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ENROLLED

HOUSE BILL No. 4065

(Pages 1 through 502)

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

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Passed March 12, 1994

In Effect Ninety Days from Passage
ENROLLED

H. B. 4065

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AN ACT to repeal articles twenty and twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal articles five, five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-m, five-n, six-a, nine, ten and ten-a, chapter twenty; to repeal article one-a, chapter twenty-two-a of said code; to repeal articles one-c and one-d, chapter twenty-nine of said code; to amend and reenact section one, article three, chapter five; to amend and reenact section eight, article seven, chapter six; to amend and reenact sections three-aa and three-ff, article one, and section twenty-two, article five, chapter seven; to amend and reenact section seventeen, article twenty, and section twenty-seven, article twenty-four, chapter eight; to amend and reenact section ten, article one-c, sections one and two, article six-a and section six, article thirteen-a, chapter eleven; to amend and reenact section four, article five-a, chapter fifteen; to amend and reenact sections nine and fourteen-a, article one, sections two and three, article nine, section six, article twelve, section twenty-three-a, article thirteen-a, section ten, article thirteen-b, and section two, article twenty-seven, chapter sixteen; to amend and reenact sections three, five, and seven, article one-b, section five, article twelve-a, section four, article twenty-one-a, and section five, article twenty-five, chapter nineteen; to amend and sections one-b, three, nine and twenty-one, article thirteen-a,
reenact sections two, seven and fourteen, article one, sections six and ten, article five-j, sections four and twenty-six, article seven, chapter twenty; to further amend said article seven, by adding thereto two new sections, designated sections twenty-eight and twenty-nine; to amend and reenact section one, article eight and sections four, five-a, five-b, nine and twelve, article eleven of said chapter twenty; to amend and reenact section three, article three-b, chapter twenty-one; to amend and reenact chapter twenty-two; to amend and reenact article one, chapter twenty-two-a; to amend and reenact sections one, two, three, seven, twelve, twenty-three, twenty-five, thirty-three, thirty-six, fifty-three-c, fifty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article two of said chapter twenty-two-a; to amend and reenact articles three, four, five, six and seven, of said chapter twenty-two-a; to further amend said chapter twenty-two-a by adding thereto three new articles, designated articles eight, nine and ten; to amend and reenact chapter twenty-two-b; to amend said code by adding thereto a new chapter, designated chapter twenty-two-c; to amend and reenact section two, article four, chapter twenty-three; to amend and reenact sections one-b, one-c, one-f, one-h, one-i and four-b, article two, chapter twenty-four; to amend and reenact section eleven, article two-b and section five-a, article three, chapter twenty-nine; to amend and reenact section four, article sixteen, section twenty-a, article eighteen and section four, article nineteen, chapter thirty-one; to amend and reenact section nine-a, article four, chapter thirty-six; to amend and reenact section seventeen, article seven and section two, article twelve-a, chapter fifty-five; to amend and reenact section forty-seven, article three, chapter sixty-one, all of said code relating to revising, arranging and consolidating in the code laws relating generally to the environment, the division of environmental protection, laws administered and enforced by the division, laws incidental thereto and the related criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:
That articles twenty and twenty-six, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that articles five, five-a, five-b, five-c, five-d, five-e, five-f, five-g, five-h, five-i, five-m, five-n, six-a, nine, ten and ten-a, chapter twenty be repealed; that article one-a, chapter twenty-two-a be repealed; that articles one-c and one-d, chapter twenty-nine be repealed; that section one, article three, chapter five be amended and reenacted; that section eight, article seven, chapter six be amended and reenacted; that sections three-aa and three-ff, article one, and section twenty-two, article five, chapter seven be amended and reenacted; that section seventeen, article twenty, and section twenty-seven, article twenty-four, chapter eight be amended and reenacted; that section-ten, article one-c, sections one and two, article six-a and section six, article thirteen-a, chapter eleven be amended and reenacted; that section four, article five-a, chapter fifteen be amended and reenacted; that sections nine and fourteen-a, article one, sections two and three, article nine, section six, article twelve, section twenty-three-a, article thirteen, sections one-b, three, nine and twenty-one, article thirteen-a, section ten, article thirteen-b, and section two, article twenty-seven, chapter sixteen be amended and reenacted; that sections three, five and seven, article one-b, section five, article twelve-a, section four, article twenty-one-a, and section five, article twenty-five, chapter nineteen be amended and reenacted; that sections two, seven and fourteen, article one, sections six and ten, article five-j, sections four and twenty-six, article seven, chapter twenty be amended and reenacted; that said article seven be further amended by adding thereto two new sections, designated sections twenty-eight and twenty-nine; that section one, article eight and sections four, five-a, five-b, nine and twelve, article eleven of said chapter twenty be amended and reenacted; that section three, article three-b, chapter twenty-one be amended and reenacted; that chapter twenty-two be amended and reenacted; that article one, chapter twenty-two-a be amended and reenacted; that sections one, two, three, seven, twelve, twenty-three, twenty-five, thirty-three, thirty-six, fifty-three-c, fifty-four, sixty-six, sixty-eight, seventy, seventy-two, seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven and seventy-eight, article two of said chapter twenty-two-a be amended and reenacted; that articles three, four, five, six and
seven of said chapter twenty-two-a be amended and reenacted; that said chapter twenty-two-a be further amended by adding thereto three new articles, designated articles eight, nine and ten; that chapter twenty-two-b be amended and reenacted; that said code be amended by adding thereto a new chapter, designated chapter twenty-two-c; that section two, article four, chapter twenty-three be amended and reenacted; that sections one-b, one-c, one-f, one-h, one-i and four-b, article two, chapter twenty-four be amended and reenacted; that section eleven, article two-b and section five-a, article three, chapter twenty-nine be amended and reenacted; that section four, article sixteen, section twenty-a, article eighteen and section four, article nineteen, chapter thirty-one be amended and reenacted; that section nine-a, article four, chapter thirty-six be amended and reenacted; that section seventeen, article seven and section two, article twelve-a, chapter fifty-five be amended and reenacted; that section forty-seven, article three, chapter sixty-one be amended and reenacted, all of said code, all to read as follows:

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 3. ATTORNEY GENERAL.

§5-3-1. Written opinions and advice and other legal services; expenditures by state officers, boards and commissions for legal services prohibited.

1 The attorney general shall give written opinions and advice upon questions of law, and shall prosecute and defend suits, actions, and other legal proceedings, and generally render and perform all other legal services, whenever required to do so, in writing, by the governor, the secretary of state, the auditor, the state superintendent of free schools, the treasurer, the commissioner of agriculture, the board of public works, the tax commissioner, the state archivist and historian, the commissioner of banking, the adjutant general, the director of the division of environmental protection, the superin-
tendent of public safety, the state commissioner of public institutions, the commissioner of the division of highways, the commissioner of the bureau of employment programs, the public service commission, or any other state officer, board or commission, or the head of any state educational, correctional, penal or eleemosynary institution; and it is unlawful from and after the time this section becomes effective for any of the public officers, commissions, or other persons above mentioned to expend any public funds of the state of West Virginia for the purpose of paying any person, firm, or corporation for the performance of any legal services: Provided, That nothing contained in this section impairs or affects any existing valid contracts of employment for the performance of legal services heretofore made.

It is also the duty of the attorney general to render to the president of the Senate and/or the speaker of the House of Delegates a written opinion or advice upon any questions submitted to the attorney general by them or either of them whenever he or she is requested in writing so to do.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-8. Public carriage for state officials and employees and the university of West Virginia board of trustees and the board of directors of the state college system.

State law-enforcement officials, including, but not limited to, the director of the division of public safety, the adjutant general of the West Virginia national guard, the director of the office of emergency services, the director of the division of natural resources, the director of the division of environmental protection, the commissioner of the division of corrections, the state fire marshal, state fire administrator and officials of the university of West Virginia board of trustees and the board of directors of the state college system at the discretion of the respective chancellor thereof, have the authority to use, and permit and allow or disallow their
designated employees to use, publicly provided carriage
to travel from their residences to their workplace and
return: Provided, That such usage is subject to the
supervision of such official and is directly connected
with and required by the nature and in the performance
of such official's or designated employee's duties and
responsibilities.

CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3aa. Authority of county commissions to create and
fund a hazardous material accident re­
sponse program.

In addition to all other powers and duties now
conferred by law upon county commissions, county
commissions are hereby authorized and empowered to
create a hazardous material accident response program.
The program may include the establishment of a
hazardous materials response team. The hazardous
materials response team shall include members of the
fire departments, recognized and approved by the West
Virginia fire commission in the county, who are
designated by the county commission. The team shall
also include members of emergency medical services
certified pursuant to article four-c, chapter sixteen of
this code who are acting in their official capacity by
providing ambulance or emergency medical services
within the county and who are designated as members
of the hazardous materials response team by the county
commission. The team may also include other people in
the community who are recognized as having expertise
with hazardous materials or hazardous material inci­
dents and who are designated by the county commission
to serve on the team. The purpose of the team is to
respond to hazardous material incidents. The hazardous
materials response team shall function and the members
shall serve at the will and pleasure of the county
commission. The team shall operate in cooperation with
the county office of emergency services and other
approved fire departments. The commission is autho­
rized to receive donated funds and to expend those funds
and to expend its own funds for the acquisition of
equipment and materials for use by and training of the
members of the team. The county commission is hereby
authorized to enter into agreements with other counties
to combine or coordinate hazardous material response
team training and for the purchase or lease and use of
equipment or materials.

Any carrier, owner or generator of hazardous mate-
rials who receives the services of a county hazardous
materials response team is liable for the cost of
necessary services provided by a county hazardous
materials response team. County commissions may bill
a carrier, owner or generator of hazardous materials for
any costs incurred by the team in responding to a
hazardous materials incident in which the carrier,
owner or generator is involved: Provided, That the
carrier, owner or generator may, within thirty days of
receipt of the bill, appeal in writing to the county
commission to request a hearing to address any costs
which may be considered extraordinary for the services
of the hazardous materials response team. The carrier,
owner or generator will hold payment of the costs in
abeyance pending the final written decision of the
county commission. Any funds received by the county
commission as a result of billing carrier, owners and
generators of hazardous materials shall be used by the
county commission to implement the provisions of this
section and to reimburse the response teams partici-
pants for response costs.

Any carrier, owner or generator involved in a
hazardous materials incident who fails to pay a bill for
services provided by a county hazardous materials
incident team within ninety days shall be liable for
treble the cost of the services.

For purposes of this section, the term "generator"
means any person, corporation, partnership, association
or other legal entity, by site location, whose act or
process produces hazardous materials as identified or
listed by the director of the division of environmental
protection in regulations promulgated pursuant to
section six, article nineteen, chapter twenty-two of this
code, in an amount greater than twelve thousand
kilograms per year.

For purposes of this section, the term "carrier" means
any person engaged in the off-site transportation of
hazardous materials by air, rail, highway or water.

For purposes of this section, "owner" means any
person, corporation, partnership, association or other
legal entity whose hazardous materials are being
transported by the entity or by a carrier.

For the purposes of this section, the term "hazardous
materials" means those materials which are designated
as such pursuant to federal laws and regulations, the
designations of which are adopted by reference as of the
tenth day of July, one thousand nine hundred ninety-
three.

§7-1-3ff. Duty to require clearance of refuse and debris
from private lands; notice of demand thereof;
procedure to contest demand.

County commissions, as set forth in this article, county
health officers, as set forth in section two, article two,
chapter sixteen of this code, and state fire marshals as
set forth in section twelve, article three, chapter twenty-
ine of this code, such commissions and health officers
are hereby authorized and obliged to require clearance
of any refuse or debris consisting of remnants or
remains of any unused or unoccupied dwelling, cement
foundation, piping, basements, intact chimneys, non-
farm building, structure or manmade appurtenance on
all private lands within their respective scopes of
authority by the owners thereof that has accumulated
as the result of any natural or manmade fire, force or
effect which presents a safety or health hazard,
including the removal of toxic or contaminant spillage
and seepage or which has deteriorated to such a degree
as to be unsightly, visually offensive and be depressive
of the value of the adjacent properties or uses of such
properties: Provided, That upon request from a land-
downer and a written determination and approval from
the state fire marshal, where appropriate, a landowner
may fill the remains of a basement to ground level with
inert fill material in lieu of complete removal of such
cement foundation, piping and basement.

Upon determination by any state fire marshal that
substantial accumulations or refuse, debris or destroyed
structures or appurtenances, as described above, exist
on the property as a result of a natural or manmade fire,
notice shall be given by the fire marshal and forwarded
to the owner immediately informing the landowner of
the requirements of this article to effect repair, removal,
closure or demolition of the fire damaged property
within ninety days of the receipt of such notice.

Upon a determination by a county commission or
county health officer that substantial accumulations of
refuse or the presence of debris, as described above,
exist on any such private lands, notice shall be for-
warded to the owner thereof informing the landowner
of the following:

(a) Of the commission’s or health officer’s demand to
remove all refuse and debris within ninety days of the
receipt of such notice unless an extension be granted by
said commission or health officer;

(b) Of the landowner’s right to contest such demand
and of the proper procedure in which to do so;

(c) That if the landowner fails to both properly contest
and comply with the commission’s or health officer’s
demand, that removal will be achieved otherwise and
that the reasonable costs incurred thereto will become
a civil debt owed by the landowner to the county;

(d) That if the county incurs costs of removal and the
landowner fails to pay such costs within two months of
such removal that a judgement lien on the subject
property will be filed in the county clerk’s office wherein
the subject property exists.

The commission or health officer shall send notice as
described herein by certified mail. If, for any reason,
such certified mail is returned without evidence of
proper receipt thereof, then in such event, a Class III-
0 legal advertisement shall be published in a newspaper
61 of general circulation in the county wherein such land
62 is situated in order to render proper notice in accor-
63 dance with this section: Provided, That if the commis-
64 sion or health officer determines, after notice and
65 inquiry as provided herein, that such refuse or debris
66 was created by someone other than the present lan-
67 downer, without such landowner's expressed or implied
68 permission, the commission or health officer shall
69 remove any such refuse or debris and shall apply to and
70 be eligible to receive from the solid waste reclamation
71 and environmental response fund created under section
72 eleven, article fifteen, chapter twenty-two of this code
73 for reimbursement for all reasonable costs incurred for
74 such removal.
75 In the event any landowner desires to contest any
76 demand brought forth pursuant to this section, the
77 landowner shall do so in accordance with article three,
78 chapter fifty-eight of this code.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-22. County solid waste assessment fees authorized.

1 Each county or regional solid waste authority is
2 hereby authorized to impose a similar solid waste
3 assessment fee to that imposed by section eleven, article
4 fifteen, chapter twenty-two of this code at a rate not to
5 exceed fifty cents per ton or part thereof upon the
6 disposal of solid waste in that county or region. All
7 assessments due shall be applied to the reasonable costs
8 of administration of the county's regional or county solid
9 waste authority including the necessary and reasonable
10 expenses of its members, and any other expenses
11 incurred from refuse cleanup, litter control programs,
12 or any solid waste programs deemed necessary to fulfill
13 its duties.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE
SYSTEMS.

§8-20-17. Additional and alternative method for con-
structing, etc., and financing combined water-
works and sewerage system; cumulative authority.

This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined waterworks and sewerage system herein provided for and for the issuance and sale of the bonds by this article authorized, and is an additional and alternative method therefor and for the financing thereof, and no petition, referendum or election or other or further proceeding with respect to any such undertaking or to the issuance or sale of bonds under this article and no publication of any resolution, ordinance, notice or proceeding relating to any such undertaking or to the issuance or sale of such bonds is required, except as prescribed by this article, any provisions of other statutes of the state to the contrary notwithstanding: Provided, That all functions, powers and duties of the bureau of public health and the division of environmental protection remain unaffected by this article.

This article is cumulative authority for any undertaking herein authorized, and does not repeal any existing laws with respect thereto.

ARTICLE 24. PLANNING AND ZONING.

§8-24-27. Cooperation between planning commissions; cooperation between commissions and governing and administrative bodies and officials.

In the exercise of the powers and authority granted by this article, the planning commission of any municipality or county may cooperate with the planning commissions or governing and administrative bodies and officials of other municipalities within or without such county and of other counties, with a view to coordinating and integrating the planning and zoning of such municipality or county with the plans of such other municipalities and of such other counties, and may appoint such committee or committees and may adopt
such rules and regulations as may be thought proper to
effect such cooperation. Such planning commissions and
governing and administrative bodies and officials of
other municipalities and counties are hereby authorized
to cooperate with such municipal or county planning
commissions for the purposes of such coordination and
integration. Similarly, such municipal or county plan-
ning commissions may cooperate with the division of
environmental protection of this state and make use of
advice and information furnished by such division and
by other appropriate state and federal officials, depart-
ments and agencies, and all state departments and
agencies having information, maps and data pertinent
to the planning and zoning of such municipality or
county may make such available for the use of such
planning commissions.

CHAPTER 11. TAXATION.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural
resources property by tax commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

(1) "Industrial property" means real and personal
property integrated as a functioning unit intended for
the assembling, processing and manufacturing of
finished or partially finished products.

(2) "Natural resources property" means coal, oil,
natural gas, limestone, fireclay, dolomite, sandstone,
shale, sand and gravel, salt, lead, zinc, manganese, iron
ore, radioactive minerals, oil shale, managed timberland
as defined in section two of this article, and other
minerals.

(b) All owners of industrial property and natural
resources property each year shall make a return to the
state tax commissioner and, if requested in writing by
the assessor of the county where situated, to such county
assessor at a time and in the form specified by the
commissioner of all industrial or natural resources
property owned by them. The commissioner may
require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The state tax commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The tax commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the state tax commissioner shall determine the fair market value of all natural resources property in the state. The commissioner shall thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the division of forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner’s certification must state that forest management practices will be conducted in accordance with approved practices from the publication “Best Management Practices for Forestry”. Property certified as managed timberland shall be valued according to its use and productive potential. The tax commissioner shall
promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state division of environmental protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state division of environmental protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The tax commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds two million dollars or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding two million dollars. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(e) The tax commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall
include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before the first day of January, one thousand nine hundred ninety-one, for its approval on or before the first day of July of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the state tax commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the tax commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the state tax commissioner: Provided, That if the county assessor fails to accept the appraisal provided by the state tax commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: Provided, That the office of the state attorney general shall provide legal representation on behalf of the tax commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to the first day of July, one thousand nine hundred ninety—one. The property owner
may request a hearing by the director of the division of forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

ARTICLE 6A. POLLUTION CONTROL FACILITIES TAX TREATMENT.

§11-6A-1. Declaration of policy.

It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state and a reasonable degree of purity of the air resources of the state. In the exercise of the police power of the state to protect the environment and promote the public health, safety and general welfare, the Legislature has enacted the Water Pollution Control Act as article eleven, chapter twenty-two of this code and the Air Pollution Control Act as article five, chapter twenty-two thereof. It is recognized and declared by the Legislature that pollution control facilities, as hereinafter defined, are required for the protection and benefit of the environment and the general welfare of the people, are nonproductive, do not add to the economic value of a business enterprise and do not have a market value after installation in excess of salvage value.

§11-6A-2. Definition.

As used in this article, "pollution control facility" means any personal property designed, constructed or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, the design, construction and installation of which personal property was approved as a pollution control facility by either the office of water resources or the office of air quality, both of the division of environmen-
ARTICLE 13A. SEVERANCE TAXES.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

(a) Additional coal severance tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing coal, or preparing coal (or both severing and preparing coal), for sale, profit or commercial use, there is hereby imposed an additional severance tax, the amount of which shall be equal to the value of the coal severed or prepared (or both severed and prepared), against which the tax imposed by section three of this article is measured as shown by the gross proceeds derived from the sale thereof by the producer, multiplied by thirty-five one hundredths of one percent. The tax imposed by this subsection shall be in addition to the tax imposed by section three of this article, and this additional tax is hereinafter in this section referred to as the "additional tax on coal".

(b) This additional tax on coal is imposed pursuant to the provisions of section six-a, article ten of the West Virginia constitution. Seventy-five percent of the net proceeds of this additional tax on coal shall, after appropriation thereof by the Legislature, be distributed by the state treasurer in the manner hereinafter
specified, to the various counties of this state in which
the coal upon which this additional tax is imposed was
located at the time it was severed from the ground.
Those counties are hereinafter in this section referred
to as the "coal-producing counties". The remaining
twenty-five percent of the net proceeds of this additional
tax on coal shall be distributed, after appropriation,
among all the counties and municipalities of this state
in the manner hereinafter specified.

(c) Such additional tax on coal shall be due and
payable, reported and remitted as elsewhere provided in
this article for the tax imposed by said section three of
this article, and all of the enforcement and other
provisions of this article shall apply to such additional
tax. In addition to the reports and other information
required under the provisions of this article and the
tonnage reports required to be filed under the provisions
of section seventy-seven, article two, chapter twenty-
two-a of this code, the tax commissioner is hereby
granted plenary power and authority to promulgate
reasonable rules requiring the furnishing by producers
of such additional information as may be necessary to
compute the allocation required under the provisions of
subsection (f) of this section. The tax commissioner is
also hereby granted plenary power and authority to
promulgate such other reasonable rules as may be
necessary to implement the provisions of this section:
Provided, That notwithstanding any language contained
in this code to the contrary, the gross amount of
additional tax on coal collected under this article shall
be paid over and distributed without the application of
any credits against the tax imposed by this section.

(d) In order to provide a procedure for the distribution
of seventy-five percent of the net proceeds of such
additional tax on coal to such coal-producing counties,
there is hereby continued in the state treasurer’s office
the special fund known as the "county coal revenue
fund"; and in order to provide a procedure for the
distribution of the remaining twenty-five percent of the
net proceeds of such additional tax on coal to all counties
and municipalities of the state, without regard to coal
having been produced therein, there is also hereby
continued in the state treasurer's office the special fund
known as the "all counties and municipalities revenue
fund".

Seventy-five percent of the net proceeds of such
additional tax on coal shall be deposited in the "county
coil revenue fund" and twenty-five percent of such net
proceeds shall be deposited in the "all counties and
municipalities revenue fund", from time to time, as such
proceeds are received by the tax commissioner. The
moneys in such funds shall, after appropriation thereof
by the Legislature, be distributed to the respective
counties and municipalities entitled thereto in the
manner set forth in subsection (e) of this section.

(e) The moneys in the "county coal revenue fund" and
the moneys in the "all counties and municipalities
revenue fund" shall be allocated among and distributed
quarterly to the counties and municipalities entitled
thereto by the state treasurer in the manner hereinafter
specified. On or before each distribution date, the state
treasurer shall determine the total amount of moneys in
each fund which will be available for distribution to the
respective counties and municipalities entitled thereto
on that distribution date. The amount to which a coal-
producing county is entitled from the "county coal
revenue fund" shall be determined in accordance with
subsection (f) of this section, and the amount to which
every county and municipality shall be entitled from the
"all counties and municipalities revenue fund" shall be
determined in accordance with subsection (g) of this
section. After determining as set forth in subsection (f)
and subsection (g) of this section the amount each county
and municipality is entitled to receive from the respec-
tive fund or funds, a warrant of the state auditor for the
sum due to such county or municipality shall issue and
a check drawn thereon making payment of such sum
shall thereafter be distributed to such county or
municipality.

(f) The amount to which a coal-producing county is
entitled from the "county coal revenue fund" shall be determined by: (1) Dividing the total amount of moneys in such fund then available for distribution by the total number of tons of coal mined in this state during the preceding quarter; and (2) multiplying the quotient thus obtained by the number of tons of coal removed from the ground in such county during the preceding quarter.

(g) The amount to which each county and municipality is entitled from the "all counties and municipalities revenue fund" shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States:

(1) The treasurer shall first apportion the total amount of moneys available in the "all counties and municipalities revenue fund" by multiplying the total amount in such fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's "base share" shall then be subdivided into two portions. One portion is determined by multiplying the "base share" by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the "base share" by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's "base share". The percentage of such latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of such latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) All counties and municipalities shall create a "coal severance tax revenue fund" which shall be the depo-
itory for moneys distributed to any county or municipality under the provisions of this section, from either or both special funds. Moneys in such "coal severance tax revenue funds", in compliance with subsection (i), may be expended by the county commission or governing body of the municipality for such public purposes as the county commission or governing body shall determine to be in the best interest of the people of its respective county or municipality: Provided, That in counties with population in excess of two hundred thousand at least seventy-five percent of such funds received from the county coal revenue fund shall be apportioned to, and expended within the coal-producing area or areas of the county, said coal-producing areas of each county to be determined generally by the state tax commissioner: Provided, however, That a line item budgeted amount from the current levy estimated for a county shall be funded at one hundred percent of the preceding year's expenditure from the county general fund prior to the use of coal severance tax revenue fund moneys for the same general purpose: Provided further, That said coal severance tax revenue fund moneys shall not be budgeted for personal services in an amount to exceed one fourth of the total funds available in such fund.

(i) On or before the twenty-eighth day of March, one thousand nine hundred eighty-six, and each twenty-eighth day of March thereafter, each county commission or governing body of a municipality receiving such revenue shall submit to the tax commissioner on forms provided by the tax commissioner a special budget, detailing how such revenue is to be spent during the subsequent fiscal year. Such budget shall be followed in expending such revenue unless a subsequent budget is approved by the state tax commissioner. All unexpended balances remaining in said special fund at the close of a fiscal year shall be reappropriated to the budget for the subsequent fiscal year. Such reappropriation shall be entered as an amendment to the new budget and submitted to the tax commissioner on or before the fifteenth day of July of the current budget year.

(j) On or before the fifteenth day of December, one
thousand nine hundred eighty-six, and each fifteenth
day of December thereafter, the tax commissioner shall
deliver to the clerk of the Senate and the clerk of the
House of Delegates a consolidated report of the special
budgets, created by subsection (i) of this section, for all
county commissions and municipalities as of the
fifteenth day of July of the current year.

(k) The state tax commissioner shall retain for the
benefit of the state from the additional taxes on coal
collected the amount of thirty-five thousand dollars
annually as a fee for the administration of such
additional tax by the tax commissioner.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND
COMMUNITY RIGHT-TO-KNOW ACT.

§15-5A-4. State emergency response commission created;
composition and organization, qualifications,
terms, removal, compensation, meetings.

(a) There is hereby created the state emergency
response commission.

(b) The state emergency response commission shall
consist of eleven members, including the director of the
division of environmental protection, the commissioner
of the division of public health, the chief of the office
of air quality of the division of environmental protection,
the director of the office of emergency services, the
superintendent of the division of public safety, the
commissioner of the division of highways; one designee
of the public service commission and one designee of the
state fire marshal, all of whom are members ex officio.
A representative from the chemical industry, a repre-
sentative of a municipal or volunteer fire department
and a representative of the public who is knowledgeable
in the area of emergency response shall be appointed by
the governor as public members of the state emergency
response commission. The director of the office of
emergency services serves as the chair of the commis-
sion and may cast a vote only in the event of a tie vote.
Members serve without compensation, but shall be
reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their duties
under this article. The initial public members appointed
by the governor shall serve for a term ending on
the first day of July, one thousand nine hundred ninety-
one. A successor to a public member of the commission
shall be appointed in the same manner as the original
public members and has a term of office expiring two
years from the date of the expiration of the term for
which his or her predecessor was appointed. In cases of
any vacancy among the public members, such vacancy
shall be filled by appointment by the governor. Any
member appointed to fill a vacancy on the commission
occurring prior to the expiration of the term for
which his or her predecessor was appointed shall be appointed
for the remainder of such term. Members appointed by
the governor may be removed by the governor in case
of incompetency, neglect of duty, gross immorality or
malfeasance in office.

(c) The commission shall elect from its membership
a vice chair and appoint a secretary. The secretary need
not be a member of the commission. The vice chair shall
preside over the meetings and hearings of the commis-
sion in the absence of the chair. The commission may
appoint and employ such personnel as may be required,
whose duties shall be defined by the commission and
whose compensation, to be fixed by the commission,
shall be paid out of the state treasury, upon the
requisition of the commission, from moneys approp-
riated for such purposes.

(d) The commission may establish procedural rules in
accordance with chapter twenty-nine-a of the code for
the regulation of its affairs and the conduct of all
proceedings before it. All proceedings of the commission
shall be entered in a permanently bound record book,
properly indexed, and the same shall be carefully
preserved and attested by the secretary of the commis-
sion. The commission shall meet at such times and
places as may be agreed upon by the commissioners, or
upon the call of the chairman of the commission or any
two members of the commission, all of which meetings
shall be general meetings for the consideration of any
and all matters which may properly come before the
commission. A majority of the commission constitutes a
quorum for the transaction of business.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-9. Supervision over local sanitation.

1 No person, firm, company, corporation, institution or
association, whether public or private, county or
municipal, shall install or establish any system or
method of drainage, water supply, or sewage or excreta
disposal without first obtaining a written permit to
install or establish such system or method from the
commissioner of the bureau of public health or his or
her authorized representative. All such systems or
methods shall be installed or established in accordance
with plans, specifications and instructions issued by the
commissioner or which have been approved in writing
by the commissioner or his or her authorized
representative.

14 Whenever the commissioner of the bureau of public
health or his or her authorized representative finds upon
investigation that any system or method of drainage,
water supply, or sewage or excreta disposal, whether
publicly or privately owned, has not been installed in
accordance with plans, specifications and instructions
issued by the commissioner approved in writing by the
commissioner or his or her duly authorized representa-
tive, the commissioner or his or her duly authorized
representative may issue an order requiring the owner
of such system or method to make alterations as may
be necessary to correct the improper condition. Such
alterations shall be made within a reasonable time
which shall not exceed thirty days, unless a time
extension is authorized by the commissioner or his or
her duly authorized representative.

30 The presence of sewage or excreta being disposed of
in a manner not approved by the commissioner of the
bureau of public health or his or her authorized
representative constitutes prima facie evidence of the existence of a condition endangering public health.

The personnel of the bureau of public health shall be available to consult and advise with any person, firm, company, corporation, institution or association, whether publicly or privately owned, county or municipal, or public service authority, as to the most appropriate design, method of operation or alteration of any such system or method.

Any person, firm, company, corporation, institution or association, whether public or private, county or municipal, who violates any provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars. The continued failure or refusal of such convicted person, firm, company, corporation, institution or association, whether public or private, county or municipal, to make the alterations necessary to protect the public health required by the commissioner of the bureau of public health or his or her duly authorized representative is a separate, distinct and additional offense for each twenty-four hour period of such failure or refusal, and, upon conviction thereof, the violator shall be fined not less than twenty-five dollars nor more than five hundred dollars for each such conviction: Provided, That none of the provisions contained in this section apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.

Magistrates have concurrent jurisdiction with the circuit courts of this state for violations of any provisions of this section.

§16-1-14a. Commissioner authorized to designate a representative to serve in his or her place on certain boards and commissions.

Notwithstanding any other provision of this code to the contrary, the commissioner may, at his or her discretion, designate in writing a representative to serve in his or her stead at the meetings and in the duties of
all boards and commissions on which the commissioner
is designated as a member ex officio. Such appropriately
designated representative or proxy may act with the full
power and authority of the commissioner in voting,
acting upon matters concerning the public health and
welfare and such other business as may properly be the
duty of any such said board or commission, with any
such representative serving as proxy for the commis-
sioner at his or her will and pleasure: Provided, That
the provisions of this section do not apply to the state
board of health, the medical licensing board, the air
quality board or any other board, commission or body
on which the commissioner is designated by this code
as chairman ex officio, secretary ex officio or any board,
commission or body on which the commissioner is
designated by this code as being that person whose
signature must appear on licenses, minutes or other
documents necessary to carry out the intents and
purposes of said board, commission or body.

ARTICLE 9. OFFENSES GENERALLY.

§16-9-2. Throwing or releasing dead animals or offensive
substances into waters used for domestic
purposes; penalties; jurisdiction; failure to
bury or destroy offensive substances after
conviction; successive offenses.

Any person who knowingly and willfully throws,
causes to be thrown or releases any dead animal,
carcass, or part thereof, garbage, sink or shower waste,
organic substance, human or animal excrement, con-
tents of privy vault, septic tank, cesspool or the effluent
from any cesspool or nauseous or offensive or poisonous
substances into any well, cistern, spring, brook, pond,
stream or other body of water which is used for domestic
purposes, is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not less than twenty-
five dollars nor more than two hundred dollars. None
of the provisions contained in this section shall apply to
those commercial or industrial wastes which are subject
to the regulatory control of the West Virginia division
of environmental protection.
Upon conviction of any such offense, the person convicted shall, within twenty-four hours after such conviction, remove and bury or cause to be buried at least three feet under the ground or destroy or cause to be destroyed as otherwise directed by the commissioner of the bureau of public health or his or her duly authorized representative any of such offensive materials which the person so convicted has thrown, caused to be thrown, released or knowingly permitted to remain in water used for domestic purposes, contrary to the provisions of this section, and his or her failure or refusal to do so is a misdemeanor and a second violation of the provisions of this section. The continued failure or refusal of such convicted person to so bury or destroy such offensive materials is a separate, distinct and additional offense for each successive twenty-four hour period of such failure or refusal. Any person convicted of any offense described in this paragraph shall be fined not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail not more than ninety days, or both fined and imprisoned.

§16-9-3. Depositing dead animals or offensive substances in or near waters or on or near roads or on public or private grounds; penalties; failure to bury or destroy offensive substances after conviction; successive offenses.

Any person (1) who throws, causes to be thrown or releases any dead animal, carcass, or part thereof, garbage, sink or shower waste, organic substances, contents of a privy vault, septic tank, cesspool or the effluent from any cesspool, spoiled meat or nauseous or offensive or poisonous substances into any river, creek or other stream, or upon the surface of any land adjacent to any river, creek or other stream in such a location that high water or normal drainage conditions will cause such offensive materials to be washed, drained or cast into the river, creek or other stream; or (2) who throws, or causes to be thrown or releases any of such offensive materials upon the surface of any road, right-of-way, street, alley, city or town lot, public ground, market space, common or private land, or (3) who, being
the owner, lessee or occupant of any city or town lot, public ground, market space, common or private land knowingly permits any such offensive materials to remain thereon or neglects or refuses to remove or abate the public health menace or nuisance occasioned thereby, within twenty-four hours of the service of notice thereof in writing from the commissioner of the bureau of public health or his or her duly authorized representative, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars. None of the provisions contained in this section apply to those commercial or industrial wastes which are subject to the regulatory control of the West Virginia division of environmental protection.

Upon a conviction for any such offense, the person shall, within twenty-four hours after such conviction, remove and bury or cause to be buried at least three feet under the ground, or destroy or cause to be destroyed as otherwise directed by the commissioner of the bureau of public health or his or her duly authorized representative, any of such offensive materials which the person so convicted has placed or knowingly permitted to remain upon such city or town lot, public ground, market space, common or private land, contrary to the provisions of this section. Such person's failure or refusal to do so is a misdemeanor and a second offense against the provisions of this section. The continued failure or refusal of such convicted person to remove and bury or destroy such offensive materials is a separate, distinct and additional offense for each successive twenty-four-hour period of such failure and refusal. Any person convicted of any offense described in this paragraph shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned in the county jail not more than ninety days, or both fined and imprisoned.

ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.

§16-12-6. Penalty for failure to provide sewers and sewage treatment plant; duties of the division of environmental protection and the bureau of public health; prosecution.
All sanitary districts organized under the provisions of this article shall proceed as rapidly as possible to provide sewers and a plant or plants for the treatment or purification of its sewage, which plant or plants shall be of suitable kind and sufficient capacity to properly treat and purify such sewage so as to conduce to the preservation of the public health, comfort and convenience and to render said sewage harmless, insofar as is reasonably possible, to animal, fish and plant life. Any violation of this proviso and any failure to observe and follow same, by any sanitary district organized under this article, is a misdemeanor on the part of the sanitary district and upon conviction, said sanitary district shall be punished by such fine as law and equity may require, and the trustees thereof may be removed from office as trustees of said sanitary district by an order of the court before whom the cause is heard. It is the duty of the division of environmental protection or the bureau of public health or other body having proper supervision of such matters, to enforce the foregoing provisions; and upon complaint of said office or bureau it is the duty of the attorney general or prosecuting attorney of the county in which such violation may occur, to institute and prosecute such cause by indictment or in the manner provided by law.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-23a. Additional powers of municipality upon receipt of order to cease pollution.

Notwithstanding any other provision contained in this article, and in addition thereto, the governing body of any municipal corporation which has received or which hereafter receives an order issued by the director of the division of environmental protection or the environmental quality board requiring such municipal corporation to cease the pollution of any stream or waters, is hereby authorized and empowered to fix, establish and maintain, by ordinance, just and equitable rates or charges for the use of the services and facilities of the existing sewer system of such municipal corporation, and/or for the use of the services and facilities to be rendered upon
completion of any works and system necessary by virtue of said order, to be paid by the owner, tenant or occupant of each and every lot or parcel of real estate or building that is connected with and uses any part of such sewer system, or that in any way uses or is served thereby, and may change and readjust such rates or charges from time to time. Such rates or charges shall be sufficient for the payment of all the proper and reasonable costs and expenses of the acquisition and construction of plants, machinery and works for the collection and/or treatment, purification and disposal of sewage, and the repair, alteration and extension of existing sewer facilities, as may be necessary to comply with such order of the director of the division of environmental protection or the environmental quality board, and for the operation, maintenance and repair of the entire works and system; and the governing body shall create, by ordinance, a sinking fund to accumulate and hold any part or all of the proceeds derived from rates or charges until completion of said construction, to be remitted to and administered by the municipal bond commission by expending and paying said costs and expenses of construction and operation in the manner as provided by said ordinance; and after the completion of the construction such rates or charges shall be sufficient in each year for the payment of the proper and reasonable costs and expenses of operation, maintenance, repair replacement, and extension from time to time, of the entire sewer and works. No such rates or charges shall be established until after a public hearing, at which all the potential users of the works and owners of property served or to be served thereby and others shall have had an opportunity to be heard concerning the proposed rates or charges. After introduction of the ordinance fixing such rates or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates or charges, shall be given by publication of such notice as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the municipality. The first publication shall be made
at least ten days before the date fixed therein for the
hearing. After such hearing, which may be adjourned
from time to time, the ordinance establishing the rates
or charges, either as originally introduced or as
modified and amended, may be passed and put into
effect. A copy of the schedule of such rates and charges
so established shall be kept on file in the office of the
sanitary board having charge of the construction and
operation of such works, and also in the office of the
clerk of the municipality, and shall be open to inspection
by all parties interested. The rates or charges so
established for any class of users or property served
shall be extended to cover any additional premises
thereafter served which fall within the same class,
without the necessity of any hearing or notice. Any
change or readjustment of such rates or charges may be
made in the same manner as such rates or charges were
originally established as hereinbefore provided: Pro-
vided, That if such change or readjustment be made
substantially pro rata, as to all classes of service, no
hearing or notice is required. If any rate or charge so
established is not paid within thirty days after the same
is due, the amount thereof, together with a penalty of
ten percent, and a reasonable attorney's fee, may be
recovered by the sanitary board of such municipal
corporation in a civil action in the name of the munic-
ipality. Any municipal corporation exercising the
powers given herein has authority to construct, acquire,
improve, equip, operate, repair and maintain any plants,
machinery, or works necessary to comply with such
order of the director of the division of environmental
protection or the environmental quality board, and the
authority provided herein to establish, maintain and
collect rates or charges is an additional and alternative
method of financing such works and matters, and is
independent of any other provision of this article insofar
as such article provides for or requires the issuance of
revenue bonds or the imposition of rates and charges in
connection with such bonds: Provided, however, That
except for the method of financing such works and
matters, the construction, acquisition, improvement,
equipment, custody, operation, repair and maintenance
of any plants, machinery or works in compliance with
an order of the director of the division of environmental
protection or the environmental quality board, and the
rights, powers, and duties of such municipal corporation
and the respective officers and departments thereof,
including the sanitary board, are governed by the
provisions of this article.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-1b. County commissions to develop plan to
create, consolidate, merge, expand or
dissolve public service districts.

Each county commission shall conduct a study of all
public service districts which have their principal
offices within its county and shall develop a plan
relating to the creation, consolidation, merger, expan-
sion or dissolution of such districts or the consolidation
or merger of management and administrative services
and personnel and shall present such plan to the public
service commission for approval, disapproval, or
modification: Provided, That within ninety days of the
effective date of this section each county commission in
this state shall elect either to perform its own study or
request that the public service commission perform such
study. Each county commission electing to perform its
own study has one year from the date of election to
present such plan to the public service commission. For
each county wherein the county commission elects not
to perform its own study, the public service commission
shall conduct a study of such county. The public service
commission shall establish a schedule for such studies
upon a priority basis, with those counties perceived to
have the greatest need of creation or consolidation of
public service districts receiving the highest priority. In
establishing the priority schedule, and in the perfor-
mance of each study, the bureau of public health and
the division of environmental protection shall offer their
assistance and cooperation to the public service commis-
son. Upon completion by the public service commission
of each study, it shall be submitted to the appropriate
county commission for review and comment. Each
county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board
consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district.
If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members become members of the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three; and the member or members appointed by the governing bodies of the cities, incorporated towns or other municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission.

The respective terms of office of the members of the first board shall be fixed by the county commission and
shall be as equally divided as may be, that is approxi- 
mately one third of the members for a term of two 
years, a like number for a term of four, and the term 
of the remaining member or members for six years, 
from the first day of the month during which the 
appointments are made. The first members of the board 
appointed as aforesaid shall meet at the office of the 
clerk of the county commission which entered the order 
creating the district as soon as practicable after the 
appointments and shall qualify by taking an oath of 
office: Provided, That any member or members of the 
board may be removed from their respective office as 
provided in section three-a of this article.

Any vacancy shall be filled for the unexpired term 
within thirty days, otherwise successor members of the 
board shall be appointed for terms of six years and the 
terms of office shall continue until successors have been 
appointed and qualified. All successor members shall be 
appointed in the same manner as the member succeeded 
was appointed.

The board shall organize within thirty days following 
the first appointments and annually thereafter at its 
first meeting after the first day of January of each year 
by selecting one of its members to serve as chair and 
by appointing a secretary and a treasurer who need not 
be members of the board. The secretary shall keep a 
record of all proceedings of the board which shall be 
available for inspection as other public records. Duplicate 
records shall be filed with the county commission 
and shall include the minutes of all board meetings. The 
treasurer is lawful custodian of all funds of the public 
service district and shall pay same out on orders 
authorized or approved by the board. The secretary and 
treasurer shall perform other duties appertaining to the 
affairs of the district and shall receive salaries as shall 
be prescribed by the board. The treasurer shall furnish 
bond in an amount to be fixed by the board for the use 
and benefit of the district.

The members of the board, and the chair, secretary 
and treasurer thereof, shall make available to the county 
commission, at all times, all of its books and records
pertaining to the district's operation, finances and affairs, for inspection and audit. The board shall meet at least monthly.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and
address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and
charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval.

Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately
served by the sewer facilities of the district, and it is
hereby found, determined and declared that the mand-
datory use of such sewer facilities provided for in this
paragraph is necessary and essential for the health and
welfare of the inhabitants and residents of such districts
and of the state: Provided, That if the public service
district determines that the property owner must
connect with the sewer facilities even when sewage from
such dwellings may not flow to the main line by gravity
and the property owner must incur costs for any
changes in the existing dwellings' exterior plumbing in
order to connect to the main sewer line, the public
service district board shall authorize the district to pay
all reasonable costs for such changes in the exterior
plumbing, including, but not limited to, installation,
operation, maintenance and purchase of a pump, or any
other method approved by the bureau of public health;
maintenance and operation costs for such extra instal-
lation should be reflected in the users charge for
approval of the public service commission. The circuit
court shall adjudicate the merits of such petition by
summary hearing to be held not later than thirty days
after service of petition to the appropriate owners,
tenants or occupants.

Whenever any district has made available sewer
facilities to any owner, tenant or occupant of any house,
dwelling or building located near such sewer facility,
and the engineer for the district has certified that such
sewer facilities are available to and are adequate to
serve such owner, tenant or occupant, and sewage will
flow by gravity or be transported by such other methods
approved by the bureau of public health from such
house, dwelling or building into such sewer facilities,
the district may charge, and such owner, tenant or
occupant shall pay the rates and charges for services
established under this article only after thirty-day notice
of the availability of the facilities has been received by
the owner.

All delinquent fees, rates and charges of the district
for either water facilities, sewer facilities or gas
facilities are liens on the premises served of equal
dignity, rank and priority with the lien on such premises
of state, county, school and municipal taxes. In addition
to the other remedies provided in this section, public
service districts are hereby granted a deferral of filing
fees or other fees and costs incidental to the bringing
and maintenance of an action in magistrate court for the
collection of delinquent water, sewer or gas bills. If the
district collects the delinquent account, plus reasonable
costs, from its customer or other responsible party, the
district shall pay to the magistrate the normal filing fee
and reasonable costs which were previously deferred. In
addition, each public service district may exchange with
other public service districts a list of delinquent
accounts.

Anything in this section to the contrary notwithstanding,
any establishment, as defined in section three,
article eleven, chapter twenty-two, now or hereafter
operating its own sewage disposal system pursuant to a
permit issued by the division of environmental protec-
tion, as prescribed by section eleven, article eleven,
chapter twenty-two of this code, is exempt from the
provisions of this section.

§16-13A-21. Complete authority of article; liberal con-
struction; district to be public instrumentality; tax exemption.

This article is full and complete authority for the
creation of public service districts and for carrying out
the powers and duties of same as herein provided. The
provisions of this article shall be liberally construed to
accomplish its purpose and no procedure or proceedings,
notices, consents or approvals, are required in connec-
tion therewith except as may be prescribed by this
article: Provided, That all functions, powers and duties
of the public service commission of West Virginia, the
bureau of public health, the division of environmental
protection and the environmental quality board remain
unaffected by this article. Every district organized,
consolidated, merged or expanded under this article is
a public instrumentality created and functioning in the
interest and for the benefit of the public, and its
property and income and any bonds issued by it are
exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, that the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent.

ARTICLE 13B. COMMUNITY IMPROVEMENT ACT.

§16-13B-10. Notice to property owners of assessments; hearings, correcting and laying assessments; report on project completion; permits.

(a) After the execution of an agreement or agreements for the construction of a project with another governmental agency or the acceptance by the board of a bid by one or more contractors as contemplated by section nine of this article, but prior to the commencement of construction, the board shall cause the engineer, governmental agency or person charged by the board with the supervision of the project, to prepare a report describing each lot or parcel of land abutting the project in the case of a wastewater or water project, or each lot or parcel on which a flood relief project shall be undertaken or shall protect in the case of such a project; and setting forth the total cost of the project based on the contract with the governmental agency, or the accepted bid or bids, and all other costs incurred prior to the commencement of construction, and the respective amounts chargeable upon each lot or parcel of land which may be assessed and the proper amount to be assessed against the respective lots or parcels of land in accordance with sections eleven and twelve of this article, with a description of the lots and parcels of land as to ownership, frontage and location. If two or more different kinds of projects are involved, the report shall set forth the portion of the assessment attributable to each respective project. The board shall thereupon give notice to the owners of property to be assessed that on
or after a date specified in the notice an assessment may be levied against the property: Provided, That construction of a project shall not commence until the assessment district has laid all assessments on the property to be benefitted by the project and has issued all assessment certificates necessary to evidence the assessments in accordance with section fifteen of this article. The notice shall state that the owner of assessed property, or other interested party, may on said date appear before the board to move the revision or correction of the proposed assessment, and shall show the total cost of the project, whether the assessments will pay for all or part of the total cost of the project, and the lots or parcels of property to be assessed and the respective amounts to be assessed against such lots or parcels, with a description of the respective lots and parcels of land as to ownership, frontage and location. The notice shall be published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code, and the publication area for such publication is the assessment district. On or after the date so advertised, the board may revise, amend, correct and verify the report and proceed by resolution to lay the assessments as corrected and verified.

(b) Upon completion of a project, or the completion of that portion of a project that provides water, wastewater or flood protection benefits to the property subject to the assessments, the board shall cause the engineer or committee charged by the board with the supervision of the project, to prepare a final report certifying the completion of the project and showing the total cost of the project and whether the cost is greater or less than the cost originally estimated. If the total cost of the project is less or greater than the cost shown in the report prepared prior to construction, the board may revise the assessment charged on each lot or parcel of land pursuant to subsection (a) of this section to reflect the total cost of the project as completed, and in so doing shall, in the case of an assessment increase only, (1) follow the same procedure with regard to notice and providing each owner of assessed property the right to appear before the board to move for the revision or
correction of such proposed reassessment as required for
the original assessment, and (2) issue such additional
assessment certificates as may be necessary to evidence
the amount by which the assessment applicable to each
lot or parcel of land has increased. If an assessment is
decreased, the board shall, by resolution and written
notice to the sheriff of the county in which the assess-
ment district is located, cause the next installment or
installments of assessment fees then due and payable by
each affected property owner to be reduced pro rata,
and shall provide written notice to such property owners
of the amount of such decrease by the deposit of such
notice in the United States mail, postage prepaid. In
such cases the board shall also transmit to the sheriff
an amount of funds equal to the difference between the
cost of the project upon which the assessments were
originally laid and the cost of the project as completed,
and the sheriff shall disburse such funds to the holders
of the assessment certificates issued in connection with
the project on a pro rata basis.

(c) Prior to the construction of a project, the board
shall obtain all permits and licenses required by law for
the construction and operation of the project: Provided,
That the board is not required to obtain a certificate of
public convenience from the public service commission
under article two, chapter twenty-four of this code:
Provided, however, That prior to the construction of each
project, the board shall apply to the public service
commission for authorization enabling the construction
and shall submit with said application any certificate
required by the division of public health, any certifica-
tion or permit required by the division of environmental
protection, the contract for utility service, if a utility
will be involved, a copy of the utility's applicable,
existing rate tariff, a copy of the order or ordinance
creating the board and a certificate of a qualified
professional engineer that the utility providing service
has the capacity to provide or treat, as the case may be.
The public service commission shall render its final
decision on any application filed under the provisions of
this section within (i) ninety days in the case of a project
serving twenty-five or fewer residential customers, or
ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

(a) No person shall store or dispose of any radioactive waste material within the state: Provided, That the provisions of this section do not prohibit (1) the storage or disposal of such material produced within the state as a result of medical, educational, research or industrial activities and so stored or disposed of in compliance with all applicable state and federal laws, or (2) the transportation of such material out of or through the state when done in compliance with all applicable state and federal laws: Provided, however, That such waste from industrial activities does not include, for the purpose of this article, such material produced from the operation of any nuclear power generation facility, nuclear processing facility, or nuclear reprocessing facility.

(b) The disposal of radioactive waste material in a solid waste facility or in a commercial solid waste facility, as defined in section two, article fifteen, chapter twenty-two of this code, is prohibited.

CHAPTER 19. AGRICULTURE.

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-3. Definitions.

(a) “Best management practices” means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) “Chief” means the chief of the office of water resources of the division of environmental protection, or his or her designee.
(c) "Director" means the director of the division of forestry of the department of commerce, labor and environmental resources, or his or her authorized designee.

(d) "Operator" means any person who conducts timbering operations.

(e) "Timbering operations" means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations do not include the severing of evergreens grown for and severed for the traditional Christmas holiday season, or the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations, or the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities or any company subject to the jurisdiction of the federal energy regulatory commission unless the trees so severed are being sold or provided as raw material for commercial wood product purposes, or the severing of trees by an individual on the individual's own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.

(f) "Sediment" means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.

§19-1B-5. Compliance orders, suspension of timbering operating license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the chief shall notify the director of the location of the site, the problem associated with the site, and any suggested corrective action. Upon the failure of the director to take appropriate action within three days of providing notice to the director, the chief may seek relief through the confer-
ence panel in accordance with section eleven of this article.

(b) Upon notification of the chief or upon a finding by the director that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to soil erosion or water pollution, the director shall issue a written compliance order requiring the person conducting the timber operation to take corrective action. The order shall mandate compliance within a reasonable and practical time, not to exceed ten days. The person subject to the order may appeal the order within forty-eight hours of its issuance to the conference panel in accordance with section eleven of this article.

(c) In any circumstance where observed damage or circumstances on a logging operation, in the opinion of the director, are sufficient to endanger life or result in uncorrectable soil erosion or water pollution, or if the operator is not licensed pursuant to this article, or if a certified logger is not supervising the operation, the director shall order the immediate suspension of the timber operation and the operation shall remain suspended until the corrective action mandated in the compliance order suspending the operation is instituted. The director shall not issue an order cancelling the suspension order until compliance is satisfactory or until overruled on appeal. Failure to comply with any compliance order is a violation of this article. The person subject to the order may appeal to the conference panel in accordance with the provisions of section eleven of this article.

(d) The director may suspend the license of any person conducting a timbering operation or the certification of any certified logger supervising a timbering operation, for no less than thirty nor more than ninety days, if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a second time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this subsection.
(e) The director may revoke the license of any person conducting timbering operations or the certification of any certified logger if the person is found in violation of this article or article eleven, chapter twenty-two of this code, for a third time within any two-year period: Provided, That one or more violations for the same occurrence is only one violation for purposes of this subsection. A revoked license is not subject to reissue during the licensing period for which it was issued.

(f) The director shall notify the chief of any order issued or any suspension or revocation of a license pursuant to this section within three days of the date of the director's action.

§19-1B-7. Certification of persons supervising timbering operations, timbering operations to be supervised, promulgation of rules.

(a) After the first day of July, one thousand nine hundred ninety-three, any individual supervising any timbering operation must be certified pursuant to this article.

(b) The director is responsible for the development of standards and criteria for establishment of a regularly scheduled program of education, training and examination that all persons must successfully complete in order to be certified to supervise any timbering operation. The program for certified loggers shall provide, at a minimum, for education and training in the safe conduct of timbering operations, in first aid procedures, and in the use of best management practices to prevent, insofar as possible, soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is safest for the individuals conducting the operations and that they are performed in an environmentally sound manner.

(c) The director shall provide for such programs by using the resources of the division, other appropriate state agencies, educational systems, and other qualified persons. Each inspector under the jurisdiction of the
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chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall promulgate legislative rules in accordance with article three, chapter twenty-nine-a, of this code, which provide the procedure by which certification pursuant to this article may be obtained and shall require the payment of an application fee and an annual renewal fee of fifty dollars.

(e) Upon a person's successful completion of the certification requirements, the director shall provide that person with proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) A certification granted pursuant to this section is renewable only for two succeeding years. For the third renewal and every third renewal thereafter, the licensee shall first attend a program designed by the director to update the training.

(g) After the first day of July, one thousand nine hundred ninety-three, every timbering operation must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted and all timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices in selecting practices appropriate and adequate for reducing sediment movement during a timber operation.

(h) The director shall, at no more than three year intervals after the effective date of this article, convene a committee to review the best management practices so as to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person doing research in the field of silvicultural best management practices, a person doing research in the field of silviculture, two loggers certified under this article, a representative of the office of water resources of the division of environmental protection,
and a representative of an environmentally active
organization. The director shall chair the committee and
may adjust the then current best management practices
according to the suggestions of the committee in time
for the next certification cycle.

ARTICLE 12A. FARM MANAGEMENT COMMISSION.

§19-12A-5. Powers, duties and responsibilities of
commission.

(a) On or before the first day of July, one thousand
nine hundred ninety, the commission shall meet and
confer with respect to the development of a management
plan to determine the optimum use or disposition of all
institutional farms, at which time the farm management
director shall provide the commission with a complete
inventory of all institutional farms, and such informa-
tion relating to easements, mineral rights, appurtenan-
tces, farm equipment, agricultural products, livestock,
inventories and farm facilities as may be necessary to
develop such management plan. The commission shall
complete and provide to the governor a management
plan, which plan shall set forth the objectives of the
commission with respect to institutional farms, the
criteria by which the commission shall determine the
optimum use or disposition of such property, and
determinations as to whether each institutional farm
shall be used in production, sold, or leased, in whole or
in part. Prior to the adoption of any plan, the commis-
sion shall consult with the secretaries of the various
departments of state government and shall request from
such secretaries suggestions for land use and resource
development on farm commission lands. On or before
the first day of December, one thousand nine hundred
ninety, such management plan shall be presented to the
Legislature, by providing a copy to the president of the
Senate and the speaker of the House of Delegates. The
commission may confer with any other agency or
individual in implementing and adjusting its manage-
ment plan. The management plan established pursuant
to this subsection may be amended, from time to time,
as may be necessary.
(b) The commission shall manage its institutional farms, equipment and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set forth by this article. From the total amount of food, milk and other commodities produced on institutional farms, the commission shall sell, at prevailing wholesale prices, and each of the institutions under the control of the bureau of public health and the division of corrections shall purchase, a proportionate amount of these products based on the dietary needs of each institution.

(c) If requested by the commissioner of corrections, the commission may authorize the division of corrections to operate a farm or other enterprise using inmates as labor on such lands. The commissioner of corrections is responsible for the selection, direction and supervision of the inmates and shall assign the work to be performed by inmates.

(d) The commission is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes permitted by the management plan, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the commissioner of agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of one thousand dollars or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication is the county in which the property to be leased is located;

(2) Transfer to the public land corporation land designated in its management plan as land to be
disposed of, which land shall be sold, exchanged or otherwise transferred pursuant to sections four and five, article one-a, chapter twenty of this code: Provided, That the net proceeds of the sale of farm commission lands shall be deposited in the general revenue fund of the state: Provided, however, That no sale may be concluded until on or after the fifteenth day of March, one thousand nine hundred ninety-one, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, the tenth day of March, one thousand nine hundred ninety; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the regional jail and correctional facilities authority or the state building commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the regional jail and correctional facilities authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the division of environmental protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) herein, no timberland may be leased, sold, exchanged or otherwise disposed of unless the division of forestry of the department of commerce, labor and environmental resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange or other disposition is accomplished by the sealed bid auction procedure provided above in subdi-
visions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to chapter twenty-nine-a of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee; continuation.

(a) The state soil conservation committee is continued. It is to serve as an agency of the state and to perform the functions conferred upon it in this article. The committee shall consist of seven members. The following shall serve, ex officio, as members of the committee: The director of the state cooperative extension service; the director of the state agricultural experiment station; the director of the division of environmental protection; and the state commissioner of agriculture, who shall be chairman of the committee.

The governor shall appoint as additional members of the committee three representative citizens. The term of members thus appointed shall be four years, except that of the first members so appointed, one shall be appointed for a term of two years, one for a term of three years, and one for a term of four years. In the event of a vacancy, appointment shall be for the unexpired term.

The committee may invite the secretary of agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings and promulgate such rules as may be necessary for the execution of its functions under this article.

(b) The state soil conservation committee may employ an administrative officer and such technical experts and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The committee
may call upon the attorney general of the state for such
legal services as it may require. It shall have authority
to delegate to its chairman, to one or more of its
members, or to one or more agents or employees, such
powers and duties as it may deem proper. The commit-
tee is empowered to secure necessary and suitable office
accommodations, and the necessary supplies and equip-
ment. Upon request of the committee, for the purpose
of carrying out any of its functions, the supervising
officer of any state agency, or of any state institution of
learning shall, insofar as may be possible, under
available appropriations, and having due regard to the
needs of the agency to which the request is directed,
assign or detail to the committee, members of the staff
or personnel of such agency or institution of learning,
and make such special reports, surveys or studies as the
committee may request.

(c) A member of the committee shall hold office so
long as he shall retain the office by virtue of which he
shall be serving on the committee. A majority of the
committee shall constitute a quorum, and the concur-
rence of a majority in any matter within their duties
shall be required for its determination. The chairman
and members of the committee shall receive no compen-
sation for their services on the committee, but shall be
entitled to expenses, including traveling expenses,
necessarily incurred in the discharge of their duties on
the committee. The committee shall provide for the
execution of surety bonds for all employees and officers
who shall be entrusted with funds or property; shall
provide for the keeping of a full and accurate public
record of all proceedings and of all resolutions, rules and
orders issued or adopted; and shall provide for an
annual audit of the accounts of receipts and
disbursements.

(d) In addition to the duties and powers hereinafter
conferred upon the state soil conservation committee, it
shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to
the supervisors of soil conservation districts, organized
as provided hereinafter, in the carrying out of any of
their powers and programs;

(2) To keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable;

(6) To accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise, from the United States or any of its agencies, from the state of West Virginia, or from other sources, and to use or expend such money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate such money, services or materials in part to the various soil conservation districts created by this article in order to assist them in carrying on their operations; and

(7) To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, operate and improve any properties acquired, to receive and retain income from such property and to expend such income as required for operation, maintenance, administration or improvement of such properties or in otherwise carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its
property or interests therein in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the state soil conservation committee and expended as herein provided.

After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the state soil conservation committee should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the state soil conservation committee shall continue to exist until the first day of July, one thousand nine hundred ninety-eight.

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.


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

2 (1) “Charge” means:

3 (A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in section two of this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion which may not exceed fifty dollars a year per recreational participant;

4 (B) For purposes of limiting liability for military training set forth in section six of this article, the amount of money asked in return for an invitation to enter or go upon the land;

5 (2) “Land” includes, but shall not be limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

6 (3) “Noncommercial recreational activity” shall not include any activity for which there is any charge which exceeds fifty dollars per year, per participant;
(4) "Owner" includes, but shall not be limited to, tenant, lessee, occupant or person in control of the premises;

(5) "Recreational purposes" includes, but shall not be limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;

(6) "Wildlife propagation purposes" applies to and includes all ponds, sediment control structures, permanent water impoundments or any other similar or like structure created or constructed as a result of or in connection with surface mining activities, as governed by article three, chapter twenty-two of this code, or from the use of surface in the conduct of underground coal mining as governed by said article, and rules promulgated thereunder, which ponds, structures or impoundments are hereafter designated and certified in writing by the director of the division of environmental protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds and fish or other forms of aquatic life, and finds and determines that the premises has the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures or impoundments shall not be removed without the joint consent of the director and the owner; and

(7) "Military training" includes, but it not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment or other use of land by a member of the army national guard or air national guard, a member of a reserve unit of the armed forces of the United States or
a person on active duty in the armed forces of the United States, acting in that capacity.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a different meaning:

2 "Agency" means any branch, department or unit of the state government, however designated or constituted.

3 "Alien" means any person not a citizen of the United States.

4 "Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any licensee.

5 "Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

6 "Citizen" means any native born citizen of the United States, and foreign born persons who have procured their final naturalization papers.

7 "Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

8 "Commission" means the natural resources commission.

9 "Commissioner" means a member of the advisory commission of the natural resources commission.

10 "Director" means the director of the division of natural resources.

11 "Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

12 "Fur-bearing animals" include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g)
the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

"Game" means game animals, game birds and game fish as herein defined.

"Game animals" include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases — red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) the Anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the Rallidae, commonly known as rails, sora, coots, mudhens and gallinales; (c) the Limicola, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the Galli, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); and (e) the Columbidae, commonly known as doves, and the Icteridae, commonly known as blackbirds, redwings and grackle.

"Game fish" include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) Kokanee salmon; (f) largemouth bass; (g) smallmouth bass; (h) Kentucky or spotted bass; (i) striped bass; (j) pickerel; (k) muskellunge; (l) walleye pike or pike perch; (m) northern pike; (n) rock bass; (o) white bass; (p) white and black crappie; (q) all sunfish; (r) channel and flathead catfish; and (s) sauger.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals.

"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act", for the protection of migratory birds and game mammals concluded, respectively, the sixteenth day of August, one
thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not been a domiciled resident of the state of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner, and shall include both the first and the last day of the season or period designated by the director.

"Person" except as otherwise defined elsewhere in this chapter, means the plural "persons" and shall include individuals, partnerships, corporations or other legal entities.

"Preserve" means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has been a domiciled resident of the state of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service, and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under the provisions of this
chapter.

“Roadside menagerie” means any place of business, other than commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

“Take” means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so.

“Unprotected birds” shall include: (a) The English sparrow, (b) the European starling, (c) the cowbird, and (d) the crow.

“Wild animals” means all mammals native to the state of West Virginia occurring either in a natural state or in captivity, except house mice or rats.

“Wild birds” shall include all birds other than: (a) Domestic poultry — chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (a) Those occurring in a natural state in West Virginia; or (b) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

“Wildlife” means wild birds, wild animals, game and fur-bearing animals, fish (including minnows), reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

“Wildlife refuge” means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsi-
bilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the "division of natural resources" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the natural resources commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the natural resources commission before such season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the governor in case of an emergency such as a drought, forest fire hazard or epizootic disease
among wildlife. The suspension shall continue during
the existence of the emergency and until rescinded by
the director. Suspension, or reopening after such
suspension, of open seasons may be made upon twenty-
four hours' notice by delivery of a copy of the order of
suspension or reopening to the wire press agencies at the
state capitol;

(8) Supervise the fiscal affairs and responsibilities of
the division;

(9) Designate such localities as he or she shall
determine to be necessary and desirable for the perpe-
tuation of any species of wildlife;

(10) Enter private lands to make surveys or inspec-
tions for conservation purposes, to investigate for
violations of provisions of this chapter, to serve and
execute warrants and processes, to make arrests and to
otherwise effectively enforce the provisions of this
chapter;

(11) Acquire for the state in the name of the "division
of natural resources" by purchase, condemnation, lease
or agreement, or accept or reject for the state, in the
name of the division of natural resources, gifts, dona-
tions, contributions, bequests or devises of money,
security or property, both real and personal, and any
interest in such property, including lands and waters,
which he or she deems suitable for the following
purposes:

(a) For state forests for the purpose of growing
timber, demonstrating forestry, furnishing or protecting
watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose
of preserving scenic, aesthetic, scientific, cultural,
archaeological or historical values or natural wonders,
or providing public recreation;

(c) For public hunting, trapping or fishing grounds or
waters for the purpose of providing areas in which the
public may hunt, trap or fish, as permitted by the
provisions of this chapter, and the rules issued
hereunder;
(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell, with the approval in writing of the governor, timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha state forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. When the appraised value of the timber to be sold is more than five hundred dollars, the director, before making sale thereof, shall receive sealed bids therefor, after notice by publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right to reject any and all bids and to readvertise for bids. If the foregoing provisions of this section have been complied with, and no bid equal to or in excess of the appraised value of the timber is received, the director may, at any time, during a period of six months after the opening of the bids, sell the timber in such manner as he or she deems appropriate, but the sale price shall not be less than the appraised value of the timber advertised. No contract for sale of timber made pursuant to this section...
shall extend for a period of more than ten years. And
all contracts heretofore entered into by the state for the
sale of timber shall not be validated by this section if
the same be otherwise invalid. The proceeds arising
from the sale of the timber so sold, shall be paid to the
treasurer of the state of West Virginia, and shall be
credited to the division and used exclusively for the
purposes of this chapter: Provided, That nothing
contained herein shall prohibit the sale of timber which
otherwise would be removed from rights-of-way neces-
sary for and strictly incidental to the extraction of
minerals;

(14) Sell or lease, with the approval in writing of the
governor, coal, oil, gas, sand, gravel and any other
minerals that may be found in the lands under the
jurisdiction and control of the director, except those
lands that are designated as state parks. The director,
before making sale or lease thereof, shall receive sealed
bids therefor, after notice by publication as a Class II
legal advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be each
county in which such lands are located. The minerals so
advertised shall be sold or leased to the highest
responsible bidder, who shall give bond for the proper
performance of the sales contract or lease as the director
shall designate; but the director shall have the right to
reject any and all bids and to readvertise for bids. The
proceeds arising from any such sale or lease shall be
paid to the treasurer of the state of West Virginia and
shall be credited to the division and used exclusively for
the purposes of this chapter;

(15) Exercise the powers granted by this chapter for
the protection of forests, and regulate fires and smoking
in the woods or in their proximity at such times and in
such localities as may be necessary to reduce the danger
of forest fires;

(16) Cooperate with departments and agencies of state,
local and federal governments in the conservation of
natural resources and the beautification of the state;
(17) Report to the governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver such report to the governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;

(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for any and all purposes specified in this chapter, and he or she shall account for
and report on all such receipts and expenditures to the governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules and regulations made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months; and

(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.
§20-1-14. Sections within division.

Sections of wildlife resources and of law enforcement are hereby continued within the division of natural resources. Subject to provisions of law, the director of the division of natural resources shall allocate the functions and services of the division to the sections, offices and activities thereof and may from time to time establish and abolish other sections, offices and activities within the division in order to carry out fully and in an orderly manner the powers, duties and responsibilities of the office as director. The director shall select and designate a competent and qualified person to be chief of each section. The chief is the principal administrative officer of that section and is accountable and responsible for the orderly and efficient performance of the duties, functions and services thereof.

ARTICLE 5J. MEDICAL WASTE ACT.

§20-5J-6. Powers of secretary; authority to promulgate rules.

(a) The secretary shall promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, necessary to effectuate the findings and purposes of this article. Said rules shall include, but not be limited to, the following:

(1) A plan designed to encourage and foster reduction in the volume of infectious and noninfectious medical waste and the separation of infectious and noninfectious medical waste;

(2) Guidelines and procedures for the development and implementation of local infectious medical waste management plans, to be followed by all generators, that set forth proper methods for the management of infectious and noninfectious medical waste;

(3) Criteria for identifying the characteristics of infectious medical waste and identifying the characteristics of noninfectious medical waste;

(4) Standards applicable to generators of medical waste necessary to protect public health, safety and the
environment, which standards shall establish requirements respecting:

(A) Record-keeping practices that accurately identify the quantities of infectious medical waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such waste;

(B) Labeling practices for containers used in the storage, transportation or disposal of infectious medical waste which will accurately identify such waste;

(C) Use of appropriate containers for infectious medical waste;

(D) Furnishing of information regarding the general composition of infectious medical wastes to persons transporting, treating, storing or disposing of such waste;

(E) Use of a manifest system and other reasonable means to assure that all infectious medical waste is designated for and arrives at treatment, storage or disposal facilities for which the secretary has issued permits, other than facilities on the premises where the waste is generated; and

(F) The submission of reports to the secretary, at such times as the secretary deems necessary, setting out the quantity of infectious medical waste generated during a particular time period, and the disposition of such infectious medical waste;

(5) Performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of infectious medical waste necessary to protect public health and safety and the environment, which standards shall include, but need not be limited to, requirements respecting:

(A) Maintaining records of all infectious medical waste and the manner in which such waste was treated, stored or disposed of;

(B) Reporting, monitoring and inspection of and compliance with the manifest system referred to in
subdivision (4), subsection (a) of this section;
(C) Treatment, storage or disposal of all infectious
medical waste received by the facility pursuant to
operating methods, techniques and practices as may be
satisfactory to the secretary;
(D) The location, design and construction of infectious
medical waste treatment, disposal or storage facilities;
(E) Contingency plans for effective action to minimize
unanticipated damage from any treatment, storage or
disposal of infectious medical waste;
(F) The maintenance or operation of such facilities
and requiring additional qualifications as to ownership,
continuity of operation, training for personnel and
financial responsibility as may be necessary or desira-
ble: Provided, That no private entity may be precluded
by reason of criteria established under this subsection
from the ownership or operation of facilities providing
infectious medical waste treatment, storage or disposal
services where such entity can provide assurances of
financial responsibility and continuity of operation
consistent with the degree and duration of risks
associated with the treatment, storage or disposal of
infectious medical waste; and
(G) Compliance with the requirements of this article
respecting permits for treatment, storage or disposal;
(6) The terms and conditions under which the secre-
tary shall issue, modify, suspend, revoke or deny permits
required by this article. The legislative rules required
by this subdivision shall be promulgated by the first day
of August, one thousand nine hundred ninety-one;
(7) Establishing and maintaining records; making
reports; taking samples and performing tests and
analyses; installing, calibrating, operating and main-
taining monitoring equipment or methods; and provid-
ing any other information necessary to achieve the
purposes of this article;
(8) Standards and procedures for the certification of
personnel at infectious medical waste treatment, storage
or disposal facilities or sites;

(9) Procedures for public participation in the implementation of this article;

(10) Procedures and requirements for the use of manifests during the transportation of infectious medical wastes;

(11) Procedures and requirements for the submission and approval of a plan by the owners or operators of infectious medical waste storage, treatment and disposal facilities, for closure of such facilities, post-closure monitoring and maintenance, and for both sudden and nonsudden accidental occurrences; and

(12) A schedule of fees to recover the costs of processing permit applications and renewals, training, enforcement, inspections and program development.

(b) The legislative rules required by subsection (a) shall be promulgated within six months after the effective date of this article.

(c) Within twelve months after the effective date of this article, the secretary shall conduct and publish a study of infectious medical waste management in this state which shall include, but not be limited to:

(1) A description of the sources of infectious medical waste generation within the state, including the types and quantities of such waste;

(2) A description of current infectious medical waste management practices and costs, including treatment, storage and disposal within the state; and

(3) An inventory of existing infectious medical waste treatment, storage and disposal sites.

(d) Any person aggrieved or adversely affected by an order of the secretary pursuant to this article, or by the denial or issuance of a permit, or the failure or refusal of said secretary to act within a reasonable time on an application for a permit or the terms or conditions of a permit granted under the provisions of this article, may appeal to a special hearing examiner appointed to
hear contested cases in accordance with the provisions of chapter twenty-nine-a of this code. The secretary shall promulgate legislative rules establishing procedures for appeal and the conduct of hearings.

(e) In addition to those enforcement and inspection powers conferred upon the secretary elsewhere by law, the secretary has the enforcement and inspection powers as provided in sections seven, eight and nine of this article.

(f) Nothing in this section diminishes or alters the authority of the director of the division of environmental protection under article five, chapter twenty-two of this code.

§20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

(a) On and after the first day of July, one thousand nine hundred ninety-one, collectors, haulers and transporters of infectious medical waste who are "common carriers by motor vehicle," as defined in section two, article one, chapter twenty-four-a of this code, shall be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. The rules of the public service commission shall not conflict nor take precedence over the rules promulgated by the secretary.

(b) The commission shall provide a separate and distinct category of special certificates of convenience and necessity for infectious medical waste collectors, haulers and transporters regulated by this section: Provided, That within six months of the effective date of this article, the commission may issue such special certificates to existing common carriers of solid waste who are presently transporting infectious medical waste and who demonstrate that they are in compliance with the provisions of this article: Provided, however, That such common carriers need not make any additional demonstration of public convenience and necessity. Regulation of collectors, haulers and transporters of medical waste shall be separate and distinct from the
regulation of solid waste collectors, haulers and trans-
porters provided for in section twenty-three, article
three, chapter twenty-two-c of this code.

(c) At any hearing conducted by the public service
commission pertaining to infectious medical waste
collectors, haulers and transporters, the secretary may
appear before the commission and present evidence.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

Conservation officers and all other persons authorized
to enforce the provisions of this chapter shall be under
the supervision and direction of the director in the
performance of their duties as herein provided. The
authority, powers and duties of the conservation officers
shall be statewide and they shall have authority to:

(1) Arrest on sight, without warrant or other court
process, any person or persons committing a criminal
offense in violation of any of the laws of this state, in
the presence of such officer, but no such arrest shall be
made where any form of administrative procedure is
prescribed by this chapter for the enforcement of any
of the particular provisions contained herein;

(2) Carry such arms and weapons as may be pres-
cribed by the director in the course and performance of
their duties, but no license or other authorization shall
be required of such officers for this privilege;

(3) Search and examine, in the manner provided by
law, any boat, vehicle, automobile, conveyance, express
or railroad car, fish box, fish bucket or creel, game bag
or game coat, or any other place in which hunting and
fishing paraphernalia, wild animals, wild birds, fish,
amphibians or other forms of aquatic life could be
concealed, packed or conveyed whenever they have
reason to believe that they would thereby secure or
discover evidence of the violation of any provisions of
this chapter;

(4) Execute and serve any search warrant, notice or
any process of law issued under the authority of this
chapter or any law relating to wildlife, forests, and all
other natural resources, by a magistrate or any court
having jurisdiction thereof, in the same manner, with
the same authority, and with the same legal effect, as
any sheriff can serve or execute such warrant, notice or
process;

(5) Require the operator of any motor vehicle or other
conveyance on or about the public highways or road-
ways, or in or near the fields and streams of this state,
to stop for the purpose of allowing such officers to
conduct game-kill surveys;

(6) Summon aid in making arrests or seizures or in
executing any warrants, notices or processes, and they
shall have the same rights and powers as sheriffs have
in their respective counties in so doing;

(7) Enter private lands or waters within the state
while engaged in the performance of their official duties
hereunder;

(8) Arrest on sight, without warrant or other court
process, subject to the limitations set forth in subdivision
(1) of this section, any person or persons committing a
criminal offense in violation of any law of this state in
the presence of any such officer on any state-owned
lands and waters and lands and waters under lease by
the division of natural resources and all national forest
lands, waters and parks, and U.S. Corps of Army
Engineers' properties within the boundaries of the state
of West Virginia, and, in addition to any authority
conferred in the other subdivisions of this section,
execute all warrants of arrest on such state and national
lands, waters and parks, and U.S. Corps of Army
Engineers' properties, consistent with the provisions of
article one, chapter sixty-two of this code;

(9) Arrest any person who enters upon the land or
premises of another without written permission from
the owner of the land or premises in order to cut,
damage, or carry away, or cause to be cut, damaged, or
carried away any timber, trees, logs, posts, fruit, nuts,
growing plants, or products of any growing plant. Any
person convicted of the foregoing shall be liable to the
owner in the amount of three times the value of the
timber, trees, logs, posts, fruit, nuts, growing plants, or
products of any growing plant, which shall be in
addition to and notwithstanding any other penalties by
law provided by section thirteen, article three, chapter
sixty-one of this code; and

(10) Do all things necessary to carry into effect the
provisions of this chapter.

PART III. WEST VIRGINIA LITTER CONTROL PROGRAM.

§20-7-26. Unlawful disposal of litter; civil and criminal
penalties; litter control fund; evidence;
notice of violations; litter receptacle place-
ment; penalties; duty to enforce violations.

(a) (1) Any person who places, deposits, dumps or
throws or causes to be placed, deposited, dumped or
thrown any litter as defined in section twenty-four of
this article, in or upon any public or private highway,
road, street or alley, or upon any private property
without the consent of the owner, or in or upon any
public park or other public property other than in such
place as may be set aside for such purpose by the
governing body having charge thereof, is guilty of a
misdemeanor, and, upon his or her first conviction, shall
be fined not less than fifty dollars nor more than five
hundred dollars: Provided, That a person shall not be
held responsible for the actions of animals under their
direct control. At the request of the defendant or in the
discretion of the court, the court may sentence the
defendant to pick up and remove from any public
highway, road, street, alley or any other public park or
public property as designated by the court, any and all
litter, garbage, refuse, trash, cans, bottles, papers,
ashes, carcass of any dead animal or any part thereof,
offal or any other offensive or unsightly matter placed,
deposited, dumped or thrown contrary to the provisions
of this section by anyone prior to the date of such
conviction. For the first offense, the alternative sentence
of litter pickup shall be not less than eight hours nor
more than sixteen hours in lieu of other such fine. For
purposes of this subdivision, the term “court” includes
(2) Upon his or her second conviction, such person shall be fined not less than two hundred fifty dollars nor more than one thousand dollars and imprisoned in the county jail not less than twenty-four hours nor more than six months: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the second offense, the alternative sentence of litter pickup shall be not less than sixteen hours nor more than thirty-two hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term "court" shall include circuit and magistrate courts.

(3) Upon such person's third and successive conviction, he or she shall be fined not less than five hundred dollars nor more than two thousand dollars and imprisoned in the county jail not less than forty-eight hours nor more than one year: Provided, That a person shall not be held responsible for the actions of animals under their direct control. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any public highway, road, street, alley or any other public park or public property as designated by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction, the alternative sentence of litter pickup shall be not less than thirty-
two hours nor more than sixty-four hours in lieu of such
fine or incarceration, but not both. For purposes of this
subdivision, the term “court” includes circuit and
magistrate courts.

(4) The alternative sentence of litter pickup herein set
forth shall be verified by the conservation officers from
the division of natural resources or environmental
inspectors from the division of environmental protection
or a regional engineering technician from the division
of environmental protection pollution prevention and
open dumps program (PPOD) of the county in which the
offense occurred. Any defendant receiving the herein
specified alternative sentence of litter pickup shall
provide within a time to be set by the court written
acknowledgement from said conservation officers or
environmental officers that the sentence has been
completed.

(5) Any person who has been found by the court to
have willfully failed to comply with the terms of an
alternative sentence imposed by the court pursuant to
this section is subject at the discretion of the court to
up to twice the original penalty provisions available to
the court at the time of conviction.

(6) If any litter is thrown or cast from a motor vehicle
or boat, such action is prima facie evidence that the
driver of such motor vehicle or boat intended to violate
the provisions of this section. If any litter is dumped or
discharged from a motor vehicle or boat, such action is
prima facie evidence that the owner and driver of such
motor vehicle or boat intended to violate the provisions
of this section.

(b) Any litter found on any public or private property
with any indication of ownership on it will be evidence
creating a rebuttable inference it was deposited improperly
by the person whose identity is indicated, and any
person who improperly disposes of litter is subject to
either a civil fine of up to five hundred dollars for such
litter or required to pay the costs of removal of such
litter if the removal of such litter is required to be done
by the division, at the discretion of the director. All such
fines and costs shall be deposited to the litter control fund: *Provided*, That no inference shall be drawn solely from the presence of any logo, trademark, trade name or other similar mass reproduced identifying character appearing on litter found.

(c) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay the sum of not less than fifty dollars nor more than five hundred dollars as costs for clean-up, investigation and prosecution in such case, in addition to any other court costs that the court is otherwise required by law to impose upon such convicted person.

The clerk of the circuit court, magistrate court or municipal court wherein such additional costs are imposed shall, on or before the last day of each month, transmit all such costs received under this subsection to the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be known as the litter control fund which is hereby continued. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code: *Provided*, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, expenditures shall be authorized from collections. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) (1) The commissioner of the division of motor vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a copy of subsection (a) of this section.

(2) The commissioner of the division of highways shall cause appropriate signs to be placed at the state
boundary on each primary and secondary road, and at
other locations throughout the state, informing those
entering the state of the maximum penalty provided for
disposing of litter in violation of subsection (a) of this
section.

(e) Any state agency or political subdivision that owns,
operates or otherwise controls any public area as may
be designated by the director by rule promulgated
pursuant to subdivision (8), subsection (a), section
twenty-five of this article, shall procure and place litter
receptacles at its own expense upon its premises and
shall remove and dispose of litter collected in such litter
receptacles. After receiving two written warnings from
any law-enforcement officer or officers to comply with
this subsection or the said rules of the director, any
person who fails to place and maintain such litter
receptacles upon his or her premises in violation of this
subsection or the rules of the director shall be fined
fifteen dollars per day of such violation.

(f) No portion of this section shall be construed to
restrict a private owner in the use of the owner's own
private property in any manner otherwise authorized by
law.

(g) Any law-enforcement officer who shall observe a
person violating the provisions of this section has a
mandatory duty to arrest or otherwise prosecute the
violator to the limits provided herein. The West Virginia
division of highways shall investigate and cause to be
prosecuted violations of this section occurring upon the
highways of the state as the term "highways" is defined
in chapter seventeen of this code.

§20-7-28. Litter along streams, criminal penalties,
enforcement.

(a) It is unlawful to place, deposit, dump or throw, or
cause to be placed, deposited, dumped or thrown, any
litter as defined in section twenty-four of this article and
also any garbage, refuse, trash, can, bottle, paper, ashes,
carcass of any dead animal or any part thereof, offal or
any other offensive or unsightly matter into any river,
stream, creek, branch, brook, lake or pond, or upon the
surface of any land within one hundred yards thereof, or in such location that high water or normal drainage conditions will cause any such materials or substances to be washed into any river, stream, creek, branch, brook, lake or pond.

(b) No portion of this section restricts an owner, renter or lessee in the use of his or her own private property or rented or leased property or to prohibit the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of article eleven, chapter twenty-two of this code. But if any owner, renter or lessee, private or otherwise, knowingly permits any such materials or substances to be placed, deposited, dumped or thrown in such location that high water or normal drainage conditions will cause any such materials or substances to wash into any river, stream, creek, branch, brook, lake or pond, it is prima facie evidence that such owner, renter or lessee intended to violate the provisions of this section: Provided, That if a landowner, renter or lessee, private or otherwise, reports any such placing, depositing, dumping or throwing of any such substances or materials upon his or her property to the prosecuting attorney, county commission, or the division of natural resources or the division of environmental protection, then the landowner, renter or lessee will be presumed to not have knowingly permitted such placing, depositing, dumping or throwing of such materials or substances.

(c) In addition to enforcement by the director, the director of the division of environmental protection, the chief of the office of water resources of the division of environmental protection, and the division of natural resources' chief law-enforcement officer, the provisions of this section may be enforced by all other proper law-enforcement agencies.

(d) (1) Any person violating any provision of this section is guilty of a misdemeanor, and, upon his or her first conviction, shall be fined not less than fifty nor more than five hundred dollars. At the request of the defendant or in the discretion of the court, the court may
sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the first offense, the alternative sentence of litter pickup shall be not less than eight hours nor more than sixteen hours in lieu of a fine. For purposes of this subdivision, the term “court” includes circuit, magistrate and municipal courts.

(2) Upon his or her second conviction, such person shall be fined not less than two hundred fifty dollars nor more than one thousand dollars and imprisoned in the county jail not less than twenty-four hours nor more than six months. At the request of the defendant or in the discretion of the court, the court may sentence the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. For the second offense, the alternative sentence of litter pickup shall be not less than sixteen hours nor more than thirty-two hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” includes circuit and magistrate courts.

(3) Upon such person’s third and successive conviction, he or she shall be fined not less than five hundred dollars nor more than two thousand dollars and imprisoned in the county jail not less than forty-eight hours nor more than one year. At the request of the defendant or in the discretion of the court, the court may sentence
the defendant to pick up and remove from any area of a bank of any river, stream, creek, branch, brook, lake or pond, or other property with prior permission of the owner, the area to be specified by the court, any and all litter, garbage, refuse, trash, cans, bottles, papers, ashes, carcass of any dead animal or any part thereof, offal or any other offensive or unsightly matter placed, deposited, dumped or thrown contrary to the provisions of this section by anyone prior to the date of such conviction. Upon a third conviction the alternative sentence of litter pickup shall be not less than thirty-two hours nor more than sixty-four hours in lieu of such fine or incarceration, but not both. For purposes of this subdivision, the term “court” includes circuit and magistrate courts.

(4) The alternative sentence of litter pickup herein set forth shall be verified by division of natural resources conservation officers or by environmental inspectors from the division of environmental protection or a regional engineering technician from the pollution prevention and open dumps program (PPOD) of the division of environmental protection, of the county in which the offense occurred. Any defendant receiving the herein specified alternative sentence of litter pickup shall provide within a time to be set by the court written acknowledgement from said conservation officers or environmental officers that the sentence has been completed.

(5) Any person who has been found by the court to have willfully failed to comply with the terms of an alternative sentence imposed by the court pursuant to this section is subject at the discretion of the court to up to twice the original penalty provisions available to the court at the time of conviction.

§20-7-29. Assistance to solid waste authorities.

The director may expend funds from the litter control fund established pursuant to section twenty-six of this article to assist county and regional solid waste authorities in the formulation of their comprehensive litter and solid waste control plans pursuant to section eight,
article four, chapter twenty-two-c of this code and in the 
construction and maintenance of approved commercial 
solid waste facilities and collection equipment, including 
the provision of grants as well as bonding assistance for 
those authorities which would in the opinion of the 
director be unable to construct or maintain an approved 
commercial solid waste facility without grant funds.

ARTICLE 8. GENERAL AND MISCELLANEOUS PROVISIONS.

§20-8-1. Transition in terms; continuity.

Whenever in this code and elsewhere in law the terms 
"the conservation commission of West Virginia," 
"conservation commission," "director of conservation" 
and similar and related terms are used and referenced, 
they shall be read, understood and construed in the light 
of the enactment of this chapter by which the conser-
vation commission and the office of director of conser-
vation are abolished and the responsibilities, functions 
and services thereof are transferred to and absorbed in 
the division of natural resources, the natural resources 
commission and the office of director of the division of 
natural resources as in this chapter provided.

Any litigation instituted, entered into or pending to 
which any of the governmental corporations and 
agencies abolished by this chapter are named parties 
may be continued and prosecuted to completion in such 
party names or, at the option of the litigants and by 
leave of court, such party names may be amended or 
changed to correspond with the names of the successor 
governmental corporations and agencies as in this 
chapter provided.

All contracts, compacts and agreements, heretofore 
entered into by any of the governmental corporations 
and agencies hereby abolished, shall continue to be the 
obligations of the respective successor corporations and 
agencies as in this chapter provided. No provision of this 
chapter shall be construed as impairing the obligation 
of any contract.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-4. Recycling plans.
(a) Each county or regional solid waste authority, as part of the comprehensive litter and solid waste control plan required pursuant to the provisions of section eight, article four, chapter twenty-two-c of this code, shall prepare and adopt a comprehensive recycling plan to assist in the implementation of the recycling goals in section three of this article.

(b) Each recycling plan required by this section shall include, but not be limited to:

(1) Designation of the recyclable materials that can be most effectively source separated in the region or county, which shall include at least three recyclable materials; and

(2) Designation of potential strategies for the collection, marketing and disposition of designated source separated recyclable materials in each region or county.

§20-11-5a. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) Imposition. — Effective the first day of January, one thousand nine hundred ninety-two, a recycling assessment fee is hereby levied and imposed upon the disposal of solid waste at all solid waste disposal facilities in this state, to be collected at the rate of two dollars per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth
day of the month next succeeding the month in which
the fee accrued. Upon remittance of the fee, the operator
shall be required to file returns on forms and in the
manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until they are remitted to the tax
commissioner.

(4) If any operator fails to collect the fee imposed by
this section, he or she is personally liable for such
amount as he or she failed to collect, plus applicable
additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax
commissioner. Such notice remains in effect until a
notice of cancellation is served on the operator or owner
by the tax commissioner.

(6) Whenever the owner of a solid waste disposal
facility leases the solid waste facility to an operator, the
operator is primarily liable for collection and remittance
of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by
this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste
facility are jointly and severally responsible and liable
for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting
the fee imposed by this section is an association or
corporation, the officers thereof are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions
(8) Each person disposing of solid waste at a solid
waste disposal facility and each person required to
collect the fee imposed by this section shall keep
complete and accurate records in such form as the tax
commissioner may require in accordance with the rules
of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by
this section is a necessary and reasonable cost for motor
carriers of solid waste subject to the jurisdiction of the
public service commission under chapter twenty-four-a
of this code. Notwithstanding any provision of law to the
contrary, upon the filing of a petition by an affected
motor carrier, the public service commission shall,
within fourteen days, reflect the cost of said fee in said
motor carrier's rates for solid waste removal service. In
calculating the amount of said fee to said motor carrier,
the commission shall use the national average of pounds
of waste generated per person per day as determined by
the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section:

"Solid waste disposal facility" means any approved
solid waste facility or open dump in this state and
includes a transfer station when the solid waste collected
at the transfer station is not finally disposed of at a solid
waste facility within this state that collects the fee
imposed by this section.

Nothing herein authorizes in any way the creation or
operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are
exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility by
the person who owns, operates or leases the solid waste
disposal facility if it is used exclusively to dispose of
waste originally produced by such person in such
person's regular business or personal activities or by
persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; and

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, in a special revenue account designated as the "Recycling Assistance Fund" which is hereby created. The director of the division of natural resources shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be provided in grants to assist municipalities, counties and other interested parties in the planning and implementation of recycling programs, public education programs, and recycling market procurement efforts, established pursuant to this article. The director of the division of natural resources shall promulgate rules, in accordance with chapter twenty-nine-a of this code, containing application procedures, guidelines for
(2) Twelve and one-half percent of the total proceeds shall be expended for personal services and benefit expenses of full-time salaried conservation officers;

(3) Twelve and one-half percent of the total proceeds shall be transferred to the West Virginia development office, to be used in assisting counties and municipalities in the design and construction of wastewater treatment facilities;

(4) Twelve and one-half percent of the total proceeds shall be transferred to the solid waste reclamation and environmental response fund, established pursuant to section eleven, article fifteen, chapter twenty-two of this code, to be expended by the division of environmental protection to assist in the funding of the pollution prevention and open dumps program (PPOD) which encourages recycling, reuse, waste reduction and cleanup activities; and

(5) Twelve and one-half percent of the total proceeds shall be deposited in the hazardous waste emergency response fund established in article nineteen, chapter twenty-two of this code.

(i) Severability. — If any provision of this section or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment does not affect, impair or invalidate the remainder of this section, but is confined in its operation to the provision thereof directly involved in the controversy in which such judgment is rendered, and the applicability of such provision to other persons or circumstances is not affected thereby.

(j) Effective date. — This section is effective on the first day of January, one thousand nine hundred ninety-two.

§20-11-5b. Solid and hazardous waste supplemental assessment fee.

(a) Imposition. — Effective the first day of January,
one thousand nine hundred ninety-two, a solid and
hazardous waste supplemental assessment fee is hereby
imposed upon the disposal of solid or hazardous waste
at all solid waste or hazardous waste disposal facilities
in this state, to be collected at the rate of twenty-five
cents per ton or part thereof of solid or hazardous waste.
The fee imposed by this section is in addition to all other
fees levied by law.

(b) Collection, return, payment and records. — The
person disposing of solid or hazardous waste at the solid
or hazardous waste disposal facility shall pay the fee
imposed by this section, whether or not such person
owns the solid or hazardous waste, and the fee shall be
collected by the operator of the solid or hazardous waste
facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time
the solid or hazardous waste is delivered to the solid or
hazardous waste disposal facility.

(2) The operator shall remit the fee imposed by this
section to the tax commissioner on or before the fifteenth
day of the month next succeeding the month in which
the fee accrued. Upon remittance of the fee, the operator
shall be required to file returns on forms and in the
manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees
collected under this section and shall hold them in trust
for the state until they are remitted to the tax
commissioner.

(4) If any operator fails to collect the fee imposed by
this section, he or she shall be personally liable for such
amount as he or she failed to collect, plus applicable
additions to tax, penalties and interest imposed by
article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully
account for, remit the fee, or file returns with the fee
as required in this section, the tax commissioner may
serve written notice requiring such operator to collect
the fees which become collectible after service of such
notice, to deposit such fees in a bank approved by the
tax commissioner, in a separate account, in trust for and
payable to the tax commissioner, and to keep the amount
of such fees in such account until remitted to the tax
commissioner. Such notice remains in effect until a
notice of cancellation is served on the operator or owner
by the tax commissioner.

(6) Whenever the owner of a solid or hazardous waste
disposal facility leases the solid or hazardous waste
facility to an operator, the operator is primarily liable
for collection and remittance of the fee imposed by this
section and the owner is secondarily liable for remit-
tance of the fee imposed by this section. However, if the
operator fails, in whole or in part, to discharge his or
her obligations under this section, the owner and the
operator of the solid or hazardous waste disposal facility
are jointly and severally responsible and liable for
compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting
the fee imposed by this section is an association or
corporation, the officers thereof are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions
to tax, penalties and interest imposed by article ten,
chapter eleven of this code may be enforced against
them and against the association or corporation which
they represent.

(8) Each person disposing of solid or hazardous waste
at a solid or hazardous waste disposal facility and each
person required to collect the fee imposed by this section
shall keep complete and accurate records in such form
as the tax commissioner may require in accordance with
the rules and regulations of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by
this section is a necessary and reasonable cost for motor
carriers of solid or hazardous waste subject to the
jurisdiction of the public service commission under
chapter twenty-four-a of this code. Notwithstanding any
provision of law to the contrary, upon the filing of a
petition by an affected motor carrier, the public service
commission shall, within fourteen days, reflect the cost
of said fee in said motor carrier's rates for solid or hazardous waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section:

(1) “Solid or hazardous waste disposal facility” means any approved solid or hazardous waste facility or open dump in this state and includes a transfer station when the solid or hazardous waste collected at the transfer station is not finally disposed of at a solid or hazardous waste facility within this state that collects the fee imposed by this section.

(2) “Coal combustion byproduct” means the residuals, including fly ash, bottom ash, bed ash, and boiler slag produced by coal-fired or coal/gas-fired electrical or steam generating units. For nonelectrical steam generating units burning a combination of solid waste and coal, a carbon monoxide level of less than or equal to one hundred parts per million on a twenty-four hour average basis is required for the byproducts to meet this definition. The carbon monoxide level shall be calculated on a dry gas basis corrected to seven percent oxygen; and

(3) “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste in which the recycling assessment fee levied and imposed by section five-a of this article has been paid;

(2) Disposal of sludge or coal combustion byproducts;
(3) Reuse or recycling of any solid or hazardous waste;
or
(4) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the division of environmental protection by rule as exempt from the fee imposed pursuant to section eleven, article fifteen, chapter twenty-two of this code.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties.—Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds.—The proceeds of the fee collected pursuant to this section shall be deposited by the tax commissioner, at least monthly, to the hazardous waste emergency response fund established in article nineteen, chapter twenty-two of this code.

(i) Severability.—If any provision of this section or the application thereof is for any reason adjudged by any court of competent jurisdiction to be invalid, such judgment does not affect, impair or invalidate the remainder of this section, but is confined in its operation to the provision thereof directly involved in the controversy in which such judgment is rendered, and the applicability of such provision to other persons or circumstances is not affected thereby.

(j) Effective date. — This section is effective on the first day of January, one thousand nine hundred ninety-two.
§20-11-9. Recycled oil advisory committee.

(a) The division of natural resources recycled oil advisory committee is continued. The recycled oil advisory committee shall consist of nine members appointed by the governor, for terms of two years, who serve without compensation. One member of the committee shall have significant experience in the oil refining industry, one member shall have significant experience in the jobbing or distributing of motor oil, one member shall be a representative of retail gasoline dealers, one member shall be a representative of retail merchants, one member shall be a representative of the insurance industry, one member shall be a member of a county or regional solid waste authority, one member shall be a member of the general public, one member shall be a member of the House of Delegates recommended by the speaker of the House of Delegates, and one member shall be a member of the Senate recommended by the president of the Senate. The director of the division of natural resources or his or her designated representative shall be an ex officio member of the committee and shall serve as chair of the committee. The recycled oil advisory committee shall meet at least monthly, or upon the call of four members, to discuss all aspects of the collection, handling, transportation, storage, disposal and recycling of used motor oil.

(b) The functions of the committee include, but are not limited to, the following:

(1) Making recommendations to the division of natural resources, division of environmental protection and the Legislature concerning the adoption of management standards with respect to collection, handling, transportation, storage, disposal and recycling of used motor oil. The committee shall make the first report of its recommendations on or before the fifteenth day of January, one thousand nine hundred ninety-two, and other such reports may be made at such times as the committee deems appropriate.
(2) Carrying out education and promotional activities regarding the use of recycled oil.

(3) Identifying areas in the public and private sectors where recycled oil could be utilized.

(4) Entertaining proposals from citizens, corporations and businesses related to all aspects of used motor oil.

(5) Identifying administrative requirements at both the state and local levels to ascertain resources and needs relating to used motor oil.

(6) Examining federal law and regulations, both existing and proposed, to assure that West Virginia businesses and individuals who generate used motor oil may participate in a program of handling and disposing of used motor oil that complies with federal statutes and regulatory requirements.

§20-11-12. Recycling facilities exemption.

Recycling facilities, as defined in section two, article fifteen of chapter twenty-two of this code, whose only function is to accept free-of-charge, buy or transfer source separated material or recycled material for resale or transfer for further processing shall be exempt from the provisions of said article and article four of chapter twenty-two-c and sections one-c and one-f, article two, chapter twenty-four of this code.

CHAPTER 21. LABOR.

ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.

§21-3B-3. Environmental assistance resource board.

There is hereby created within the division of labor an environmental assistance resource board to advise and assist the commissioner of labor in developing the technical resources necessary to administer the provisions of this article. The board is composed of the commissioner of the division of labor, who serves as chair; the chief of the office of air quality of the division of environmental protection; the chief of the office of water resources of the division of environmental protection; the chief of the office of waste management of the division of environmental protection; the director
of the division of environmental protection; one member of the House of Delegates appointed by the speaker of the House; and one member of the Senate appointed by the president of the Senate. Terms of legislative members of the board run concurrent with the member's legislative term of office.

The board shall meet within thirty days of the effective date of this article and thereafter at the call of the chair. The board shall establish an information network wherein the commissioner of labor and any consultant advising employers, in order to provide accurate information regarding compliance with environmental and hazardous waste rules, may access written materials or staff having technical expertise within the agencies represented on the board. At the request of the board, the secretary of the department of commerce, labor and environmental resources is authorized to direct the assignment of staff, on a temporary or permanent basis, from any agency represented on the board to the division of labor to assist in the implementation of the employer assistance program set forth in this article.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

(1) Restoring and protecting the environment is fundamental to the health and welfare of individual citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

(2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

(3) Governmental decisions on matters which relate to the use, enhancement, preservation, protection and
conservation of the environment should be made after public participation and public hearings.

(4) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

(5) Those functions of government which regulate the environment should be consolidated in order to accomplish the purposes set forth in this article, to carry out the environmental functions of government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

(b) The Legislature declares that the establishment of a division of environmental protection is in the public interest and will promote the general welfare of the state of West Virginia without sacrificing social and economic development. It is the policy of the state of West Virginia, in cooperation with other governmental agencies, public and private organizations, and the citizens of this state, to use all practicable means and measures to prevent or eliminate harm to the environment and biosphere, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations. The purposes of this chapter are:

(1) To strengthen the commitment of this state to restore, maintain and protect the environment;

(2) To consolidate environmental regulatory programs in a single state agency;

(3) To provide a comprehensive program for the
conservation, protection, exploration, development, enjoyment and use of the natural resources of the state of West Virginia;

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations, and the general public; to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

(6) To encourage the increased involvement of all citizens in the development and execution of state environmental programs;

(7) To promote improvements in the quality of the environment through research, evaluation and sharing of information;

(8) To improve the management and effectiveness of state environmental protection programs; and

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally.

§22-1-2. Definitions.

As used in this article, unless otherwise provided or indicated by the context:

(1) "Department" means the department of commerce, labor and environmental resources.
(2) "Director" means the director of the division of environmental protection.

(3) "Division" means the division of environmental protection.

(4) "Function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(5) "Office" includes any office, board, agency, unit, organizational entity, or component thereof.

(6) "Secretary" means the secretary of the department of commerce, labor and environmental resources.

§22-1-3. Rule-making generally; relationship to federal programs.

(a) The director has the power and authority to propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out and implement the provisions of this chapter and to carry out and implement any other provision of law relating to offices or functions of the division.

(b) The requirements and limitations set forth in this section apply to any rule-making authority granted pursuant to this chapter or chapters twenty-two-b and twenty-two-c of this code.

(c) Prior to the proposal of any new rule, the director shall consult with the division of environmental protection advisory council and after such consultation, the director may determine that such a rule should be the same in substance as a counterpart federal regulation. If the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practicable, such proposed rule shall incorporate by reference the counterpart federal regulation. The director shall file, contemporaneously with the proposed rule, a statement setting forth whether the rule is the same in substance as a counterpart federal regulation. If the director determines that the rule should not be the same in substance as a
counterpart federal regulation, then the director shall
file contemporaneously with the proposed rule, a
statement setting forth the differences between the
proposed rule and the counterpart federal regulation. In
addition, the director shall file a statement setting forth
the results of the consultation with the advisory council.

(d) Whenever any existing rule is modified, amended
or replaced, the provisions of subsection (c) of this
section apply to the proposal of any such modification,
amendment or replacement rule.

(e) Notwithstanding the provisions of article three,
chapter twenty-nine-a of this code, at least one public
hearing shall be held by the division in conjunction with
each rule-making prior to the expiration of the public
comment period for the proposed rules.

§22-1-3a. Rules — New or amended environmental
provisions.

Except for legislative rules promulgated for the
purpose of implementing the provisions of section four,
article twelve, section six, article seventeen, and section
six, article eighteen, all of this chapter, and notwith-
standing the provisions of section four, article five of this
chapter, legislative rules promulgated by the director
which become effective on or after the first day of July,
one thousand nine hundred ninety-four, may include
new or amended environmental provisions which are
more stringent than the counterpart federal rule or
program to the extent that the director first provides
specific written reasons which demonstrate that such
provisions are reasonably necessary to protect, preserve
or enhance the quality of West Virginia's environment
or human health or safety, taking into consideration the
scientific evidence, specific environmental characteris-
tics of West Virginia or an area thereof, or stated
legislative findings, policies or purposes relied upon by
the director in making such determination. In the case
of specific rules which have a technical basis, the
director shall also provide the specific technical basis
upon which the director has relied.

In the event that legislative rules promulgated by the
director which become effective on or after the first day of July, one thousand nine hundred ninety-four, include new or amended environmental provisions which are less stringent than a counterpart federal rule which recommends, but does not require, a particular standard or any federally recommended environmental standard whether or not there be a counterpart federal rule, the division shall first provide specific written reasons which demonstrate that such provisions are not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety, taking into consideration the scientific evidence, specific environmental characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the director in making such determination. In the case of specific rules which have a technical basis, the director shall also provide the specific technical basis upon which the director has relied.

In the absence of a federal rule, the adoption of a state rule shall not be construed to be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific federal exemption.

§22-1-4. Division of environmental protection; appointment of director.

The division of environmental protection is continued within the department of commerce, labor and environmental resources. The division shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director.

§22-1-5. Jurisdiction vested in division.

Except as may be otherwise provided in this code, the division is hereby designated as the lead regulatory agency for this state for all purposes of federal legislation relating to all activities regulated under this chapter.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the
division. Subject to section seven of this article and other provisions of law, the director shall organize the division into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the division and for the accomplishment of its objects and purposes. The director may appoint assistants, hearing officers, clerks, stenographers, and other officers, technical personnel and employees needed for the operation of the division and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(b) The director has the power to and may designate supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the director. Additionally, the director has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the division his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the division, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The director has responsibility for the conduct of the intergovernmental relations of the division, including assuring: (1) That the division carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and (2) that appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the
environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the director by this chapter, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-
f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the "division of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the division of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property;

(5) Provide for workshops, training programs and
other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The director is further authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the director; and

(6) Issue certifications required under 33 U.S.C. §1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the governor: Provided, That in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the division shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary and the director or in the event of vacancies in both of those offices.

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least
one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the director shall take and subscribe to the oath required of public officers prescribed by section five, article four of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of state. Premiums on the bond shall be paid from the division funds.

Consistent with the provisions of this article the director shall, at a minimum, maintain the following offices within the division:

(1) The office of abandoned mine lands and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article two of this chapter;

(2) The office of mining and reclamation, which is charged, at a minimum, with administering and enforcing, under the supervision of the director the provisions of articles three and four of this chapter;

(3) The office of air quality, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of article five of this chapter;

(4) The office of oil and gas, which is charged, at a minimum, with administering and enforcing, under the
supervision of the director, the provisions of articles six, seven, eight, nine and ten of this chapter;

(5) The office of water resources, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles eleven, twelve, thirteen and fourteen of this chapter; and

(6) The office of waste management, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of articles fifteen, sixteen, seventeen, eighteen, nineteen and twenty of this chapter.


(a) The director shall appoint a competent and qualified person to be chief of each office specified in section seven of this article. The chief is the principal administrative officer of that office and is accountable and responsible for the orderly and efficient performance of the duties, functions and services of her or his office.

(b) There shall be in the division such other supervisory officers as the director determines is necessary to administer the functions of the division. Such supervisory officers are "administrators" as such term is defined in section two, article six, chapter twenty-nine of this code, notwithstanding the fact that the positions filled by such persons are not statutorily created. Any such supervisory officer may be designated by the director as a deputy director, assistant director, chief, administrator, or other administrative title or designation. Each of the supervisory officers shall be appointed by the director and serve at the will and pleasure of the director. The compensation of such supervisory officers shall be fixed by the director. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where such dual appointment is made, such supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory position.

(c) A supervisory officer appointed pursuant to the
provisions of this section shall report directly to the
director and shall, in addition to any functions vested
in or required to be delegated to such officer, perform
such additional functions as the director may prescribe.

(d) The supervisory officers of the division shall,
before entering upon the discharge of their duties, take
the oath of office prescribed by section five, article four
of the constitution of West Virginia, and shall execute
a bond in the penalty of two thousand dollars, with
security to be approved by the governor, conditioned
upon the faithful discharge of their duties, a certificate
of which oath and which bond shall be filed in the office
of the secretary of state. Premiums on such bond shall
be paid from the division funds.


(a) There is created within the department of com-
merce, labor and environmental resources the environ-
mental protection advisory council. The environmental
protection advisory council consists of seven members.
The director serves as an ex officio member of the
council and as its chair. The remaining six members are
appointed by the governor. Each member serves for a
term of four years and may be reappointed. Of the
members of the council first appointed, two shall be
appointed for terms ending on the thirtieth day of June,
one thousand nine hundred ninety-six, and two each for
terms ending one and two years thereafter. Vacancies
on the council shall be filled within sixty days after the
vacancy occurs.

(b) Two members of the council shall represent
industries regulated by the division or their trade
associations. Two members shall represent organiza-
tions advocating environmental protection. One member
shall represent organizations representing local govern-
ments. One member shall represent public service
districts. In making subsequent appointments this
balance of membership shall be maintained.

(c) Appointed members shall be paid the same
compensation and expense reimbursement as is paid to
members of the Legislature for their interim duties as
recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(d) The council shall meet at least once every quarter and at the call of the chair.

(e) The council shall:

(1) Consult with and advise the director on program and policy development, problem solving and other appropriate subjects;

(2) Identify and define problems associated with the implementation of the policy set forth in section one of this article;

(3) Provide and disseminate to industry and the public early identification of major federal program and regulatory changes;

(4) Provide a forum for the resolution of conflicts between constituency groups;

(5) To the extent possible, strive for consensus on the development of overall environmental policy; and

(6) Provide an annual report to the joint committee on government and finance on or before the first day of January of each year relating to its findings with regard to the division's performance during the previous year. The report will specifically address the division's performance in accomplishing the nine purposes set forth in subsection (b), section one of this article.

§22-1-10. Allocation of appropriations and effect on personnel.

(a) The director may, with the exception of the special reclamation fund established in section eleven, article three, of this chapter, expend, in accordance with the provisions of chapter five-a of this code, from special revenue accounts, and funds established pursuant to this chapter and chapters twenty-two-b and twenty-two-c of this code, amounts necessary to implement and administer the general powers, duties and responsibilities of
the division of environmental protection: Provided, That
federal funds required by law to be expended for a
specific purpose may not be expended for any purpose
contrary to the laws, rules or regulations of the federal
government.

(b) With respect to employees affected by the creation
of the division or the transfer of functions and offices
to the division the layoff and recall rights of such
employees within the classified service of the state as
provided in subsections (5) and (6), section ten, article
six, chapter twenty-nine of this code are limited to the
department of commerce, labor and environmental
resources and further limited to an occupational group
substantially similar to the occupational group estab-
lished by the classification and compensation plan for
the classified service of the agency or board in which
the employee was employed: Provided, That the em-
ployee has the qualifications established for the job
class. The duration of recall rights provided in this
subsection is limited to two years or the length of tenure,
whichever is less. Except as provided in this subsection,
nothing contained in this section abridges the rights of
employees within the classified service of the state as
provided in sections ten and ten-a, article six, chapter
twenty-nine of this code.

(c) The director is empowered to authorize the
payment of all or any part of the reasonable expenses
of employees of the division in moving their household
furniture and effects as a result of a reassignment of
such employee caused by a transfer of functions or
offices to the division.


(a) All orders, determinations, rules, permits, grants,
contracts, certificates, licenses, waivers, bonds, author-
izations and privileges which have been issued, made,
granted, or allowed to become effective by the governor,
any state department or agency or official thereof, or by
a court of competent jurisdiction, in the performance of
functions which have been transferred to the director or
to the division, and were in effect on the date such
transfer occurred continue in effect, for the benefit of
the division, according to their terms until modified,
terminated, superseded, set aside, or revoked in accor-
dance with the law by the governor, the secretary, the
director, or other authorized official, a court of compe-
tent jurisdiction, or by operation of law.

(b) Any proceedings, including notices of proposed
rule making, or any application for any license, permit,
certificate, or financial assistance pending before any
department, division or other office, functions of which
were transferred to the division are not affected by the
transfer. Orders issued in any such proceedings shall
continue in effect until modified, terminated, super-
seded, or revoked by the governor, the secretary, the
director, by a court of competent jurisdiction, or by
operation of law. Nothing in this subsection prohibits
the discontinuance or modification of any such proceed-
ing under the same terms and conditions and to the
same extent that such proceeding could have been
discontinued or modified if the division had not been
created or if functions or offices had not been trans-
ferred to the division. The director is authorized to
propose legislative rules in accordance with the provi-
sions of chapter twenty-nine-a of this code for the
orderly transfer of proceedings continued under the
provisions of this subsection.

(c) Except as provided in subsection (e) of this section,
the creation of the division and the subsequent transfer
of functions to it do not affect suits commenced prior to
the effective date of the creation or any transfer of
functions or offices to it, and in all such suits, proceed-
ings shall be had, appeals taken, and judgments
rendered in the same manner and with like effect as if
the creation or transfer had not occurred.

(d) No suit, action or other proceeding commenced by
or against any officer in the official capacity of such
individual as an officer of any department, division or
other office, functions of which were transferred to the
division abates by reason of such transfer. No cause of
action by or against any department, division or other
office, functions of which were transferred to the
division, or by or against any officer thereof in the official capacity of such officer, abates by reason of the
transfer.

(e) If, before the transfer, any department, division or other office, or officer thereof in the official capacity of such officer, was a party to a suit, and any function of such department, division or other office, or officer was transferred to the secretary, the director or other officer of the division, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.


The division shall collect, organize and from time to time distribute to the public, through news media or otherwise, interesting facts, information and data concerning the state's environment and its environmental regulatory programs. The director may organize and promote lectures, demonstrations, symposiums, schools and other educational programs relating to the state's environment and its protection. Video tapes, motion pictures, slide films and other photographic services may be provided for instruction on the environment and its protection for schools, other governmental agencies, and civic organizations under such rules as may be prescribed by the director.

The director shall select and designate a competent and qualified person as division public information officer, who is responsible for the organization and management of the division's public information and public affairs programs.


Any person may request the director to notify the person of a decision to issue or deny a specific permit applied for under this chapter. The request must be in writing and received by the director within the public comment period or at a public hearing held for the specific permit application. If there is no public comment period or public hearing held for the specific permit application the director is required to make the
notification under this section only if the request for
notification is received by the director at least two
working days prior to notifying the applicant of the
decision. The director shall notify all persons who have
made a timely request under this section of the decision
on the application at the same time the applicant is
notified of the decision. The notification shall advise the
person of any appeal rights under this chapter.

§22-1-14. Stream restoration fund; creation; special
account; purposes and expenditures.

(a) There is hereby created in the state treasury a
special interest bearing account known as the “stream
restoration fund.” Moneys received by the division
pursuant to transfers from any other account lawfully
transferred, from the federal government and other
sources, from mitigation, moneys, from gifts, bequests,
donations and contributions, and other moneys lawfully
received from whatever source, may be deposited in the
state treasury to the credit of the stream restoration
fund.

(b) Expenditures from the fund are not authorized
from collections but shall only be authorized by line item
appropriation by the Legislature. The moneys are to be
used and expended for the restoration and enhancement
of the streams and water resources of this state which
have been affected by coal mining or acid mine

drainage.

§22-1-15. Laboratory certification; rules; fees; revocation
and suspension; environmental laboratory
certification fund; programs affected; and
appeals.

(a) The director shall promulgate rules to require the
certification of laboratories conducting waste and
wastewater tests and analyses to be used for purposes
of demonstrating compliance under the covered statu-
tory programs, including reasonable annual certifica-
tion fees based upon the type or classification of tests
or analyses being conducted by laboratories not to
exceed an annual program aggregate of one hundred
fifty thousand dollars, to be assessed against laboratory
owners or operators in such an amount as is necessary
program and the processing of certification applications,
to be deposited in the state environmental laboratory
certification fund created pursuant to this section. By
the first day of July of each year beginning the first day
of July, one thousand nine hundred ninety-five, the
director shall provide to the secretary a written report
reflecting funds collected, how the funds were expended,
and an assessment of the adequacy of the funding to
administer the program.

(b) After the effective date of the rules promulgated
pursuant to this section, waste and wastewater tests and
analyses conducted in laboratories that are not certified
for the parameters or toxicity being tested or analyses
shall not be accepted by the division, except as otherwise
provided, as being in compliance with the requirements,
rules or orders of the division issued under authority of
one or more of the covered statutory programs: Pro-
vided, That field tests and remote monitoring or testing
equipment which is conducted or located away from any
laboratory shall not be deemed a laboratory for purposes
of assessing the fee but shall be subject to such quality
assurance and quality control standards as may be
established by the director in rules promulgated
pursuant to this section. The director shall provide by
rule for the granting of certification for laboratories
located outside of West Virginia without performance
testing or assessment of certification fee pursuant to this
section if such laboratories provide written documenta-
tion that approval has been received under require-
ments in another state determined by the director to be
equivalent to the West Virginia laboratory certification
program. Such reciprocal certification shall be granted
only for testing methods and parameters for which the
laboratory holds a valid authorization in such other state
and only for laboratories in states which allow reciproc-
ity with respect to laboratories located in this state.

(c) Application shall be made to the director for
approval or certification by laboratories on forms and
in a manner prescribed by the director.
(d) Certification shall be renewed on an annual basis. The existing certification shall remain in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria governing what shall be considered in any decision to deny or issue a certification.

(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director shall be grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: Provided, That any person whose data or test results are invalidated because such person had relied upon a laboratory which loses its certification, shall be granted thirty days after notice thereof by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the “environmental laboratory certification fund” shall be established in the state treasury on the first day of July, one thousand nine hundred ninety-four. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line item appropriation by the Legislature, the director shall expend the proceeds of the environmental laboratory certification fund solely for the administration of the requirements of this section: Provided, That for fiscal year one thousand nine
hundred ninety-five, expenditures are permitted from collection without further appropriation by the Legislature.

(i) For purposes of this section, "covered statutory program" means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, article eleven of this chapter; Hazardous Waste Management Act, article eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste Management Act, article fifteen of this chapter; or the Groundwater Protection Act, article twelve of this chapter.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal thereof, may appeal to the environmental quality board pursuant to article one, chapter twenty-two-b of this code.

(k) The provisions of this section shall apply only to tests and analyses of waste or wastewater subject to regulation by the division of environmental protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

ARTICLE 1A. PRIVATE REAL PROPERTY PROTECTION.

§22-1A-1. Short title.

This article shall be known and may be cited as the "Private Real Property Protection Act".

§22-1A-2. Legislative findings and purpose.

It is the policy of this state that action by the division of environmental protection affecting private real property is subject to such protection as is afforded by the constitutions of the United States and of West Virginia and the principles of nuisance law. The Legislature intends that the division of environmental
protection follow certain procedures to ensure constitutional protection of private real property rights, while also meeting its obligation to protect the quality of the environment, and reduce the burden on citizens, local governments and this state caused by certain actions affecting private real property. The purpose of this article is to establish an orderly, consistent process that better enables the division to evaluate how potential administrative action by it may affect privately owned real property. It is not the purpose of this article to reduce or expand the scope of private real property protections provided in section nine, article three of the constitution of West Virginia and the fifth and fourteenth amendments of the constitution of the United States, as those provisions have been and may in the future be interpreted by the state and federal courts of competent jurisdiction with respect to such matters for this state.

§22-1A-3. Actions by division of environmental protection; requirement for assessment.

(a) Whenever the division of environmental protection considers any action within its statutory authority that is reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her private real property, it shall prepare an assessment that includes but need not be limited to the following:

(1) An identification of the risk created by the private real property use, and a description of the environmental, health, safety, or other benefit to be achieved by the proposed action;

(2) The anticipated effects, if any, on other real property owners or on the environment if the division does not take the proposed action;

(3) An explanation of how the division believes its action advances the purpose of protecting against the risk;

(4) The reasons that the division believes that its action is likely to result in requiring the state, under
applicable constitutional principles and case law, to compensate the owner of private real property, including a description of how the action affects the use or value of private real property;

(5) Alternatives, if any, to the proposed action that the division believes will fulfill the legal obligations of the division, reduce the impact on the private real property owner and reduce the likelihood of requiring compensation; and

(6) An estimate of the cost to the state for compensation in the event such compensation is required.

No assessment is required under this article, unless the West Virginia Supreme Court of Appeals or the United State Supreme Court has under similar factual circumstances required compensation to be paid.

(b) In the case of an immediate threat to human health and safety that constitutes an emergency and requires an immediate response, the assessment required by this section may be delayed until after the emergency response is completed.

(c) The following do not require an assessment under this section:

(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; or

(3) Enforcement actions undertaken by the division pursuant to any applicable state or federal statutes, rules or regulations.

§22-1A-4. Buffer zones.

(a) Prior to the division of environmental protection requiring that a buffer zone be created on private real property, the division shall prepare a report which shall
identify the public purpose or policy which is to be
served by the creation of the buffer zone and how the
creation and maintenance of the buffer zone promotes
or fulfills that public purpose or policy. This report is
in addition to any other assessment required pursuant
to the provisions of this article.

(b) Any report made pursuant to this section is public
information.

c) In the case of an immediate threat to human health
and safety that constitutes an emergency and requires
an immediate response, the report required by this
section may be delayed until after the emergency
response is completed.

§22-1A-5. Remedies.

When a court of competent jurisdiction determines
that action of the division of environmental protection,
within its statutory authority, requires that compensa-
tion be paid to a private real property owner pursuant
to section nine, article three of the constitution of West
Virginia, or the fifth or fourteenth amendments of the
constitution of the United States or the principles of
nuisance law, the private real property owner is also
entitled to his or her reasonable attorney fees and costs:

(1) If the court determines that the division failed to
perform the assessment required in section three of this
article; or

(2) If the court determines that the division performed
the assessment required in section three of this article
but failed to conclude that its action was reasonably
likely to require compensation to be paid to the private
real property owner.

§22-1A-6. Scope of application.

The provisions of this article only apply to the
programs administered by the division of environmental
protection on the effective date of this article.
This article shall be known and cited as the "Abandoned Mine Lands and Reclamation Act".

§22-2-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

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

Further, the Legislature finds and declares that, due to the passage of the federal Surface Mining Control and Reclamation Act of 1977, certain areas within the boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, provides for the collection of thirty-five cents per ton of coal produced from surface-mine operations and fifteen cents per ton of coal produced from underground mine operations in West Virginia to be collected by the secretary of the United States department of the interior until the thirtieth day of September, two thousand four. At least fifty percent of the funds collected are to be allocated directly to the state of West Virginia to accomplish reclamation of abandoned coal mining operations, as of the date the state of West Virginia obtained an approved abandoned mine reclamation plan in accordance with Sections 405 and 503 of the federal Surface Mining Control and Reclamation Act of 1977, as amended.

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the director of the division of environmental protection to maintain program approval by, and receipt of funds from, the
United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.


(a) All definitions set forth in article three of this chapter apply to those defined terms which also appear in this article, if applicable.

(b) For the purposes of this article the following words have the meanings ascribed to them in this subsection:

(1) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) "Division" means the division of environmental protection; and

(3) "Secretary" means the secretary of the United States Department of Interior.

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the director, under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the director for the following:

(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned
deep mine entries and voids; planting of land adversely
affected by past coal surface-mining operations to
prevent erosion and sedimentation; prevention, abate-
ment, treatment and control of water pollution created
by coal mine drainage, including restoration of stream
beds and construction and operation of water treatment
plants; prevention, abatement and control of burning
coal processing waste areas and burning coal in situ;
prevention, abatement and control of coal mine subsi-
dence; and payment of administrative expenses and all
other necessary expenses incurred to accomplish the
purpose of this article: Provided, That all expenditures
from this fund shall reflect the following priorities in
the order stated:

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

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

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

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

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

(F) The development of publicly owned land adversely
affected by past coal surface-mining practices, including
land acquired as provided in this article for recreation
and historic purposes, conservation and reclamation
purposes and open space benefits.

(2) (A) The director may expend up to thirty percent
of the funds allocated to the state in any year through
the grants made available under paragraphs (1) and (5),
subsection (g) of Section 402 of the federal Surface
Mining Control and Reclamation Act of 1977, as
amended, for the purpose of protecting, repairing,
replacing, constructing or enhancing facilities relating
to water supply, including water distribution facilities
and treatment plants, to replace water supplies adver-
sely affected by coal surface-mining practices.

(B) If the adverse effects on water supplies referred
to in this subdivision occurred both prior to and after
the third day of August, one thousand nine hundred
seventy-seven, subsection (c) of this section does not
prohibit the state from using funds for the purposes of
this subdivision if the director determines that the
adverse effects occurred predominantly prior to the
third day of August, one thousand nine hundred seventy-
seven.

(3) The director may receive and retain up to ten
percent of the total of the grants made annually to the
state under paragraphs (1) and (5), subsection (g) of
Section 402 of the federal Surface Mining Control and
Reclamation Act of 1977, as amended, if the amounts
are deposited to the credit of either:

(A) The special account in the state treasury desig-
nated the "Reclamation and Restoration Fund" is hereby
continued. Moneys in the fund may be expended by the
director to achieve the priorities stated in subdivision (1)
of this subsection after the thirtieth day of September,
one thousand nine hundred ninety-five and for asso-
ciated administrative and personnel expenses; or

(B) The special account in the state treasury desig-
nated the "Acid Mine Drainage Abatement and Treat-
ment Fund" is hereby continued. Moneys in the fund
may be expended by the director to implement, in
consultation with the United States soil conservation
service, acid mine drainage abatement and treatment
plans approved by the secretary of the United States
department of interior and for associated administrative
and personnel expenses. The plans shall provide for the
comprehensive abatement of the causes and treatment
of the effects of acid mine drainage within qualified
hydrologic units affected by coal surface-mining
practices.

(c) Except as provided for in this subsection, lands and
water eligible for reclamation or drainage abatement
expenditures under this article are those which were
mined for coal or which were affected by the mining,
wastebanks, coal processing or other coal mining
processes, and abandoned or left in an inadequate
reclamation status prior to the third day of August, one
two thousand nine hundred seventy-seven, and for which
there is no continuing reclamation responsibility:
Provided, That moneys from the funds made available
by the secretary of the United States department of
interior pursuant to paragraphs (1) and (5), subsection
(g), Section 402 of the federal Surface Mining Control
and Reclamation Act of 1977, as amended, may be
expended for the reclamation or drainage abatement of
a site that: (1) The surface-mining operation occurred
during the period beginning on the fourth day of
August, one thousand nine hundred seventy-seven, and
ending on or before the twenty-first day of January, one
two thousand nine hundred eighty-one, and that any funds
for reclamation or abatement which are available
pursuant to a bond or other financial guarantee or from
any other source, and not sufficient to provide for
adequate reclamation or abatement of the site; or (2) the
surface-mining operation occurred during the period
beginning on the fourth day of August, one thousand
nine hundred seventy-seven, and ending on or before the
fifth day of November, one thousand nine hundred
ninety, and that the surety of the surface-mining
operation became insolvent during that period, and as
of the fifth day of November, one thousand nine hundred
ninety, funds immediately available from proceeding
relating to the insolvency or from any financial guaran-
tees or other sources are not sufficient to provide for
adequate reclamation of the site: Provided, however,
That the director, with the concurrence of the secretary,
makes either of the above-stated findings, and that the
site is eligible, or more urgent than the reclamation
priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state and nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article or any act done by virtue of this article estop the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

(e) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary concurs, then the director may expend money from the fund for the construction.

§22-2-5. Powers and duties of director; program plans and reclamation projects.

(a) The director shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this article.

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

(c) On an annual basis, the director shall submit to the secretary an application for the support of the state program and implementation of specific reclamation projects. The annual requests shall include information as may be requested by the secretary including:

(1) A general description of each proposed project;
(2) A priority evaluation of each proposed project;
(3) A statement of the estimated benefits in such terms as number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution and hazards of mine and coal refuse disposal area fires;
(4) An estimate of the cost for each proposed project;
(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
(6) An identification of lands or interest therein to be acquired and the estimated cost; and
(7) In each year after the first in which a plan is filed under this article, an inventory of each project funded under the previous year's grant, which inventory shall include details of financial expenditures on the project together with a brief description of the project, including the project's location, the landowner's name, acreage and the type of reclamation performed.

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

§22-2-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

(a) If the director makes a finding of fact that:
(1) Land or water resources have been adversely affected by past coal surface-mining practices;
(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;
(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices are not known or readily available; or
(4) The owners will not give permission for the director, his or her agents, employees or contractors to enter upon the property to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his or her agents, employees or contractors have the right to enter upon the property adversely affected by past coal surface-mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for the work and the benefits accruing to any premises so entered upon is chargeable against the land and mitigates or offsets any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The director, his or her agents, employees or contractors have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal surface-mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The director may acquire any land by purchase, donation or condemnation, which is adversely affected by past coal surface-mining practices, if the director determines that acquisition of the land is necessary to
successful reclamation and that:

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

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

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

(d) Title to all lands acquired pursuant to this section shall be in the name of the state of West Virginia, by the West Virginia division of environmental protection. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal surface-mining practices.

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

(f) The director may accept and local political subdivisions may transfer to the director land belonging to them to carry out the purposes set out in this article and in that event they have a preferential right to purchase the land after reclamation at the fair market value less the political subdivision's cost of acquisition, but at no time shall the director sell the land to a political subdivision at a price less than the cost of the acquisition and reclamation of the land: Provided, That if any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the director in the terms and conditions of...
the sales agreement, then all rights, title and interest in the land revert to the West Virginia division of environmental protection. Any moneys received from the sale shall be deposited in the abandoned land reclamation fund.

(g) Where land acquired pursuant to this section is considered to be suitable for industrial, commercial, residential or recreational development, the director may sell the land by public sale under a system of competitive bidding at not less than fair market value and pursuant to rules promulgated to ensure that the lands are put to proper use consistent with state and local land use plans.

(h) The director, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which affords local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal surface-mining practices which constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. The activities shall be accomplished under such terms and conditions as the director requires, which
may include transfers of land with or without monetary
consideration: Provided, That to the extent that the
consideration is below the fair market value of the land
transferred, no portion of the difference between the fair
market value and the consideration shall accrue as a
profit to such persons, firm, association or corporation.
No part of the funds provided under this article may be
used to pay the actual construction costs of housing. The
director may carry out the purposes of this subsection
directly or he or she may make grants and commitments
for grants, and may advance money under such terms
and conditions as he or she may require to any depart-
ment, agency or political subdivision of this state, or any
public body or nonprofit organization designated by the
director.

§22-2-7. Liens against reclaimed land; petition by land-
downer; appeal; priority of liens.

(a) Within six months after the completion of a project
to restore, reclaim, abate, control or prevent adverse
effects of past coal surface-mining practices on a
privately owned land, the director shall itemize the
moneys so expended and may file a statement thereof
in the office of the clerk of the county commission in the
county in which the land lies, together with a notarized
appraisal by an independent appraiser of the value of
the land before the restoration, reclamation, abatement,
control or prevention of adverse effects of past coal
surface-mining practices, if the moneys so expended
result in a significant increase in property value. The
statement constitutes a lien upon the land. The lien shall
not exceed the amount determined by the appraisal to
be the increase in the market value of the land as a
result of the restoration, reclamation, abatement, control
or prevention of the adverse effects of past coal surface-
mining practices. No lien may be filed against the
property of any person in accordance with this subsec-
tion, who owned the surface prior to the second day of
May, one thousand nine hundred seventy-seven, and who
neither consented to, nor participated in, nor exercised
control over the mining operation which necessitated the
reclamation performed hereunder.
(b) The landowner may petition the director within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices. The amount reported to be the increase in value of the premises is the amount of lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal to the circuit court of the county in which the land is located.

(c) The statement filed pursuant to subsection (a) of this section is a lien upon the land as of the date of the expenditure of the moneys and has priority as a lien second only to the lien of real estate taxes imposed upon the land.


(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation are a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The director is authorized to fill the voids, seal the abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, are a hazard to the public welfare and safety or degrade the environment.

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

(c) The director may acquire by purchase, donation, easement or otherwise such interest in land as he or she determines necessary to carry out the provisions of this section.
§22-2-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

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

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

(c) The director may request the attorney general, who is hereby authorized to initiate, in addition to any other remedies provided for in this article, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this article.

(d) The director has the authority to construct and operate a plant or any facilities for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: Provided, That this subsection does not repeal or supersede any portion of the applicable federal or state water pollution control laws and no control or treatment under this section may be less than that required under any applicable federal or state water pollution control law. The construction of any facilities may include major interceptors and other facilities appurtenant to the plant.

(e) All departments, boards, commissions and agencies of the state shall cooperate with the director by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of this article.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.
§22-3-1. **Short title.**

This article shall be known and cited as the "Surface Coal Mining and Reclamation Act."

§22-3-2. **Legislative findings and purpose; jurisdiction vested in division of environmental protection; authority of director; inter-departmental cooperation.**

(a) The Legislature finds that it is essential to the economic and social well-being of the citizens of the state of West Virginia to strike a careful balance between the protection of the environment and the economical mining of coal needed to meet energy requirements.

Further, the Legislature finds that there is great diversity in terrain, climate, biological, chemical and other physical conditions in parts of this nation where mining is conducted; that the state of West Virginia in particular needs an environmentally sound and economically healthy mining industry; and by reason of the above it may be necessary for the director to promulgate rules which vary from federal regulations as is provided for in sections 101 (f) and 201 (c)(9) of the federal Surface Mining Control and Reclamation Act of 1977, as amended, "Public Law 95-87."

Further, the Legislature finds that unregulated surface coal mining operations may result in disturbances of surface and underground areas that burden and adversely affect commerce, public welfare and safety by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes; by causing erosion and landslides; by contributing to floods; by polluting the water and river and stream beds; by destroying fish, aquatic life and wildlife habitats; by impairing natural beauty; by damaging the property of citizens; by creating hazards dangerous to life and property; and by degrading the quality of life in local communities, all where proper mining and reclamation is not practiced.

(b) Therefore, it is the purpose of this article to:

(1) Expand the established and effective statewide
(2) Assure that the rights of surface and mineral owners and other persons with legal interest in the land or appurtenances to land are adequately protected from such operations;

(3) Assure that surface-mining operations are not conducted where reclamation as required by this article is not feasible;

(4) Assure that surface-mining operations are conducted in a manner to adequately protect the environment;

(5) Assure that adequate procedures are undertaken to reclaim surface areas as contemporaneously as possible with the surface-mining operations;

(6) Assure that adequate procedures are provided for public participation where appropriate under this article;

(7) Assure the exercise of the full reach of state common law, statutory and constitutional powers for the protection of the public interest through effective control of surface-mining operations; and

(8) Assure that the coal production essential to the nation's energy requirements and to the state's economic and social well-being is provided.

(c) In recognition of these findings and purposes, the Legislature hereby vests authority in the director of the division of environmental protection to:

(1) Administer and enforce the provisions of this article as it relates to surface mining to accomplish the purposes of this article;

(2) Conduct hearings and conferences or appoint persons to conduct them in accordance with this article;

(3) Promulgate, administer and enforce rules pursuant to this article;

(4) Enter into a cooperative agreement with the
secretary of the United States department of the interior to provide for state regulation of surface-mining operations on federal lands within West Virginia consistent with section 523 of the federal Surface Mining Control and Reclamation Act of 1977, as amended; and

(5) Administer and enforce rules promulgated pursuant to this chapter to accomplish the requirements of programs under the federal Surface Mining Control and Reclamation Act of 1977, as amended.

(d) The director of the division of environmental protection and the director of the office of miners' health, safety and training shall cooperate with respect to each agency's programs and records to effect an orderly and harmonious administration of the provisions of this article. The director of the division of environmental protection may avail himself or herself of any services which may be provided by other state agencies in this state and other states or by agencies of the federal government, and may reasonably compensate them for such services. Also, he or she may receive any federal funds, state funds or any other funds, and enter into cooperative agreements, for the reclamation of land affected by surface mining.

§22-3-3. Definitions.

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

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

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

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

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

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

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

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

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

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

(i) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

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

(k) "Division" means the division of environmental protection.

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

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

(n) "Operation" means those activities conducted by an operator who is subject to the jurisdiction of this article.

(o) "Operator" means any person who is granted or who should obtain a permit to engage in any activity
covered by this article and any rule promulgated hereunder and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

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

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

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

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

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

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

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

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

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

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

§22-3-4. Reclamation; duties and functions of director.

(a) The director shall administer the provisions of this article relating to surface-mining operations. The director has within his or her jurisdiction and supervision all lands and areas of the state, mined or susceptible of being mined, for the removal of coal and all other lands and areas of the state deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within such lands and areas are lands seared and denuded by chemical operations and processes, abandoned coal mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the director shall be consistent with other provisions of this chapter.

(b) The director has the authority to:

(1) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement the provisions of this article: Provided, That the director shall give notice by publication of the public hearing required in article three, chapter twenty-nine-a of this code: Provided, however, That any forms, handbooks or similar materials having the effect of a rule as defined in article three, chapter twenty-nine-a of this code were issued, developed or distributed by the director pursuant to or as a result of a rule are subject to the provisions of article three, chapter twenty-nine-a of this code;

(2) Make investigations or inspections necessary to ensure complete compliance with the provisions of this code;

(3) Conduct hearings or appoint persons to conduct
hearings under provisions of this article or rules adopted by the director; and for the purpose of any investigation or hearing hereunder, the director or his or her designated representative, may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(4) Enforce the provisions of this article as provided herein; and

(5) Appoint such advisory committees as may be of assistance to the director in the development of programs and policies: Provided, That such advisory committees shall, in each instance, include members representative of the general public.

(c) (1) After the director has adopted the rules required by this article, any person may petition the director to initiate a proceeding for the issuance, amendment or appeal of a rule under this article.

(2) The petition shall be filed with the director and shall set forth the facts which support the issuance, amendment or appeal of a rule under this article.

(3) The director may hold a public hearing or may conduct such investigation or proceeding as he or she considers appropriate in order to determine whether the petition should be granted or denied.

(4) Within ninety days after filing of a petition described in subdivision (1) of this subsection, the director shall either grant or deny the petition. If the director grants the petition, he or she shall promptly commence an appropriate proceeding in accordance with the provisions of chapter twenty-nine-a of this code. If the director denies the petition, he or she shall notify the petitioner in writing setting forth the reasons for the denial.

§22-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person is eligible for such appointment until he or she has served in a probationary status for a period of six months to the satisfaction of the director.

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

§22-3-6. Duties of surface-mining reclamation inspectors and inspectors in training.

Except as otherwise provided in this article, surface-mining reclamation inspectors and inspectors in training shall make all necessary surveys and inspections of surface-mining operations required by the provisions of this article, shall administer and enforce all surface-mining laws and rules and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. Such inspectors shall note and describe all violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.

§22-3-7. Notice of intention to prospect, requirements therefor; bonding; director's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

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

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

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

(d) Information submitted to the director pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, is not available for public examination.
(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or rules issued pursuant thereto is subject to the provisions of sections sixteen and seventeen of this article.

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

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

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

(i) For the purpose of this section, the word "prospect" or "prospecting" does not include core drilling related solely to taxation or highway construction.

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

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

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates
that a specified longer term is reasonably needed to
allow the applicant to obtain necessary financing for
equipment and the opening of the operation, and if the
application is full and complete for such specified longer
term, the director may extend a permit for such longer
term: Provided, however, That subject to the prior
approval of the director, with such approval being
subject to the provisions of subsection (c), section
eighteen of this article, a successor in interest to a
permittee who applies for a new permit, or transfer of
a permit, within thirty days of succeeding to such
interest, and who is able to obtain the bond coverage of
the original permittee, may continue surface-mining
and reclamation operations according to the approved
mining and reclamation plan of the original permittee
until such successor’s permit application or application
for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

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

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

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

(6) Prior to the issuance of any permit, the director
shall ascertain from the commissioner of the bureau of
employment programs whether the applicant is in
compliance with the provisions of section five, article
two, chapter twenty-three of this code. If the applicant
is not in compliance, then the permit shall not be issued
until the applicant returns to compliance: Provided,
That in all such inquiries the commissioner of the
bureau of employment programs shall make response to
the division of environmental protection within fifteen
calendar days, otherwise failure to respond timely shall
be considered to indicate the applicant is in compliance
and such failure will not be used to preclude issuance
of the permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) When requested by the director, the climatological factors that are peculiar to the locality of the land to be affected, including the average seasonal precipitation, the average direction and velocity of prevailing winds, and the seasonal temperature ranges; and
(19) Other information that may be required by rules reasonably necessary to effectuate the purposes of this article.

(b) If the director finds that the probable total annual production at all locations of any coal surface-mining operator will not exceed three hundred thousand tons, the determination of probable hydrologic consequences including the engineering analyses and designs necessary as required by this article or rules promulgated thereunder; the development of cross-section maps and plans as required by this article or rules promulgated thereunder; the geologic drilling and statement of results of test borings and core samplings as required by this article or rules promulgated thereunder; the collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by this article or rules promulgated thereunder; and the collection of archaeological and historical information required by this article and rules promulgated thereunder and any other archaeological and historical information required by the federal department of the interior and the preparation of plans that may be necessitated thereby shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the director and a reasonable cost of the preparation of such determination and statement shall be assumed by the division from funds provided by the United States department of the interior pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

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

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

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

(f) The applicant shall file as part of the permit
application a schedule listing all notices of violation,
bond forfeitures, permit revocations, cessation orders or
permanent suspension orders resulting from a violation
of the federal Surface Mining Control and Reclamation
Act of 1977, as amended, this article or any law or
regulation of the United States or any department or
agency of any state pertaining to air or environmental
protection received by the applicant in connection with
any surface-mining operation during the three-year
period prior to the date of application, and indicating
the final resolution of any notice of violation, forfeiture,
revocation, cessation or permanent suspension.

(g) Within five working days of receipt of an appli-
cation for a permit, the director shall notify the operator
in writing, stating whether the application is adminis-
tratively complete and whether the operator's advertise-
ment may be published. If the application is not
administratively complete, the director shall state in
writing why the application is not administratively
complete.
§22-3-10. Reclamation plan requirements.

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

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

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

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

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

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

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

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

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

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

(11) A detailed description of the measures to be taken during the surface-mining and reclamation process to assure the protection of: (A) The quality of surface and groundwater systems, both on and off-site, from adverse effects of the surface-mining operation; (B) the rights of present users to such water; and (C) the quantity of surface and groundwater systems, both on and off-site, from adverse effects of the surface-mining operation or to provide alternative sources of water where such
(12) The results of tests borings which the applicant has made at the area to be covered by the permit, or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water, and an analysis of the chemical properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding such mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Such other requirements as the director may prescribe by rule.

(b) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface-mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be one thousand dollars for each acre or fraction thereof. The bond shall cover (1) the entire permit area, or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface-mining and reclamation operations within the initial term of the permit. If
the operator chooses to use incremental bonding, as
succeeding increments of surface mining and reclama-
tion operations are to be initiated and conducted within
the permit area, the operator shall file with the director
an additional bond or bonds to cover such increments
in accordance with this section: Provided, That once the
operator has chosen to proceed with bonding either the
entire permit area or with incremental bonding, the
operator shall continue bonding in that manner for the
term of the permit: Provided, however, That the
minimum amount of bond furnished shall be ten
thousand dollars.

(b) The period of liability for bond coverage begins
with issuance of a permit and continues for the full term
of the permit plus any additional period necessary to
achieve compliance with the requirements in the
reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the
director and may include, at the option of the operator,
surety bonding, collateral bonding (including cash and
securities), establishment of an escrow account, self-
bonding or a combination of these methods. If collateral
bonding is used, the operator may elect to deposit cash,
or collateral securities or certificates as follows: Bonds
of the United States or its possessions, of the federal
land bank, or of the homeowners' loan corporation; full
faith and credit general obligation bonds of the state of
West Virginia, or other states, and of any county,
district or municipality of the state of West Virginia or
other states; or certificates of deposit in a bank in this
state, which certificates shall be in favor of the division.
The cash deposit or market value of such securities or
certificates shall be equal to or greater than the penal
sum of the bond. The director shall, upon receipt of any
such deposit of cash, securities or certificates, promptly
place the same with the treasurer of the state of West
Virginia whose duty it is to receive and hold the same
in the name of the state in trust for the purpose for
which the deposit is made when the permit is issued.
The operator making the deposit is entitled from time
to time to receive from the state treasurer, upon the
written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The director may approve an alternative bonding system if it will (A) reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time, and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the director the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this subsection. The fund shall be administered by the director, and he or she is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface-mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on such land is less than the actual cost of reclamation. The director shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-
term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The director may use an amount, not to exceed twenty-five percent of the annual amount of the fees collected, for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The director may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article, articles two and four of this chapter and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

Every person conducting coal surface-mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. This fee shall be collected by the state tax commissioner in the same manner, at the same time, and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall this tax be construed to be an increase in either the minimum severance tax imposed by said article twelve-b or the severance tax imposed by article thirteen of said chapter eleven. Every person liable for payment of this special tax shall pay the amount due without notice or demand for payment. The tax commissioner shall provide to the director a quarterly listing of all persons known to be delinquent in payment of the special tax. The director may take such delinquencies into account in making determinations on the issuance, renewal or revision of any permit. Such tax shall be collected whenever the liabilities of the state established in this subsection exceed the accrued amount in the fund. The tax commissioner shall deposit the fees collected with the treasurer of the state of West Virginia to the credit of the special reclamation fund. The moneys in the fund shall be placed by the treasurer in interest bearing account with the interest being returned to the fund on an annual basis. At the beginning of each quarter, the director shall advise the state tax commissioner and the governor of the assets, excluding payments, expendi-
§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent; expiration of rule; reporting.

(a) Notwithstanding the provisions of section eleven of this article, the director may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) Such site-specific bonding system shall be established by a legislative rule proposed by the director. The rule shall be proposed for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, except as the provisions of this section otherwise direct. The notice of the proposed promulgation and the text of the proposed rule shall be filed in the state register in compliance with the requirements of section five, article three, chapter twenty-nine-a of this code: Provided, That such filing shall be made on or before the thirtieth day of June, one thousand nine hundred ninety-two: Provided, however, That a period for receiving public comment on the merits of such rule shall be afforded, which period shall extend for not less than sixty days next following the filing of the proposed rule in the state register. The notice establishing the period for public comment shall also fix a date, time and place for a hearing for public comment at which both written and oral presentations may be made, and such hearing shall be held after the thirtieth day of the public comment period but before the forty-sixth day of such comment period. The provisions of section nine, article three, chapter twenty-nine-a of this code to the contrary notwithstanding, after the close of the public comment period, the director shall proceed to agency approval and final adoption of the rule, including any amendments made by the director prior to such final adoption, without further hearing or public comment. No such amendment may change the main purpose of the rule. Such final adoption shall occur on or before the first day of November, one thousand nine hundred ninety-two, and such rule shall become effective, and have the full force and effect of law on and after the first day of
December, one thousand nine hundred ninety-two, without submission to the Legislature. Such rule shall continue in effect until the first day of May, one thousand nine hundred ninety-three, or until sooner modified, codified or abrogated by the Legislature. Such rule shall not be promulgated as an emergency legislative rule.

(c) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than one thousand dollars nor more than five thousand dollars per acre or fraction thereof.

(2) Any such bond, subject to the limitations of subdivision (1) of this subsection, shall reflect a relative potential cost of reclamation associated with the activities proposed to be permitted, which cost would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for all permits.

(3) Such bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(d) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (c) of this section, provide for a consideration of other factors deemed relevant by the director. For example, such rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary
(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

An analysis of various factors related to the specific permit applicant, including, but not limited to:
(A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.

It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the division of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the director and the division in fixing the amount of the bond.

(f) On or before the thirty-first day of December, one thousand nine hundred ninety-one, and every ninety days thereafter, the director shall report in writing to the joint committee on government and finance of the Legislature or its designated subcommittee as to the progress of the division in developing or implementing, as the case may be, the provisions of this section.


(a) Any permit issued by the director pursuant to this article to conduct surface-mining operations shall require that such surface-mining operations will meet
all applicable performance standards of this article and
other requirements as the director promulgates.

(b) The following general performance standards are
applicable to all surface mines and require the opera-
tion, at a minimum to:

(1) Maximize the utilization and conservation of the
solid fuel resource being recovered to minimize reaffect-
ing the land in the future through surface mining;

(2) Restore the land affected to a condition capable of
supporting the uses which it was capable of supporting
prior to any mining, or higher or better uses of which
there is reasonable likelihood so long as the use or uses
do not present any actual or probable hazard to public
health or safety or pose any actual or probable threat
of water diminution or pollution, and the permit
applicants' declared proposed land use following
reclamation is not deemed to be impractical or unrea-
onable, inconsistent with applicable land use policies
and plans, involves unreasonable delay in implementa-
tion, or is violative of federal, state or local law;

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

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

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

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

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

(8) Create, if authorized in the approved surface-
mining and reclamation plan and permit, permanent
impoundments of water on mining sites as part of
reclamation activities in accordance with rules promul-
gated by the ; director (9) Where augering is the method
of recovery, seal all auger holes with an impervious and
noncombustible material in order to prevent drainage
except where the director determines that the resulting
impoundment of water in such auger holes may create
a hazard to the environment or the public welfare and
safety: Provided, That the director may prohibit
augering if necessary to maximize the utilization,
recoverability or conservation of the mineral resources
or to protect against adverse water quality impacts;
(10) Minimize the disturbances to the prevailing
hydrologic balance at the mine site and in associated off-
site areas and to the quality and quantity of water in
surface and groundwater systems both during and after
surface-mining operations and during reclamation by:
(A) Avoiding acid or other toxic mine drainage by such
measures as, but not limited to: (i) Preventing or
removing water from contact with toxic producing
deposits; (ii) treating drainage to reduce toxic content
which adversely affects downstream water upon being
released to water courses; and (iii) casing, sealing or
otherwise managing boreholes, shafts and wells and
keep acid or other toxic drainage from entering ground
and surface waters; (B) conducting surface-mining
operations so as to prevent to the extent possible, using
the best technology currently available, additional
contributions of suspended solids to streamflow or
runoff outside the permit area, but in no event shall
contributions be in excess of requirements set by
applicable state or federal law; (C) constructing an
approved drainage system pursuant to subparagraph
(B) of this subdivision prior to commencement of
surface-mining operations, such system to be certified
by a person approved by the director to be constructed
as designed and as approved in the reclamation plan; (D)
avoiding channel deepening or enlargement in opera-
tions requiring the discharge of water from mines; (E)
unless otherwise authorized by the director; cleaning out
and removing temporary or large settling ponds or other
siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) such other actions as the director may prescribe;

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

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

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

(14) Ensure that all debris, acid-forming materials,
toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion:

Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

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

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface-mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current: Provided, That where surface-mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

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

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

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

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

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

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

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: Provided, That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

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

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

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

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

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

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

(22) Place all excess spoil material resulting from
surface-mining activities in such a manner that: (A)
Spoil is transported and placed in a controlled manner
in position for concurrent compaction and in a way as
to assure mass stability and to prevent mass movement;
(B) the areas of disposal are within the bonded permit
areas and all organic matter is removed immediately
prior to spoil placements; (C) appropriate surface and
internal drainage system or diversion ditches are used
to prevent spoil erosion and movement; (D) the disposal
area does not contain springs, natural water courses or
wet weather seeps, unless lateral drains are constructed
from the wet areas to the main underdrains in a manner
that filtration of the water into the spoil pile will be
prevented; (E) if placed on a slope, the spoil is placed
upon the most moderate slope among those upon which,
in the judgment of the director, the spoil could be placed
in compliance with all the requirements of this article,
and is placed, where possible, upon, or above, a natural
terrace, bench or berm, if placement provides additional
stability and prevents mass movement; (F) where the toe
of the spoil rests on a downslope, a rock toe buttress, of
sufficient size to prevent mass movement, is constructed;
(G) the final configuration is compatible with the
natural drainage pattern and surroundings and suitable
for intended uses; (H) design of the spoil disposal area
is certified by a qualified registered professional
engineer in conformance with professional standards;
and (I) all other provisions of this article are met:

Provided, That where the excess spoil material consists
of at least eighty percent, by volume, sandstone,
limestone or other rocks that do not slake in water and
will not degrade to soil material, the director may
approve alternate methods for disposal of excess spoil
material, including fill placement by dumping in a
single lift, on a site specific basis: Provided, however,
That the services of a qualified registered professional
engineer experienced in the design and construction of
earth and rockfill embankment are utilized: Provided
further, That such approval shall not be unreasonably
withheld if the site is suitable;

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

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

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

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

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

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

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

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

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

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

(f) The director shall promulgate rules for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection must include provisions for review and approval of plans and specifications prior to construc-
tion, enlargement, modification, removal or abandon-
ment; performance of periodic inspections during
construction; issuance of certificates of approval upon
completion of construction; performance of periodic
safety inspections; and issuance of notices and orders for
required remedial or maintenance work or affirmative
action: Provided, That whenever the director finds that
any coal processing waste pile constitutes an imminent
danger to human life, he or she may, in addition to all
other remedies and without the necessity of obtaining
the permission of any person prior or present who
operated or operates a pile or the landowners involved,
enter upon the premises where any such coal processing
waste pile exists and may take or order to be taken such
remedial action as may be necessary or expedient to
secure the coal processing waste pile and to abate the
conditions which cause the danger to human life:
Provided, however, That the cost reasonably incurred in
any remedial action taken by the director under this
subsection may be paid for initially by funds approp-
riated to the division for these purposes, and the sums
so expended shall be recovered from any responsible
operator or landowner, individually or jointly, by suit
initiated by the attorney general at the request of the
director. For purposes of this subsection “operates” or
“operated” means to enter upon a coal processing waste
pile, or part thereof, for the purpose of disposing,
depositing, dumping coal processing wastes thereon or
removing coal processing waste therefrom, or to employ
a coal processing waste pile for retarding the flow of or
for the impoundment of water.
§22-3-14. General environmental protection performance
standards for the surface effects of under-
ground mining; application of other provi-
sions of article to surface effects of under-
ground mining.

(a) The director shall promulgate separate rules
directed toward the surface effects of underground coal
mining operations, embodying the requirements in
subsection (b) of this section: Provided, That in adopting
such rules, the director shall consider the distinct
difference between surface coal mines and underground coal mines in West Virginia. Such rules may not conflict with or supersede any provision of the federal or state coal mine health and safety laws or any rule issued pursuant thereto.

(b) Each permit issued by the director pursuant to this article and relating to underground coal mining shall require the operation at a minimum to:

(1) Adopt measures consistent with known technology in order to prevent subsidence causing material damage to the extent technologically and economically feasible, maximize mine stability and maintain the value and reasonably foreseeable use of overlying surface lands, except in those instances where the mining technology used requires planned subsidence in a predictable and controlled manner: Provided, That this subsection does not prohibit the standard method of room and pillar mining;

(2) Seal all portals, entryways, drifts, shafts or other openings that connect the earth's surface to the underground mine workings when no longer needed for the conduct of the mining operations in accordance with the requirements of all applicable federal and state law and rules promulgated pursuant thereto;

(3) Fill or seal exploratory holes no longer necessary for mining and maximize to the extent technologically and economically feasible, if environmentally acceptable, return of mine and processing waste, tailings and any other waste incident to the mining operation to the mine workings or excavations;

(4) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine workings or excavations, stabilize all waste piles created by the operator from current operations through construction in compacted layers, including the use of incombustible and impermeable materials, if necessary, and assure that any leachate therefrom will not degrade surface or groundwaters below water quality standards established pursuant to applicable federal and state law and that
the final contour of the waste accumulation will be compatible with natural surroundings and that the site is stabilized and revegetated according to the provisions of this section;

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

(6) Establish on regraded areas and all other disturbed areas a diverse and permanent vegetative cover capable of self-regeneration and plant succession and at least equal in extent of cover to the natural vegetation of the area within the time period prescribed in subdivision (20), subsection (b), section thirteen of this article;

(7) Protect off-site areas from damages which may result from such mining operations;

(8) Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard to health and safety of the public;

(9) Minimize the disturbance of the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quantity and the quality of water in surface and groundwater systems both during and after mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water before being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells to keep acid or other toxic drainage from entering ground and surface waters; and (B) conducting mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions
of suspended solids to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess of requirements set by applicable state or federal law, and avoiding channel deepening or enlargement in operations requiring the discharge of water from mines: Provided, That in recognition of the distinct differences between surface and underground mining the monitoring of water from underground coal mine workings shall be in accordance with the provisions of the Clean Water Act of 1977;

(10) With respect to other surface impacts of underground mining not specified in this subsection, including the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities or other property or materials on the surface, resulting from or incident to such activities, operate in accordance with the standards established under section thirteen of this article for such effects which result from surface-mining operations: Provided, That the director shall make such modifications in the requirements imposed by this subdivision as are necessary to accommodate the distinct difference between surface and underground mining in West Virginia;

(11) To the extent possible using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, aquatic life, wildlife and related environmental values, and achieve enhancement of such resources where practicable; and

(12) Unless otherwise permitted by the director and in consideration of the relevant safety and environmental factors, locate openings for all new drift mines working in acid producing or iron producing coal seams in a manner as to prevent a gravity discharge of water from the mine.

(c) In order to protect the stability of the land, the director shall suspend underground mining under urbanized areas, cities, towns and communities and
adjacent to industrial or commercial buildings, major
impoundments or permanent streams if he or she finds
imminent danger to inhabitants of the urbanized areas,
cities, towns or communities.

(d) The provisions of this article relating to permits,
bonds, insurance, inspections, reclamation and enforce-
ment, public review and administrative and judicial
review are also applicable to surface operations and
surface impacts incident to an underground mine with
such modifications by rule to the permit application
requirements, permit approval or denial procedures and
bond requirements as are necessary to accommodate the
distinct difference between surface mines and under-
ground mines in West Virginia.

§22-3-15. Inspections; monitoring; right of entry; inspec-
tion of records; identification signs; progress
maps.

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

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

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

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

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

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

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

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

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

§22-3-16. Cessation of operation by order of inspector; informal conference; imposition of affirmative obligations; appeal.

(a) Notwithstanding any other provisions of this article, a surface-mining reclamation inspector has the authority to issue a cessation order for any portion of a surface-mining operation when an inspector determines that any condition or practice exists, or that any permittee is in violation of any requirements of this
article or any permit condition required by this article, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. The cessation order takes effect immediately. Unless waived in writing, an informal conference shall be held at or near the site relevant to the violation set forth in the cessation order within twenty-four hours after the order becomes effective or such order shall expire. The conference shall be held before a surface-mining reclamation supervisor who shall, immediately upon conclusion of said hearing, determine when and if the operation or portion thereof may resume. Operators who believe they are aggrieved by the decision of the surface-mining reclamation supervisor may immediately appeal to the director, setting forth reasons why the operation should not be halted. The director forthwith shall determine when the operation or portion thereof may be resumed.

(b) The cessation order remains in effect until the director determines that the condition, practice or violation has been abated, or until modified, vacated or released by the director. Where the director finds that the ordered cessation of any portion of a surface coal mining operation will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the director shall, in addition to the cessation order, impose affirmative obligations on the operator requiring the operator to take whatever steps the director determines necessary to abate the imminent danger or the significant environmental harm.

(c) Any cessation order issued pursuant to this section or any other provision of this article may be released by any inspector. An inspector shall be readily available to terminate a cessation order upon abatement of the violation.

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

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

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

(c) Any person engaged in surface-mining operations
who violates any permit condition or who violates any
other provision of this article or rules promulgated
pursuant thereto may also be assessed a civil penalty.
The penalty shall not exceed five thousand dollars. Each
day of continuing violation may be deemed a separate
violation for purposes of penalty assessments. In
determining the amount of the penalty, consideration
shall be given to the operator's history of previous
violations at the particular surface-mining operation,
the seriousness of the violation, including any irrepar-
able harm to the environment and any hazard to the
health or safety of the public, whether the operator was
negligent, and the demonstrated good faith of the
operator charged in attempting to achieve rapid
compliance after notification of the violation.
(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal conference with the assessment officer may be requested within fifteen days or a formal hearing before the surface mine board may be requested within thirty days. The notice of proposed penalty assessment shall advise the operator of the right to an informal conference and a formal hearing pursuant to this section. When an informal conference is requested, the operator has fifteen days from receipt of the assessment officer's decision to request a formal hearing before the board.

(A) When an informal conference is held, the assessment officer has authority to affirm, modify or vacate the notice, order or proposed penalty assessment.

(B) When a formal hearing is requested, the amount of the proposed penalty assessment shall be forwarded to the director for placement in an escrow account. Formal hearings shall be of record and subject to the provisions of article five, chapter twenty-nine-a of this code. Following the hearing the board shall affirm, modify or vacate the notice, order or proposed penalty assessment and, when appropriate, incorporate an assessment order requiring that the assessment be paid.

(2) Civil penalties owed under this section may be recovered by the director in the circuit court of Kanawha county. Civil penalties collected under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the special reclamation fund established in section eleven of this article. If, through the administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the director shall within thirty days remit the appropriate amount to the person, with interest at the rate of six percent or at the prevailing United States
department of the treasury rate, whichever is greater. Failure to forward the money to the director within thirty days is a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Any person having an interest which is or may be adversely affected by any order of the director or the surface mine board may file an appeal only in accordance with the provisions of article one, chapter twenty-two-b of this code, within thirty days after receipt of the order.

(f) The filing of an appeal or a request for an informal conference or formal hearing provided for in this section does not stay execution of the order appealed from. Pending completion of the investigation and conference or hearing required by this section, the applicant may file with the director a written request that the director grant temporary relief from any notice or order issued under section sixteen or seventeen of this article, together with a detailed statement giving reasons for granting such relief. The director shall issue an order or decision granting or denying such relief expeditiously: Provided, That where the applicant requests relief from an order for cessation of surface-mining and reclamation operations, the decision on the request shall be issued within five days of its receipt. The director may grant such relief, under such conditions as he or she may prescribe if:

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

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

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

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

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

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

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

(k) Any person who shall, except as permitted by law, willfully resists, prevents, impedes or interferes with the director or any of his or her agents in the performance of duties pursuant to this article is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than five thousand dollars or by imprisonment for not more than one year, or both.

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

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

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

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

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

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

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

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

(c) Where information available to the division indicates that any surface-mining operation owned or controlled by the applicant is currently in violation of this article or other environmental laws or rules, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the director or the department or agency which has
jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the director, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of this article or of other state or federal programs implementing the federal Surface Mining Control and Reclamation Act of 1977, as amended, of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article or the federal Surface Mining Control and Reclamation Act of 1977, as amended: Provided, That if the director finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this state, he or she shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the director and based upon a petition for reinstatement, permits may be issued to any applicant if: (1) After the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited has paid into the special reclamation fund any additional sum of money determined by the director to be adequate to reclaim the disturbed area; (2) the violations which resulted in the revocation or forfeiture have not caused irreparable damage to the environment; and (3) the director is satisfied that the petitioner will comply with this article.

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

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

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

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

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

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

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

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

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

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

(3) Any extension to an area already covered by the
permit, except incidental boundary revisions, shall be
made by application for another permit. If the permittee
desires to add the new area to his or her existing permit
in order to have existing areas and new areas under one
permit, the director may so amend the original permit:
Provided, That the application for the new area is
subject to all procedures and requirements applicable to
applications for original permits under this article.

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

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

§22-3-20. Public notice; written objections; public hear-
ing; informal conferences.

(a) At the time of submission of an application for a
surface-mining permit or a significant revision of an
existing permit pursuant to the provisions of this article,
the applicant shall submit to the division a copy of the
required advertisement. At the time of submission, the
applicant shall place the advertisement in a local
newspaper of general circulation in the county of the
proposed surface-mining operation at least once a week
for four consecutive weeks. The director shall notify
various appropriate federal and state agencies as well
as local governmental bodies, planning agencies and
sewage and water treatment authorities or water
companies in the locality in which the proposed surface-
mining operation will take place, notifying them of the
operator's intention to mine on a particularly described
tract of land and indicating the application number and
where a copy of the proposed mining and reclamation
plan may be inspected. These local bodies, agencies,
authorities or companies may submit written comments
within a reasonable period established by the director
on the mining application with respect to the effect of
the proposed operation on the environment which is
within their area of responsibility. Such comments shall
be immediately transmitted by the director to the
applicant and to the appropriate office of the division.
The director shall provide the name and address of each
applicant to the commissioner of the division of labor
who shall within fifteen days from receipt notify the
director as to the applicant's compliance, if necessary,
with section fourteen, article five, chapter twenty-one of
this code.

(b) Any person having an interest which is or may be
adversely affected, or the officer or head of any federal,
state or local governmental agency, has the right to file
written objections to the proposed initial or revised
permit application for a surface-mining operation with
the director within thirty days after the last publication
of the advertisement required in subsection (a) of this
section. Such objections shall be immediately transmit-
ted to the applicant by the director and shall be made
available to the public. If written objections are filed
and an informal conference requested within thirty days
of the last publication of the above notice, the director
shall then hold a conference in the locality of the
proposed mining within three weeks after the close of
the public comment period. Those requesting the
conference shall be notified and the date, time and
location of the informal conference shall also be
advertised by the director in a newspaper of general
circulation in the locality at least two weeks prior to the
scheduled conference date. The director may arrange
with the applicant, upon request by any party to the
conference proceeding, access to the proposed mining
area for the purpose of gathering information relevant
to the proceeding. An electronic or stenographic record
shall be made of the conference proceeding unless
waived by all parties. Such record shall be maintained
and shall be accessible to the parties at their respective
expense until final release of the applicant's bond or
other security posted in lieu thereof. The director's
authorized agent will preside over the conference. In the
event all parties requesting the informal conference
stipulate agreement prior to the conference and with-
draw their request, a conference need not be held.

§22-3-21. Decision of director on permit application;
hearing thereon.

(a) If an informal conference has been held, the
director shall issue and furnish the applicant for a
permit and persons who were parties to the informal
conference with the written finding granting or denying
the permit, in whole or in part, and stating the reasons
therefor within thirty days of the informal conference,
notwithstanding the requirements of subsection (a),
section eighteen of this article.

(b) If the application is approved, the permit shall be
issued. If the application is disapproved, specific reasons
therefor must be set forth in the notification. Within
thirty days after the applicant is notified of the
director's decision, the applicant or any person with an
interest which is or may be adversely affected may
request a hearing before the surface mine board as
provided in article one, chapter twenty-two-b of this
code to review the director's decision.

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

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

(1) Upon petition pursuant to subsection (b) of this
section, the director shall designate an area as unsuit-
able for all or certain types of surface-mining operations, if it determines that reclamation pursuant to the requirements of this article is not technologically and economically feasible.

(2) Upon petition pursuant to subsection (b) of this section, a surface area may be designated unsuitable for certain types of surface-mining operations, if the operations:

(A) Conflict with existing state or local land use plans or programs;
(B) affect fragile or historic lands in which the operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems;
(C) affect renewable resource lands, including significant aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply, food or fiber products; or
(D) affect natural hazard lands in which the operations could substantially endanger life and property. Such lands shall include lands subject to frequent flooding and areas of unstable geology.

(3) The director shall develop a process which includes:

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

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

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

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

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

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

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

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

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

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

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

(e) Notwithstanding any other provision of this code, the coal underlying any lands designated unsuitable for surface-mining operations under any provisions of this article or underlying any land upon which mining is prohibited by any provisions of this article shall be
assessed for taxation purposes according to their value and the Legislature hereby finds that the coal has no value for the duration of the designation or prohibition unless suitable for underground mining not in violation of this article: Provided, That the owner of the coal shall forthwith notify the proper assessing authorities if the designation or prohibition is removed so that the coal may be reassessed.

§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

(a) The permittee may file a request with the director for the release of a bond or deposit. The permittee shall publish an advertisement regarding such request for release in the same manner as is required of advertisements for permit applications. A copy of such advertisement shall be submitted to the director as part of any bond release application and shall contain a notification of the precise location of the land affected, the number of acres, the permit and the date approved, the amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed and a description of the results achieved as they relate to the permittee's approved reclamation plan. In addition, as part of any bond release application, the permittee shall submit copies of letters which the permittee has sent to adjoining property owners, local government bodies, planning agencies, sewage and water treatment authorities or water companies in the locality in which the surface-mining operation is located, notifying them of the permittee's intention to seek release from the bond. Any request for grade release shall also be accompanied by final maps.

(b) Upon receipt of the application for bond release, the director, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such evaluation shall consider, among other things, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of
continuance or future occurrence of such pollution and
the estimated cost of abating such pollution. The
director shall notify the permittee in writing of his or
her decision to release or not to release all or part of
the bond or deposit within sixty days from the date of
the initial publication of the advertisement if no public
hearing is requested. If a public hearing is held, the
director's decision shall be issued within thirty days
thereafter.

(c) If the director is satisfied that reclamation covered
by the bond or deposit or portion thereof has been
accomplished as required by this article, he or she may
release said bond or deposit, in whole or in part,
according to the following schedule:

(1) When the operator completes the backfilling,
regrading and drainage control of a bonded area in
accordance with the operator's approved reclamation
plan, the release of sixty percent of the bond or
collateral for the applicable bonded area: Provided, That
a minimum bond of ten thousand dollars shall be
retained after grade release;

(2) Two years after the last augmented seeding,
fertilizing, irrigation or other work to ensure com-
pliance with subdivision (19), subsection (b), section
thirteen of this article, the release of an additional
twenty-five percent of the bond or collateral for the
applicable bonded area: Provided, That a minimum
bond of ten thousand dollars shall be retained after the
release provided for in this subdivision; and

(3) When the operator has completed successfully all
surface mining and reclamation activities, the release of
the remaining portion of the bond, but not before the
expiration of the period specified in subdivision (20),
subsection (b), section thirteen of this article: Provided,
That the revegetation has been established on the
regraded mined lands in accordance with the approved
reclamation plan: Provided, however, That such a release
may be made where the quality of the untreated post-
mining water discharged is better than or equal to the
premining water quality discharged from the mining
No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure said release and notifying the operator of the right to a hearing.

(e) When any application for total or partial bond release is filed with the director, he or she shall notify the municipality in which a surface-mining operation is located by registered or certified mail at least thirty days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which is or may be adversely affected by release of the bond or the responsible officer or head of any federal, state or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed bond release and request a hearing with the director within thirty
days after the last publication of the permittee's advertisement. If written objections are filed and a hearing requested, the director shall inform all of the interested parties of the time and place of the hearing and shall hold a public hearing in the locality of the surface-mining operation proposed for bond release within three weeks after the close of the public comment period. The date, time and location of such public hearing shall also be advertised by the director in a newspaper of general circulation in the same locality.

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.

(h) For the purpose of such hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the director at the cost of the person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person's interest in water resources affected by a surface-mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution or interruption proximately caused by such surface-mining operation,
§22-3-25. Citizen suits; order of court; damages.

(a) Except as provided in subsection (b) of this section, any person having an interest which is or may be adversely affected may commence a civil action in the circuit court of the county to which the surface-mining operation is located on the person's own behalf to compel compliance with this article:

(1) Against the state of West Virginia or any other governmental instrumentality or agency thereof, to the extent permitted by the West Virginia constitution and by law, which is alleged to be in violation of the provisions of this article or any rule, order or permit issued pursuant thereto, or against any other person who is alleged to be in violation of any rule, order or permit issued pursuant to this article; or

(2) Against the director, division, surface mine board or appropriate division employees, to the extent permitted by the West Virginia constitution and by law, where there is alleged a failure of the above to perform any act or duty under this article which is not discretionary.

(b) No action may be commenced:

(1) Under subdivision (1), subsection (a) of this section: (A) Prior to sixty days after the plaintiff has given notice in writing of the violation to the director or to any alleged violator, or (B) if the director has commenced and is diligently prosecuting a civil action in a circuit court to require compliance with the provisions of this article or any rule, order or permit issued pursuant to this article; or

(2) Under subdivision (2), subsection (a) of this section prior to sixty days after the plaintiff has given notice in writing of such action to the director, except that such action may be brought immediately after such notification in the case where the violation or order complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.
(c) Any action respecting a violation of this article or the rules thereunder may be brought in any appropriate circuit court. In such action under this section, the director, if not a party, may intervene as a matter of right.

(d) The court in issuing any final order in any action brought pursuant to subsection (a) of this section may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security.

(e) Nothing in this section restricts any right which any person or class of persons may have under any statute or common law to seek enforcement of any of the provisions of this article and the rules thereunder or to seek any other relief.

(f) Any person or property who is injured through the violation by any operator of any rule, order or permit issued pursuant to this article may bring an action for damages, including reasonable attorney and expert witness fees, in any court of competent jurisdiction. Nothing in this subsection affects the rights established by or limits imposed under state workers' compensation laws.

(g) This section applies to violations of this article and the rules promulgated thereto, or orders or permits issued pursuant to said article insofar as said violations, rules orders and permits relate to surface-mining operations.

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

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

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

§22-3-27. Leasing of lands owned by state for surface mining of coal.

No land or interest in land owned by the state may be leased, and no present lease may be renewed by the state, nor any agency of the state, for the purpose of conducting surface-mining operations thereon unless said lease or renewal has been first authorized by an act of the Legislature: Provided, That the provisions of this section do not apply to underground mining on such land.

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

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

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

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

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

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

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

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

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

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

The application for the special permit shall also be
accompanied by a bond, or cash or collateral securities
or certificates of the same type, in the form as pres-
cribed by the director and in the minimum amount of
two thousand dollars per acre, for a maximum distur-
bance of five acres.

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

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

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

§22-3-29. Experimental practices.

In order to encourage advances in surface mining and reclamation practices or to allow postmining land use for industrial, commercial, residential, agricultural or public use, including recreational facilities, the director
may authorize departures, in individual cases and on an experimental basis, from the environmental protection performance standards promulgated under this article. Such departures may be authorized if the experimental practices are potentially more or at least as environmentally protective during and after surface-mining operations as those required by promulgated standards; the surface-mining operations approved for particular land use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and the experimental practices do not reduce the protection afforded health or safety of the public below that provided by promulgated standards.

§22-3-30. Certification and training of blasters.

The director is responsible for the training, examination and certification of persons engaging in or directly responsible for blasting or use of explosives in surface-mining operations.

§22-3-31. Conflict of interest prohibited; criminal penalties therefor; employee protection.

(a) No employee of the division engaged in the enforcement or administration of this article or employee of the surface mine board performing any function or duty under this article shall have a direct or indirect financial interest in any surface-mining operation. Whoever knowingly violates the provisions of this subsection is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand five hundred dollars, or imprisoned in the county jail not more than one year, or both fined and imprisoned. The director shall establish methods by which the provisions of this subsection will be monitored and enforced, including appropriate provisions for the filing and the review of statements and supplements thereto concerning any financial interest which may be affected by this subsection.

(b) No person shall discharge or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized represent-
tative of employees by reason of the fact that the employee or representative has filed, instituted, or caused to be filed or instituted, any proceeding under this article, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this article.

(c) Any employee or a representative of employees who has reason to believe that he or she has been fired or otherwise discriminated against by any person in violation of subsection (b) of this section may, within thirty days after the alleged violation occurs, petition to the surface mine board for a review of the firing or discrimination. The employee or representative is the petitioner and shall serve a copy of the petition upon the person or operator who will be the respondent. The participants shall be given ten days' written notice of the hearing before the board and the hearing shall be held within thirty days of the filing of the petition. The board shall have the same powers and shall hear the petition in the same manner as provided in article one, chapter twenty-two-b of this code.

(d) If the board finds that the alleged violation did occur, it shall issue an order incorporating therein findings of fact and conclusions requiring the participant committing the violation to take such affirmative action to abate the violation by appropriate action, including, but not limited to, the hiring or reinstatement of the employee or representative to his former position with compensation. If the board finds no violation, it shall issue a finding to that effect. Orders issued by the board under this section shall be subject to judicial review in the same manner as other orders of the board issued under this article or article one, chapter twenty-two-b of this code.

(e) Whenever an order is issued under this section to abate any violation, at the request of the petitioner a sum equal to the aggregate costs and expenses, including attorneys' fees to have been reasonably incurred by the petitioner for, or in connection with, the institution and prosecution of the proceedings, shall be assessed against the person committing the violation.
§22-3-32. Special tax on coal production; mines and minerals operations fund.

(a) Imposition of tax. — Upon every person in this state engaging in the privilege of severing, extracting, reducing to possession or producing coal for sale, profit or commercial use, there is hereby imposed an annual tax equal to two cents per ton of coal produced by such person for sale, profit or commercial use during such person's taxable year. The special tax imposed by this section is in addition to all other taxes levied by law. In no event may a ton of coal be taxed more than once under the provisions of this section.

(b) Payment and collection of tax. — The tax imposed by this section shall be collected by the tax commissioner in the same manner, at the same time, and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall this tax be construed to be an increase in either the minimum severance tax imposed by said article twelve-b or the severance tax imposed by article thirteen of said chapter eleven. Every person liable for payment of this special tax shall pay the amount due without notice or demand for payment. The tax commissioner shall provide to the director a quarterly listing of all persons known to be delinquent in payment of the special tax. The director may take such delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(c) Mining and Reclamation Operations Fund. — The special fund previously created in the state treasury known as the "Mines and Minerals Operations Fund" is renamed the "Mining and Reclamation Operations Fund". The tax commissioner shall, at least quarterly, deposit into the fund the net amount of tax collected under this section, including any additions to tax, penalties and interest collected with respect thereto. The treasurer shall deposit all moneys deposited in or credited to this fund in an interest-bearing account, with the amount of interest earned being credited to this fund as it is earned. The moneys in this special fund shall be
expended solely for the purposes of carrying out those statutory duties relating to the enforcement of environmental regulatory programs for the coal industry as imposed by this chapter and the federal Surface Mining Control and Reclamation Act of 1977 and any amendments thereto. Expenditures from the fund are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

(d) General procedure and administration. — Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of the code applies to the special tax imposed by this section with like effect as if such act were applicable only to the special tax imposed by this section and were set forth in extenso in this article, notwithstanding the provisions of section three of said article ten.

(e) Crimes and penalties. — Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of said chapter eleven applies to the special tax imposed by this section with like effect as if such act were applicable only to the special tax imposed by this section and set forth in extenso in this article, notwithstanding the provisions of section two of said article nine.

(f) Effective date. — The special tax imposed by this section applies to all coal produced in this state after the thirtieth day of September, one thousand nine hundred ninety-one.

ARTICLE 4. SURFACE MINING AND RECLAMATION OF MINERALS OTHER THAN COAL.

§22-4-1. Jurisdiction vested in division of environmental protection; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section thirty-eight, article one, chapter twenty-two-a of this code the
division of environmental protection is hereby vested
with jurisdiction over all aspects of surface mining and
with jurisdiction and control over land, water and soil
aspects pertaining to surface-mining operations, and the
restoration and reclamation of lands surface mined and
areas affected thereby.

The Legislature finds that, although surface mining
provides much needed employment and has produced
good safety records, unregulated surface mining causes
soil erosion, pyritic shales and materials, landslides,
noxious materials, stream pollution and accumulation of
stagnant water, increases the likelihood of floods and
slides, destroys the value of some lands for agricultural
purposes and some lands for recreational purposes,
destroys aesthetic values, counteracts efforts for the
conservation of soil, water and other natural resources,
and destroys or impairs the health, safety, welfare and
property rights of the citizens of West Virginia, where
proper mining and reclamation is not practiced.

The Legislature also finds that there are wide
variations regarding location and terrain conditions
surrounding and arising out of the surface mining
primarily in topographical and geological conditions,
and by reason thereof, it is necessary to provide the most
effective, beneficial and equitable solution to the
problems involved.

The Legislature further finds that authority should be
vested in the director of the division of environmental
protection to administer and enforce the provisions of
this article.

The director of the division of environmental protec-
tion and the director of the office of miners' health,
safety and training shall cooperate with respect to each
agency's programs and records so as to effect an orderly
and harmonious administration of the provisions of this
article. The director of the division of environmental
protection may avail himself or herself of any services
which may be provided by other state agencies in this
state and other states or by agencies of the federal
government, and may reasonably compensate them for
such services. He or she may also receive any federal
funds, state funds or any other funds for the reclamation
of land affected by surface mining.

No public officer or employee in the division of
environmental protection, the office of miners' health,
safety and training, or in the office of attorney general,
having any responsibility or duty either directly or of
a supervisory nature with respect to the administration
or enforcement of this article shall (1) engage in surface
mining as a sole proprietor or as a partner or (2) be an
officer, director, stockholder, owner or part owner of
any corporation or other business entity engaged in
surface mining or (3) be employed as an attorney, agent
or in any other capacity by any person, partnership,
firm, association, trust or corporation engaged in
surface mining. Any violation of this paragraph by any
such public officer or employee shall constitute grounds
for his or her removal from office or dismissal from his
or her employment, as the case may be.

§22-4-2. Definitions.

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

(a) "Adequate treatment" means treatment of water
by physical, chemical or other approved methods in a
manner that will cause the analyzed pH level of the
treated water to be 6.0 -9.0 and analyzed content of iron
of the treated water to be seven milligrams per liter or
less, or approved treatment which will not lower the
water quality standards established for the river,
stream or drainway into which such water is released.

(b) "Breakthrough" means the release of water which
has been trapped or impounded underground, or the
release of air into any underground cavity, pocket or
area.

(c) "Director" means the director of the division of
environmental protection or such other person to whom
the director has delegated authority or duties pursuant
to section six or eight, article one of this chapter.

(d) "Disturbed land" or "land disturbed" means (1) the
area from which overburden has been removed in surface-mining operations, (2) the area covered by the spoil, and (3) any areas used in surface-mining operations which by virtue of their use are susceptible to excessive erosion including all lands disturbed by the construction or improvement of haulageways, roads or trails.

(e) "Minerals" means clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore: Provided, That the term "minerals" does not include coal.

(f) "Mulch" means any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(g) "Operator" means any individual, partnership, firm, association, trust or corporation who or which is granted or should obtain a permit to engage in any activity covered by this article.

(h) "Permit area" means the area of land indicated on the approved map submitted by the operator with the reclamation plan as specified in section seven of this article showing the exact location of end strip markers, permit markers and monument.

(i) "Person" means any individual, partnership, firm, association, trust or corporation.

(j) "Surface mine" means all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways, roads or trails.

(k) "Surface mining" means all activity for the recovery of minerals, and all plants and equipment used in processing said minerals: Provided, That the bonding and reclamation provisions of this article do not apply to surface mining of limestone, sandstone and sand: Provided, however, That the surface mining of limestone, sandstone and sand is subject to separate rules to be promulgated by the director.
"Surface of a regraded bench" means the top portion or part of any regraded area.

§22-4-3. Director of the division of environmental protection; duties and functions.

Except as otherwise provided in this article, the director shall administer all of the laws of this state relating to surface mining and shall exercise all of the powers and perform all of the duties by law vested in and imposed upon him or her in relation to said operations.

§22-4-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

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

Every surface-mining reclamation supervisor or inspector shall be paid not less than sixteen thousand dollars per year.

§22-4-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws and rules, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to ensure complete compliance therewith. The director shall cause inspections to be made of each active surface-mining operation in this state by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note and describe violations of this article and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned.
§22-4-6. Permit required; applications; issuance and renewals; fees and use of proceeds.

It is unlawful for any person to engage in surface mining without having first obtained from the division of environmental protection a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director, and shall be signed and verified by the applicant. The application, in addition to such other information as may be reasonably required by the director, shall contain the following information:

(1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section seven hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), of the applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: Provided, That if such list be so large as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface-mining permit issued under the laws of this state revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the
reputed owner or owners of all surface area within five
hundred feet of any part of proposed disturbed land,
which such owners shall be notified by registered or
certified mail of such application and such owners shall
be given ten days within which to file written objections
thereto, if any, with the director. There shall be attached
to the application a true copy of an original policy of
insurance issued by an insurance company authorized to
do business in this state covering all surface-mining
operations of the applicant in this state and affording
personal injury protection in an amount not less than
one hundred thousand dollars and property damage
including blasting damage, protection in an amount of
not less than three hundred thousand dollars.

The director shall upon receipt of the application for
a permit cause to be published, as a Class III legal
advertisement in accordance with the provisions of
article three, chapter fifty-nine of this code, a notice of
the application for the permit. Such notice shall contain
in abbreviated form the information required by this
section, together with the director's statement that
written protests to such application will be received by
him or her until a specified date, which date is at least
thirty days after the first publication of the notice.

The publication area of the notices required by this
section is the county or counties in which the proposed
permit area is located. The cost of all publications
required by this section shall be borne by the applicant.

Upon the filing of an application in proper form,
accompanied by the fees and bond required by this
article and said true copy of the policy of insurance, and
after consideration of the merits of the application and
written protests, if any, the director may issue the
permit applied for if the applicant has complied with
all of the provisions of this article. If the director finds
that the applicant is or has been affiliated with or
managed or controlled by, or is or has been under the
common control of, other than as an employee, a person
who or which has had a surface-mining permit revoked
or bond or other security forfeited for failure to reclaim
lands as required by the laws of this state, he or she
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82 shall not issue a permit to the applicant: Provided, That
83 no surface-mining permit shall be refused because of
84 any past revocation of a permit and forfeiture of a bond
85 or other security if such revocation and forfeiture
86 occurred before the first day of July, one thousand nine
87 hundred seventy-one, and if, after such revocation and
88 forfeiture, the operator whose permit has been revoked
89 and bond forfeited has paid into the surface-mining
90 reclamation fund the full amount of the bond so
91 forfeited, and any additional sum of money determined
92 by the director to be adequate to reclaim the land
93 covered by such forfeited bond: Provided, however, That
94 in no event shall such additional sum be less than sixty
95 dollars per acre.

96 The permit is valid for one year from its date of issue.
97 Upon verified application, containing such information
98 as the director may reasonably require, accompanied by
99 such fees and bond as are required by this article, and
100 a true copy of the policy of insurance as aforesaid, the
101 director shall from year to year renew the permit, if the
102 operation is in compliance with the provisions of this
103 article.

104 The registration fee for all permits for surface
105 mining, is five hundred dollars. The annual renewal fee
106 for permits for surface mining is one hundred dollars
107 payable on the anniversary date of said permit upon
108 renewal.

109 The permit of any operator who fails to pay any fees
110 provided for in this article shall be revoked.

111 All registration and renewal fees for surface mining
112 shall be collected by the director and shall be deposited
113 with the treasurer of the state of West Virginia to the
114 credit of the operating permit fees fund and shall be
115 used, upon requisition of the director, for the adminis-
116 tration of this article.

§22-4-7. Preplans.

1 Under the provisions of this article, and rules adopted
2 by the director, the operator shall prepare a complete
3 reclamation and mining plan for the area of land to be
disturbed. Said reclamation and mining plan shall include a proposed method of operation, prepared by a registered professional engineer or a person approved by the director, for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article. In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable, and he or she may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, the applicant may, by written notice, request a hearing before the director. The director shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the director, he or she shall notify the applicant of his or her decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the director made after the hearing or without a hearing may appeal to the surface mine board.

The application for a permit shall be accompanied by copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area are acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land
surveyor;

(b) Identify the area to correspond with application;

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the director;

(e) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, active, abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be disturbed, the crop line of the seam to be mined, if any, and the total number of acres involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared, the north point and the quadrangle sketch and exact location of the operation;

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director may furnish the office of water resources of the division a copy of all information required by this subdivision, as well as the names and locations of all streams, creeks or other bodies of public water within five hundred feet of the area to be disturbed;

(i) Show the presence of any acid-producing materials which when present in the overburden, may cause spoil with a pH factor below 3.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on
the map, filed with the application for permit. The operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the director.

The operator shall also indicate the manner in which all permanent overburden disposal sites will be stabilized.

The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface-mining laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the director shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the director four copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be
properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended.

§22-4-8. **Installation of drainage system.**

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drainage system including any necessary settling ponds in accordance with the rules as established by the director.

§22-4-9. **Alternative plans; time.**

An operator may propose alternative plans not calling for backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this article. Such plans shall be submitted to the director, and if such plans are approved by the director and complied with within such time limits as may be determined by him or her as being reasonable for carrying out such plans, the backfilling requirements of this article may be modified.

By rule of the director, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.

If the operator or other person desires to conduct deep mining upon the premises or use a deep-mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of that operation shall not be released. Such locations shall be described and designated on the map.
required by the provisions of section seven of this article.

Where applicable, suitable soil material shall be used
to cover the surface of the regraded and backfilled area
of operation in an amount sufficient to support
vegetation.

When the backfilling and grading have been com-
pleted and approved by the director, the director shall
release that portion of the bond which was filed and
designated to cover the backfilling and grading require-
ments of this article, the remaining portion of the bond
in an amount equal to two hundred fifty dollars per
acre, but not less than a total amount of five thousand
dollars being retained by the treasurer until such time
as the planting and revegetation is done according to
law and is approved by the director, at which time the
director shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first
planting or seeding season after the construction of a
haulageway to the area. Upon abandonment of any
haulageway, the haulageway shall be seeded and every
effort made to prevent its erosion by means of culverts,
waterbars or other devices required by the director. In
proper season, all fill and cut slopes of the operation and
haulageways shall be seeded and planted in a manner
as prescribed by the director, as soil tests indicate soil
suitability and in accordance with accepted agricultural
and reforestation practices.

In any such area where surface mining is being
conducted, mulch is required on all disturbed areas
where the remaining slope exceeds twenty degrees from
horizontal as shown on the preplan map filed with the
director as required by the provisions of section seven
of this article.

After the operation has been backfilled, graded and
approved by the director, the operator shall prepare or
cause to be prepared a final planting plan for the
planting of trees, shrubs, vines, grasses or legumes upon
the area of the land affected in order to provide a
suitable vegetative cover. The seed or plant mixtures,
quantities, method of planting, type and amount of lime,
fertilizer, mulch, and any other measures necessary to
provide a suitable vegetative cover shall be defined by
the rules of the director.

The planting called for by the final planting plan shall
be carried out in a manner so as to establish a
satisfactory cover of trees, shrubs, grasses, legumes or
vines upon the disturbed area covered by the planting
plan within a reasonable period of time. Such planting
shall be done by the operator or such operator may
contract in writing with the soil conservation district for
the district in which the operation covered by such
permit is located or with a private contractor approved
by the director to have such planting done by such
district or private contractor. The director shall not
release the operator's bond until all haulageways, roads
and trails within the permit area have been abandoned
according to the provisions of this article and the rules
promulgated thereunder or such operator or any other
person has secured a permit to deep mine such area as
required by article three of this chapter.

The purpose of this section is to require restoration of
land disturbed by surface mining to a desirable purpose
and use. The director may, in the exercise of his or her
sound discretion when not in conflict with such purpose,
modify such requirements to bring about a more
desirable land use, including, but not limited to,
industrial sites, sanitary landfills, recreational areas,
building sites: Provided, That the person or agency
making such modifications will execute contracts, post
bond or otherwise ensure full compliance with the
provisions of this section in the event such modified
program is not carried to completion within a reasona-
ble length of time.

§22-4-10. Limitations; mandamus.

The Legislature finds that there are certain areas in
the state of West Virginia which are impossible to
reclaim either by natural growth or by technological
activity and that if surface mining is conducted in these
certain areas such operations may naturally cause
stream pollution, landslides, the accumulation of
stagnant water, flooding, the destruction of land for
agricultural purposes, the destruction of aesthetic
values, the destruction of recreational areas and future
use of the area and surrounding areas, thereby destroy-
ing or impairing the health and property rights of
others, and in general creating hazards dangerous to life
and property so as to constitute an imminent and
inordinate peril to the welfare of the state, and that such
areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director
to delete certain areas from all surface-mining
operations.

No application for a permit shall be approved by the
director if there is found on the basis of the information
set forth in the application or from information avail-
able to the director and made available to the applicant
that the requirements of this article or rules hereafter
adopted will not be observed or that there is not
probable cause to believe that the proposed method of
operation, backfilling, grading or reclamation of the
affected area can be carried out consistent with the
purpose of this article.

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

If the director finds that the operation will constitute
a hazard to a dwelling house, public building, school,
church, cemetery, commercial or institutional building,
public road, stream, lake or other public property, then
he or she shall delete such areas from the permit
application before it can be approved.

The director shall not give approval to surface mine
any area which is within one hundred feet of any public
road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, That the one-hundred-foot restriction aforesaid does not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor does it apply to the dredging and removal of minerals from the streams or watercourses of this state.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he or she may order immediate cessation of such operations and he or she shall take such other action or make such changes in the permit as he or she may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed by this section is subject to a writ of mandamus, in any court of competent jurisdiction by any private citizen affected thereby.

§22-4-11. Blasting restriction; formula; filing preplan; penalties; notice.

Where blasting of overburden or mineral is necessary, such blasting shall be done in accordance with established principles for preventing vibration damage to residences, buildings and communities. Such blasting is in compliance with provisions of this article if the following measures are followed:

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: W \((D/50)\) (to the second power).
Where W equals weight in pounds of explosives detonated at any one instant time, then D equals distance in feet from nearest point of blast to nearest residence, building, or structure, other than operation facilities of the mine: Provided, That explosive charges are detonated at one time if their detonation occurs within eight
milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or nonelectric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

(3) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the director with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder-breaking) blasts the following information:

(a) Date and time of blast,
(b) Number of holes,
(c) Typical explosive weight per delay period,
(d) Total explosives in blast at any one time,
(e) Number of delays used,
(f) Weather conditions, and
(g) Signature of operator employee in charge of the blast.

(5) Where inspection by the director establishes that the scaled distance formula and the approved preplan are not being adhered to, the following penalties shall be imposed:

(a) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;
(b) For the second offense in any one permit year under this section, the permit holder shall be assessed
not less than one thousand dollars nor more than five thousand dollars;

(c) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinabove set forth within a reasonable time established by the director, the permit shall be revoked.

All such assessments as set forth in this section shall be assessed by the director, collected by him or her and deposited with the treasurer of the state of West Virginia, to the credit of the operating permit fees fund.

The director shall promulgate rules which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area.

§22-4-12. Time in which reclamation shall be done.

It is the duty of an operator to commence the reclamation of the area of land disturbed by the operator's operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operations as defined by rules of the director and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current.

§22-4-13. Obligations of the operator.

In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules adopted pursuant thereto, the operator is required to perform the following:

(1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.

(2) Bury under adequate fill, all materials determined by the director to be acid-producing materials, toxic
material or materials constituting a fire hazard.

(3) Seal off any breakthrough of acid water caused by
the operator: Provided, That any breakthrough caused
by the operator during the course of the operator's
operations shall be sealed immediately and reported
immediately to the director. If the breakthrough is one
that allows air to enter a mine, the seal shall either
prevent any air from entering the mine by way of the
breakthrough, or prevent any air from entering the
breakthrough while allowing the water to flow from the
breakthrough. If the breakthrough is one that allows
acid water to escape, the seal shall prevent the acid
water from flowing. Seals shall be constructed of stone,
brick, block, earth or similar impervious materials
which are acid resistant. Any cement or concrete
employed in the construction of these seals shall also be
of an acid resistant, impervious type.

(4) Impound, drain or treat all runoff water so as to
reduce soil erosion, damage to agricultural lands and
pollution of streams and other waters.

In the case of storm water accumulations or any
breakthrough of water, adequate treatment shall be
undertaken by the operator so as to prevent pollution
occurring from the release of such water into the
natural drainway or stream. Treatment may include
check-dams, settling ponds and chemical or physical
treatment. In the case of a breakthrough of water,
where it is possible, the water released shall be
impounded immediately. All water so impounded shall
receive adequate treatment by the operator before it is
released into the natural drainway or stream.

Storm water or water which escapes, including that
which escapes after construction of the seals, and is
polluted as defined in this code, or as defined in the rules
promulgated under this code, is subject to the require-
ments of article eleven of this chapter.

(5) Remove or bury all metal, lumber, equipment and
other refuse resulting from the operation. No operator
shall throw, dump or pile; or permit the throwing,
dumping, piling or otherwise placing of any overburden,
stones, rocks, coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing listed materials in such a way that normal erosion or slides brought about by natural physical causes will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted.

The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two-hundred-foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated crop line or proposed mineral seam down slope to the estimated toe of the outer spoil. All reasonable measures shall be taken so as not to overload the fill bench during the first cut. No overburden material in excess of the first cut shall be placed over the fill bench. With the exception of haulageways and auger-mining operations, trees and brush shall be removed from the upper one half of all fill sections prior to excavation, and no trees or brush removed from the cut section shall be placed therein or thereon.

No fill bench shall be produced on slopes of more than sixty-five percent, except for construction of haulageways, and such haulageways shall not exceed thirty-five feet in width, with very scattered forty-five-foot passing areas permitted.

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the director. There shall be no depressions that will accumulate water except those the director may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

With the exception of limestone, sandstone and sand, complete backfilling is required, not to exceed the
approximate original contour of the land. Such backfiling shall eliminate highwalls and spoil peaks. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches or terraces as will control the water runoff. Additional restoration work may be required by the director, according to rules adopted by the director.

§22-4-14. Cessation of operation by inspector.

1 Notwithstanding any other provisions of this article, a surface-mining reclamation inspector has authority to order the immediate cessation of any operation where (1) any of the requirements of this article or the rules promulgated pursuant thereto or the orders of the director have not been complied with or (2) the public welfare or safety calls for the immediate cessation of the operation. Such cessation of operation shall continue until corrective steps have been started by the operator to the satisfaction of the surface-mining reclamation inspector. Operators who believe they are aggrieved by the actions of the surface-mining reclamation inspector may immediately appeal to the director, setting forth reasons why their operations should not be halted. The director shall determine immediately when and if an operation may continue.

§22-4-15. Completion of planting; inspection and evaluation.

1 When the planting of an area has been completed, the operator shall file or cause to be filed a planting report with the director on a form to be prescribed and furnished by the director providing the following information: (1) Identification of the operation; (2) the type of planting or seeding, including mixtures and amounts; (3) the date of planting or seeding; (4) the area of land planted; and (5) such other relevant information as the director may require. All planting reports shall be certified by the operator, or by the party with whom the operator contracted for such planting, as aforesaid.

§22-4-16. Performance bonds.

1 Each operator who makes application for a permit
under section six of this article shall, at the time such
permit is requested, furnish bond, on a form to be
prescribed and furnished by the director, payable to the
state of West Virginia and conditioned that the operator
shall faithfully perform all of the requirements of this
article. The amount of the bond shall be not less than
six hundred dollars for each acre or fraction thereof of
the land to be disturbed: Provided, That the director has
the discretion to determine the amount per acre of the
bond that is required before a permit is issued, such
amount to be based upon the estimated reclamation
costs per acre, not to exceed a maximum of one thousand
dollars per acre or fraction thereof. The minimum
amount of bond furnished shall be ten thousand dollars.
Such bond shall be executed by the operator and a
corporate surety licensed to do business in the state of
West Virginia: Provided, however, That in lieu of
corporate surety, the operator may elect to deposit with
the director cash, or collateral securities or certificates
as follows: Bonds of the United States or its possessions,
of the federal land banks, or of the home owners' loan
corporation; full faith and credit general obligation
bonds of the state of West Virginia, or other states, and
of any county, district or municipality of the state of
West Virginia or other states; or certificates of deposit
in a bank in this state, which certificates shall be in
favor of the director. The cash deposit or market value
of such securities or certificates shall be equal to or
greater than the sum of the bond. The director shall,
upon receipt of any such deposit of cash, securities or
certificates, immediately place the same with the
treasurer of the state of West Virginia whose duty it is
to receive and hold the same in the name of the state
in trust for the purpose for which such deposit is made.
The operator making the deposit is entitled from time
to time to receive from the state treasurer, upon the
written order of the director, the whole or any portion
of any cash, securities or certificates so deposited, upon
depositing with the treasurer in lieu thereof, cash or
other securities or certificates of the classes herein
specified having value equal to or greater than the sum
of the bond.
It is unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of the operator's obligation to the state for the reclamation of lands disturbed by the operator. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it is the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area.

The director shall not release that portion of any bond filed by any operator which is designated to assure faithful performance of, and compliance with, the backfilling and regrading requirements of the reclamation plan until all acid-bearing or acid-producing spoil within the permit area has received adequate treatment as specified in section nine of this article.

§22-4-17. Exception as to highway construction projects for reclamation requirements.

Any provision of this article to the contrary notwithstanding, a person or operator is not subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal of borrow and fill material for grading in federal and state highway construction projects: Provided, That the provisions of the highway construction contract require the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity.

§22-4-18. Rules.

The director shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of said code, for the effective administration of this article.

If any of the requirements of this article or rules promulgated pursuant thereto or the orders of the director have not been complied with within the time limits set by the director or by this article, the director shall cause a notice of noncompliance to be served upon the operator, which notice shall order the operation to cease, or where found necessary, the director shall order the suspension of a permit. A copy of such notice or order shall be handed to the operator in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this article or the rules or orders of the director. If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds with respect thereto forfeited.

When any bond is forfeited pursuant to the provisions of this article, the director shall give notice to the attorney general who shall collect the forfeiture without delay.

§22-4-20. Adjudications, findings, etc., to be by written order; contents; notice.

Every adjudication, determination or finding by the director affecting the rights, duties or privileges of any person subject to this article shall be made by written order and shall contain a written finding by the director of the facts upon which the adjudication, determination or finding is based. Notice of the making of such order shall be given to the person whose rights, duties or privileges are affected thereby by mailing a true copy thereof to such person by certified mail.
§22-4-21. Appeals to board.

Any person claiming to be aggrieved or adversely affected by any rule or order of the director or his or her failure to enter an order may appeal to the surface mine board, pursuant to the provisions of article one, chapter twenty-two-b of this code, for an order vacating or modifying such rule or order, or for such order as the director should have entered.

§22-4-22. Offenses; penalties; prosecutions; treble damages; injunctive relief.

(a) Any person who conducts any surface-mining operation, or any part thereof, without a permit or without having furnished the required bond, or who carries on such operation or be a party thereto on land not covered by a permit, or who falsely represents any material fact in an application for a permit or in an application for the renewal of a permit, or who willfully violates any provision of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation is a separate offense. It is the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The commissioner shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly
causes damage to the property of others as a result of surface mining is liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such surface mining was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages are recoverable in an action at law in any court of competent jurisdiction. The director shall require, in addition to any other bonds and insurance required by other provisions of this article, that any person engaged in the business of surface mining shall file with the director a certificate of insurance, or other security in an amount of not less than ten thousand dollars, to cover possible damage to property for which a recovery may be sought under the provisions of this subsection.

(c) Upon application by the director, the attorney general, or the prosecuting attorney of the county in which the major portion of the permit area is located, any court of competent jurisdiction may by injunction compel compliance with and enjoin violations of the provisions of this article. The court or the judge thereof in vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed.

An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed under the provisions of this article is final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from
§22-4-23. Validity and construction of existing surface-mining permits.

Any valid surface-mining permit existing on the effective date of this article shall remain in full force and effect until such permit expires under its terms or is otherwise terminated under the provisions of this article. The provisions of this section do not require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of this article.

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the “Federal Clean Air Act,” as amended.

§22-5-2. Definitions.

The terms used in this article are defined as follows:
(1) "Air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

(2) "Board" means the air quality board continued pursuant to the provisions of article two, chapter twenty-two-b of this code.

(3) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code.

(4) "Discharge" means any release, escape or emission of air pollutants into the air.

(5) "Person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

(6) "Statutory air pollution" means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

§22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies.

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the state of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing
contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

§22-5-4. Powers and duties of director; and legal services; rules.

(a) The director is authorized:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the “Federal Clean Air Act,” as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;
(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise or place on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, That nothing contained in this article eliminates any obligation to follow any process that may be required by law;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources; and the director may cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the "Air Pollution Education and Environment Fund" which is hereby continued in the state treasury. The moneys collected pursuant to this article which are directed to be deposited in the air pollution education and environment fund must be deposited in a separate account in the state
treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director; (16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the “Federal Clean Air
Act," as amended: Provided, That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Provided, however, That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(17) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following: (A) Procedures and requirements for permit applications, transfers and modifications and the review thereof; (B) Imposition of permit application and transfer fees; (C) Establishment of criteria for construction, modification, relocation and operating permits; (D) Imposition of permit fees and of certificate fees: Provided, That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and (E) Imposition of penalties and interest for the nonpayment of fees. The fees, penalties and interest shall be deposited in a special account in the state treasury designated the “Air Pollution Control Fund”, formerly the “Air Pollution Control Commission Fund”, which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the office of air quality and their employees to carry out the provisions of this article: Provided, That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program. The fees collected pursuant to this subdivision must be deposited in a separate account in the state treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article
three, chapter twelve of this code and upon fulfillment
of the provisions set forth in article two, chapter five-
a of this code. Amounts collected which are found from
time to time to exceed the funds needed for the purposes
set forth in this article may be transferred to other
accounts or funds and redesignated for other purposes
by appropriation of the Legislature: Provided, however,
That for fiscal year one thousand nine hundred ninety-
three, expenditures are permitted from collections
without appropriation by the Legislature; and (18)
Receipt of any money by the director as a result of the
entry of any consent order shall be deposited in the state
treasury to the credit of the air pollution education and
environment fund.

(b) The attorney general and his or her assistants and
the prosecuting attorneys of the several counties shall
render to the director without additional compensation
such legal services as the director may require of them
to enforce the provisions of this article.

§22-5-5. Issuance of cease and desist orders by director;
service; permit suspension, modification and
revocation; appeals to board.

If, from any investigation made by the director or
from any complaint filed with him or her, the director
is of the opinion that a person is violating the provisions
of this article, or any rules promulgated pursuant
thereto, he or she shall make and enter an order
directing such person to cease and desist such activity.
The director shall fix a reasonable time in such order
by which such activity must stop or be prevented. The
order shall contain the findings of fact upon which the
director determined to make and enter such order.

If, after any investigation made by the director, or
from any complaint filed with him or her, the director
is of the opinion that a permit holder is violating the
provisions of this article, or any rules promulgated
pursuant thereto, or any order of the director, or any
provision of a permit, the director may issue notice of
intent to suspend, modify or revoke and reissue such
permit. Upon notice of the director's intent to suspend,
modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter such order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of such final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys.

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the state of West Virginia in the circuit court of any county wherein such person resides or is engaged in the activity complained of or in the circuit court of Kanawha county. The amount of the penalty shall be fixed by the court without a jury: Provided, That any such person is not subject to such civil penalties unless such person has been given written notice thereof by the director: Provided, however, That for the first such minor violation, if such person corrects
the violation within such time as was specified in the
notice of violation issued by the director, no such civil
penalty may be recovered: Provided further, That if such
person fails to correct such minor violation or for any
serious or subsequent serious or minor violation, such
person is subject to civil penalties imposed pursuant to
this section from the first day of such violation notwith-
standing the date of the issuance or receipt of the notice
of violation. The director shall, by rule subject to the
provisions of chapter twenty-nine-a of this code, deter-
mine the definitions of serious and minor violations. The
amount of any such penalty collected by the director
shall be deposited in the general revenue of the state
treasury according to law.

(b) (1) Any person who knowingly misrepresents any
material fact in an application, record, report, plan or
other document filed or required to be maintained under
the provisions of this article or any rules promulgated
under this article is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than twenty-
five thousand dollars or imprisoned in the county jail not
more than six months or both fined and imprisoned.

(2) Any person who knowingly violates any provision
of this article, any permit or any rule or order issued
pursuant to this article or article one, chapter twenty-
two-b of this code is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than twenty-
five thousand dollars for each day of such violation or
imprisoned in the county jail not more than one year or
both fined and imprisoned.

(c) Upon a request in writing from the director it is
the duty of the attorney general and the prosecuting
attorney of the county in which any such action for
penalties accruing under this section or section seven of
this article may be brought to institute and prosecute
all such actions on behalf of the director.

(d) For the purpose of this section, violations on
separate days are separate offenses.

§22-5-7. Applications for injunctive relief.
The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section six or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney’s fees.


Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present
evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law.

§22-5-9. Powers reserved to secretary of the department of health and human resources, commissioner of bureau of public health, local health boards and political subdivisions; conflicting statutes repealed.

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the secretary of the department of health and human resources, the commissioner of the bureau of public health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

§22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy.
All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as "records, reports, data or information") obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the director shall consider such records, reports, data or information or such particular portion thereof confidential: Provided, That such confidentiality does not apply to the types and amounts of air pollutants discharged and that such records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environment protection agency concerned with enforcing this article, the federal Clean Air Act, as amended, or the federal Resource Conservation and Recovery Act, as amended, when relevant to any official proceedings thereunder: Provided, however, That such officers, employees or authorized representatives of the state or federal environmental protection agency protect such records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of such a request, the director or his or her designate shall: (a) Advise the person making such request of the time and place at which the person may inspect and copy the documents; or (b) deny the request, stating in writing the reasons for such denial. For purposes of judicial appeal, a written denial by the director shall be deemed an exhaustion of administrative remedies. Any person
whose request for information is denied, in whole or in part, may appeal from such denial by filing with the director a notice of appeal. Such notice shall be filed within thirty days from the date the request for information was denied, and shall be signed by the person whose request was denied or the person's attorney. The appeal shall be taken to the circuit court of Kanawha county, where it shall be heard without a jury. The scope of review is limited to the question of whether the records, reports, data or other information, or any particular part thereof (other than emission data), sought to be inspected or copied, would, if made public, divulge methods or processes entitled to protection as trade secrets. The said court shall make findings of fact and conclusions of law based upon the evidence and testimony. The director, the person whose request was denied, or any other person whose interest has been substantially affected by the final order of the circuit court may appeal to the supreme court of appeals in the manner prescribed by law.

§22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants.

No person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this section.

The director shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the director, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the director.

The director shall, within a reasonable time not to exceed twelve months for major sources, as defined by the director, and six months for all other sources after the receipt of a complete application, issue such permit unless he or she determines that the proposed construc-
tion, modification or relocation will not be in accordance
with this article or rules promulgated thereunder, in
which case the director shall issue an order for the
prevention of such construction, modification or reloca-
tion. For the purposes of this section, a modification is
deemed to be any physical change in, or change in the
method of operation of, a stationary source which
increases the amount of any air pollutant discharged by
such source above a de minimis level set by the director.

§22-5-12. Operating permits required for stationary
sources of air pollution.

No person may operate a stationary source of air
pollutants without first obtaining an operating permit
as provided in this section. The director shall promul-
gate legislative rules, in accordance with chapter
twenty-nine-a of this code, which specify classes or
categories of stationary sources which are required to
obtain an operating permit. The legislative rule shall
provide for the form and content of the application
procedure including time limitations for obtaining the
required permits. Any person who has filed a timely and
complete application for a permit or renewal thereof
required by this section, and who is abiding by the
requirements of this article and the rules promulgated
pursuant thereto is in compliance with the requirements
of this article and any rule promulgated thereunder
until a permit is issued or denied. Any legislative rule
promulgated pursuant to the authority granted by this
section shall be equivalent to and consistent with rules
and regulations adopted by the administrator of United
States environmental protection agency pursuant to
Title IV and Title V of the Clean Air Act Amendments
seq., respectively: Provided, That such legislative rule
may deviate from the federal rules and regulations
where a deviation is appropriate to implement the policy
and purpose of this article taking into account such
factors unique to West Virginia.


For permits required by sections eleven and twelve of
this article, the director may incorporate the required
permits with an existing permit or consolidate the
required permits into a single permit.


Any person whose interest may be affected, including,
but not necessarily limited to, the applicant and any
person who participated in the public comment process,
by a permit issued, modified or denied by the director
may appeal such action of the director to the air quality
board pursuant to article one, chapter twenty-two-b of
this code.

§22-5-15. Motor vehicle pollution, inspection and
maintenance.

(a) As the state of knowledge and technology relating
to the control of emissions from motor vehicles may
permit or make appropriate, and in furtherance of the
purposes of this article, the director may provide by
legislative rule for the control of emissions from motor
vehicles. Such legislative rule may prescribe require-
ments for the installation and use of equipment designed
to reduce or eliminate emissions and for the proper
maintenance of such equipment and of vehicles. Any
legislative rule pursuant to this section shall be
consistent with provisions of federal law, if any, relating
to control of emissions from the vehicles concerned. The
director shall not require, as a condition precedent to the
initial sale of a vehicle or vehicular equipment, the
inspection, certification or other approval of any feature
or equipment designed for the control of emissions from
motor vehicles, if such feature or equipment has been
certified, approved, or otherwise authorized pursuant to
federal law.

(b) Except as permitted or authorized by law or
legislative rule, no person shall fail to maintain in good
working order or remove, dismantle or otherwise cause
to be inoperative any equipment or feature constituting
an operational element of the air pollution control
system or mechanism of a motor vehicle required by
rules of the director to be maintained in or on the
vehicle. Any such failure to maintain in good working
order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the department of transportation, division of motor vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The department of transportation, division of motor vehicles, department of administration, information and communication services division, and the department of public safety shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director shall promulgate a legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program.

(d) The director shall promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom, and no motor vehicle may be issued a division of motor vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof, and the provisions of sections six or seven of this article do not apply thereto.

(f) As used in this section "motor vehicle" has the same meaning as in chapter seventeen-c of this code.

§22-5-16. Small business environmental compliance assistance program, compliance advisory panel.

The secretary of the department of commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental
compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. §7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

(a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the governor to represent the general public;

(b) One member selected by the speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;

(d) One member selected by the president of the Senate who is an owner or who represents owners of small business stationary sources;

(e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and

(f) One member selected by the director to represent the director.

ARTICLE 6. OFFICE OF OIL AND GAS: OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-1. Definitions.

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

(a) "Casing" means a string or strings of pipe commonly placed in wells drilled for natural gas or petroleum or both;

(b) "Cement" means hydraulic cement properly mixed with water;

(c) "Chair" means the chair of the West Virginia shallow gas well review board as provided for in section four, article eight, chapter twenty-two-c of this code;
(d) "Coal operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does operate a coal mine;

(e) "Coal seam" and "workable coal bed" are interchangeable terms and mean any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it;

(f) "Director" means the director of the division of environmental protection as established in article one of this chapter or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(g) "Deep well" means any well other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";

(h) "Expanding cement" means any cement approved by the office of oil and gas which expands during the hardening process, including, but not limited to, regular oil field cements with the proper additives;

(i) "Facility" means any facility utilized in the oil and gas industry in this state and specifically named or referred to in this article or in article eight or nine of this chapter, other than a well or well site;

(j) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in this section;

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

(l) "Owner" when used with reference to any well, shall include any person or persons, firm, partnership, partnership association or corporation that owns,
manages, operates, controls or possesses such well as
principal, or as lessee or contractor, employee or agent
of such principal;

(m) "Owner" when used with reference to any coal
seam, shall include any person or persons who own, lease
or operate such coal seam;

(n) "Person" means any natural person, corporation,
firm, partnership, partnership association, venture,
receiver, trustee, executor, administrator, guardian,
fiduciary or other representative of any kind, and
includes any government or any political subdivision or
any agency thereof;

(o) "Plat" means a map, drawing or print showing the
location of a well or wells as herein defined;

(p) "Review board" means the West Virginia shallow
gas well review board as provided for in section four,
article eight, chapter twenty-two-c of this code;

(q) "Safe mining through of a well" means the mining
of coal in a workable coal bed up to a well which
penetrates such workable coal bed and through such
well so that the casing or plug in the well bore where
the well penetrates the workable coal bed is severed;

(r) "Shallow well" means any gas well drilled and
completed in a formation above the top of the uppermost
member of the "Onondaga Group": Provided, That in
drilling a shallow well the operator may penetrate into
the "Onondaga Group" to a reasonable depth, not in
excess of twenty feet, in order to allow for logging and
completion operations, but in no event may the "Onon-
daga Group" formation be otherwise produced, perfo-
rated or stimulated in any manner;

(s) "Stimulate" means any action taken by a well
operator to increase the inherent productivity of an oil
or gas well, including, but not limited to, fracturing,
shooting or acidizing, but excluding cleaning out,
bailing or workover operations;

(t) "Waste" means (i) physical waste, as the term is
generally understood in the oil and gas industry; (ii) the
locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause a substantial reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of oil or gas; or (iii) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool; (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of, reservoir energy, it being understood that nothing in this chapter shall be construed to authorize any agency of the state to impose mandatory spacing of shallow wells except for the provisions of section eight, article nine, chapter twenty-two-c of this code and the provisions of article eight, chapter twenty-two-c of this code; (v) inefficient storing of oil or gas: Provided, That storage in accordance with a certificate of public convenience issued by the federal energy regulatory commission shall be conclusively presumed to be efficient and (vi) other underground or surface waste in the production or storage of oil, gas or condensate, however caused. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, however, That nothing in this exclusion is intended to address ownership of the gas;

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

(v) "Well work" means the drilling, redrilling,
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deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

(w) "Well operator" or "operator" means any person or persons, firm, partnership, partnership association or corporation that proposes to or does locate, drill, operate or abandon any well as herein defined;

(x) "Pollutant" shall have the same meaning as provided in subsection (17), section three, article eleven, chapter twenty-two of this code; and

(y) "Waters of this state" shall have the same meaning as the term "waters" as provided in subsection (23), section three, article eleven, chapter twenty-two of this code.

§22-6-2. Director — Powers and duties generally; division records open to public; inspectors.

(a) The director shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles eight and nine of this chapter.

(b) The director is authorized to enact rules necessary to effectuate the above stated purposes.

(c) The director shall have full charge of the oil and gas matters set out in this article and in articles eight and nine of this chapter. In addition to all other powers and duties conferred upon him, the director shall have the power and duty to:

(1) Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

(2) Employ a supervising oil and gas inspector and oil and gas inspectors.

(3) Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;
(4) Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

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

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

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

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

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

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

(11) Perform all other duties which are expressly imposed upon the director by the provisions of this chapter.
(12) Perform all duties as the permit issuing authority for the state in all matters pertaining to the exploration, development, production, storage and recovery of this state's oil and gas;

(13) Adopt rules with respect to the issuance, denial, retention, suspension or revocation of permits, authorizations and requirements of this chapter, which rules shall assure that the rules, permits and authorizations issued by the director are adequate to satisfy the purposes of this article and articles seven, eight, nine and ten of this chapter particularly with respect to the consolidation of the various state and federal programs which place permitting requirements on the exploration, development, production, storage and recovery of this state's oil and gas: Provided, That notwithstanding any provisions of this article and articles seven, eight, nine and ten of this chapter to the contrary, the environmental quality board shall have the sole authority pursuant to section three, article three, chapter twenty-two-b to promulgate rules setting standards of water quality applicable to waters of the state; and

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

(d) The director shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or inspectors or supervising inspector whenever such assistance is necessary in the inspection of any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and the supervising inspector shall have authority to visit and inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the director to have an
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100 immediate inspection made. The operator or owner of
101 every well or well site or any other oil or gas facility
102 shall cooperate with the director, all oil and gas
103 inspectors and the supervising inspector in making
104 inspections or obtaining information.
105
106 (e) Oil and gas inspectors shall devote their full time
107 and undivided attention to the performance of their
108 duties, and they shall be responsible for the inspection
109 of all wells or well sites or other oil or gas facilities in
110 their respective districts as often as may be required in
111 the performance of their duties.
112
113 (f) All records of the office shall be open to the public.

§22-6-3. Findings and orders of inspectors concerning violations; determination of reasonable time for abatement; extensions of time for abatement; special inspections; notice of findings and orders.

1 (a) If an oil and gas inspector, upon making an
2 inspection of a well or well site or any other oil or gas
3 facility, finds that any provision of this article is being
4 violated, the inspector shall also find whether or not an
5 imminent danger to persons exists, or whether or not
6 there exists an imminent danger that a fresh water
7 source or supply will be contaminated or lost. If the
8 inspector finds that such imminent danger exists, an
9 order requiring the operator of such well or well site or
10 other oil or gas facility to cease further operations until
11 such imminent danger has been abated shall be issued
12 by the inspector. If the inspector finds that no such
13 imminent danger exists, the inspector shall determine
14 what would be a reasonable period of time within which
15 such violation should be totally abated. Such findings
16 shall contain reference to the provisions of this article
17 which the inspector finds are being violated, and a
detailed description of the conditions which cause and
18 constitute such violation.
19
20 (b) The period of time so found by such oil and gas
21 inspector to be a reasonable period of time shall not
22 exceed seven days. Such period may be extended by
23 such inspector, or by any other oil and gas inspector
duly authorized by the director, from time to time, for
good cause, but not to exceed a total of thirty days, upon
the making of a special inspection to ascertain whether
or not such violation has been totally abated: Provided,
That such thirty day period may be extended beyond
thirty days by such inspectors where abatement is
shown to be incapable of accomplishment because of
circumstances or conditions beyond the control of the
well operator. The director shall cause a special
inspection to be made: (A) Whenever an operator of a
well or well site or any other oil or gas facility, prior
to the expiration of any such period of time, requests the
director to cause a special inspection to be made at such
well or well site or any other oil or gas facility; and (B)
upon expiration of such period of time as originally
fixed or as extended, unless the director is satisfied that
the violation has been abated. Upon making such special
inspection, such oil and gas inspector shall determine
whether or not such violation has been totally abated.
If the inspector determines that such violation has not
been totally abated, the inspector shall determine
whether or not such period of time as originally fixed,
or as so fixed and extended, should be extended. If the
inspector determines that such period of time should be
extended, the inspector shall determine what a reasona-
bale extension would be. If the inspector determines that
such violation has not been totally abated, and if such
period of time as originally fixed, or as so fixed and
extended, has then expired, and if the inspector also
determines that such period of time should not be
further extended, the inspector shall thereupon make an
order requiring the operator of such well or well site or
other oil or gas facility to cease further operations of
such well, well site or facility, as the case may be. Such
findings and order shall contain reference to the specific
provisions of this article which are being violated.

(c) Notice of each finding and order made under this
section shall promptly be given to the operator of the
well or well site or other oil or gas facility to which it
pertains by the person making such finding or order.

(d) No order shall be issued under the authority of this
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65 section which is not expressly authorized herein.

§22-6-4. Review of findings and orders by director; special inspection; annulment, revision, etc., of order; notice.

1 (a) Any well operator, complaining coal operator, owner or lessee, if any, aggrieved by findings or an order made by an oil or gas inspector pursuant to section three of this article, may within fifteen days apply to the director for annulment or revision of such order. Upon receipt of such application the director shall make a special inspection of the well, well site or other oil and gas facility affected by such order, or cause two duly authorized oil and gas inspectors, other than the oil and gas inspector who made such order or the supervising inspector and one duly authorized oil and gas inspector other than the oil and gas inspector who made such order, to make such inspection of such well, or well site or other oil or gas facility and to report thereon to them. Upon making such special inspection, or upon receiving the report of such special inspection, as the case may be, the director shall make an order which shall include the director's findings and shall annul, revise or affirm the order of the oil and gas inspector.

(b) The director shall cause notice of each finding and order made under this section to be given promptly to the operator of the well, well site or other oil or gas facility to which such findings and order pertain, and the complainant under section three, if any.

(c) At any time while an order made pursuant to section three of this article is in effect, the operator of the well, well site or other oil or gas facility affected by such order may apply to the director for annulment or revision of such order. The director shall thereupon proceed to act upon such application in the manner provided in this section.

(d) In view of the urgent need for prompt decision of matters submitted to the director under this article, all actions which the director, or oil and gas inspectors or the supervising inspector are required to take under this article, shall be taken as rapidly as practicable,
consistent with adequate consideration of the issues involved.

§22-6-5. Requirements for findings, orders and notices; posting of findings and orders; judicial review of final orders of director.

(a) All findings and orders made pursuant to section three or four of this article, and all notices required to be given of the making of such findings and orders, shall be in writing. All such findings and orders shall be signed by the person making them, and all such notices shall be signed by the person charged with the duty of giving the notice. All such notices shall contain a copy of the findings and orders referred to therein.

(b) Notice of any finding or order required by section three or four of this article to be given to an operator shall be given by causing such notice, addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains, to be delivered to such operator by causing a copy thereof to be sent by registered mail to the permanent address of such operator as filed with the division and by causing a copy thereof to be posted upon the drilling rig or other equipment at the well, well site or other oil and/or gas facility, as the case may be. The requirement of this article that a notice shall be “addressed to the operator of the well, well site or other oil and/or gas facility to which such finding or order pertains,” shall not require that the name of the operator for whom it is intended shall be specifically set out in such address. Addressing such notice to “Operator of ,” specifying the well, well site or other oil and/or gas facility sufficiently to identify it, shall satisfy such requirement.

(c) Any well operator, complaining coal operator, owner or lessee, if any, adversely affected by a final order issued by the director under section four of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso.
(d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

(e) Legal counsel and services for the director in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his or her assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The director, with written approval of the attorney general, may employ special counsel to represent the director at any such appeal proceedings.

§22-6-6. Permit required for well work; permit fee; application; soil erosion control plan.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, without first securing from the director a well work permit. An application may propose and a permit may approve two or more activities defined as well work.

(b) The application for a well work permit shall be accompanied by applicable bond as prescribed by section twelve, fourteen or twenty-three of this article, and the applicable plat required by section twelve or fourteen of this article.

(c) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person whom the applicant must notify under any section of this article together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The name and address of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner
of record and lessee of record required to be given notice
by section twelve, if any, if said owner or lessee is not
yet operating said coal seams;

(3) The number of the well or such other identification
as the director may require;

(4) The type of well;

(5) The well work for which a permit is requested;

(6) The approximate depth to which the well is to be
drilled or deepened, or the actual depth if the well has
been drilled;

(7) Any permit application fee required by law;

(8) If the proposed well work will require casing or
tubing to be set, the entire casing program for the well,
including the size of each string of pipe, the starting
point and depth to which each string is to be set, and
the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an oil well
or a combination well or to drill a new well for the
purpose of introducing pressure for the recovery of oil
as provided in section twenty-five of this article,
specifications in accordance with the data requirements
of section fourteen of this article;

(10) If the proposed well work is to plug or replug the
well, (i) specifications in accordance with the data
requirements of section twenty-three of this article, (ii)
a copy of all logs in the operator's possession as the
director may require, and (iii) a work order showing in
detail the proposed manner of plugging or unplugging
the well, in order that a representative of the director
and any interested persons may be present when the
work is done. In the event of an application to drill,
redrill or deepen a well, if the well work is unsuccessful
so that the well must be plugged and abandoned, and
if the well is one on which the well work has been
continuously progressing pursuant to a permit, the
operator may proceed to plug the well as soon as the
operator has obtained the verbal permission of the
director or the director's designated representative to
plug and abandon the well, except that the operator shall make reasonable effort to notify as soon as practicable the surface owner and the coal owner, if any, of the land at the well location, and shall also timely file the plugging affidavit required by section twenty-three of this article;

(11) If the proposed well work is to stimulate an oil or gas well, specifications in accordance with the data requirements of section thirteen of this article;

(12) The erosion and sediment control plan required under subsection (d) of this section for applications for permits to drill; and

(13) Any other relevant information which the director may require by rule.

(d) An erosion and sediment control plan shall accompany each application for a well work permit except for a well work permit to plug or replug any well. Such plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia erosion and sediment control manual as adopted and from time to time amended by the division, in consultation with the several soil conservation districts pursuant to the control program established in this state through section 208 of the federal Water Pollution Control Act Amendments of 1972 (33 U.S.C.1288). The erosion and sediment control plan shall become part of the terms and conditions of a well work permit, except for a well work permit to plug or replug any well, which is issued and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of section thirty of this article.

(e) The well operator named in such application shall designate the name and address of an agent for such operator who shall be the attorney-in-fact for the operator and who shall be a resident of the state of West
Virginia upon whom notices, orders or other communications issued pursuant to this article or article eleven, chapter twenty-two, may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the director of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the director in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the director.

(g) The director may waive the requirements of this section and sections nine, ten and eleven of this article in any emergency situation, if the director deems such action necessary. In such case the director may issue an emergency permit which would be effective for not more than thirty days, but which would be subject to reissuance by the director.

(h) The director shall deny the issuance of a permit if the director determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation within the time prescribed by the director pursuant to the provisions of sections three and four of this article and the rules promulgated hereunder, which time may not be unreasonable: Provided, That in the event that the director does find that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the director may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit: Provided, however, That the director may reinstate the permit without further notice, at which time the well work may be continued. The director shall make written findings of any such determination and may enforce the same in the circuit
courts of this state and the operator may appeal such suspension pursuant to the provisions of section forty of this article. The director shall make a written finding of any such determination.

(i) Any person who violates any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or be imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22-6-7. Water pollution control permits; powers and duties of the director; penalties.

(a) In addition to a permit for well work, the director, after public notice and an opportunity for public hearings, may either issue a separate permit, general permit or a permit consolidated with the well work permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that such discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of the director.

(b) It shall be unlawful for any person conducting activities which are subject to the requirements of this article, unless that person holds a water pollution control permit therefor from the director, which is in full force and effect to:

(1) Allow pollutants or the effluent therefrom, produced by or emanating from any point source, to flow into the water of this state;

(2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of pollutants or the effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated pollutants or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;
(4) Increase in volume or concentration any pollutants in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any pollutants discharging or flowing into the waters of the state;

(6) Operate any disposal well for the injection or reinjection underground of any pollutant, including, but not limited to, liquids or gasses, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Notwithstanding any provision of this article or articles seven, eight, nine or ten of this chapter to the contrary, the director shall have the same powers and duties relating to inspection and enforcement as those granted under article eleven, chapter twenty-two of this code in connection with the issuance of any water pollution control permit or any person required to have such permit.

(d) Any person who violates any provision of this section, any order issued under this section or any permit issued pursuant to this section or any rule of the director relating to water pollution or who willfully or negligently violates any provision of this section or any permit issued pursuant to this section or any rule or order of the director relating to water pollution or who fails or refuses to apply for and obtain a permit or who intentionally misrepresents any material fact in an application, record, report, plan or other document files or required to be maintained under this section shall be subject to the same penalties for such violations as are provided for in sections twenty-two and twenty-four, article eleven, chapter twenty-two of this code: Provided, That the provisions of section twenty-six, article eleven, chapter twenty-two of this code relating to exceptions to criminal liability shall also apply.

All applications for injunction filed pursuant to section twenty-two, article eleven, chapter twenty-two of the code shall take priority on the docket of the circuit
court in which pending, and shall take precedence over all other civil cases.

(e) Any water pollution control permit issued pursuant to this section or any order issued in connection with such permit for the purpose of implementing the "national pollutant discharge elimination system" established under the federal Clean Water Act shall be issued by the chief of the office of water resources of the division in consultation with the chief of the office of oil and gas of the division and shall be appealable to the environmental quality board pursuant to the provisions of section twenty-five, article eleven, chapter twenty-two and section seven, article one, chapter twenty-two-b of this code.

§22-6-8. Permits not to be on flat well royalty leases; legislative findings and declarations; permit requirements.

(a) The Legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this state is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this state in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the state of West Virginia of the just benefit of the natural wealth of this state;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently
23 extracted, produced or marketed, were not known or
24 contemplated by the parties, nor was it contemplated by
25 the parties that oil and gas would be recovered or
26 extracted or produced or marketed from the depths and
27 horizons currently being developed by the well
28 operators;

29 (4) That while being fully cognizant that the provi-
30 sions of section 10, article I of the United States
31 constitution and of section 4, article III of the constitu-
32 tion of West Virginia, proscribe the enactment of any
33 law impairing the obligation of a contract, the Legisla-
34 ture further finds that it is a valid exercise of the police
35 powers of this state and in the interest of the state of
36 West Virginia and in furtherance of the welfare of its
37 citizens, to discourage as far as constitutionally possible
38 the production and marketing of oil and gas located in
39 this state under the type of leases or other continuing
40 contracts described above.

41 (b) In the light of the foregoing findings, the Legis-
42 lature hereby declares that it is the policy of this state,
43 to the extent possible, to prevent the extraction,
44 production or marketing of oil or gas under a lease or
45 leases or other continuing contract or contracts provid-
46 ing a flat well royalty or any similar provisions for
47 compensation to the owner of the oil and gas in place,
48 which is not inherently related to the volume of oil or
49 gas produced or marketed, and toward these ends, the
50 Legislature further declares that it is the obligation of
51 this state to prohibit the issuance of any permit required
52 by it for the development of oil or gas where the right
53 to develop, extract, produce or market the same is based
54 upon such leases or other continuing contractual
55 agreements.

56 (c) In addition to any requirements contained in this
57 article with respect to the issuance of any permit
58 required for the drilling, redrilling, deepening, fractur-
59 ing, stimulating, pressuring, converting, combining or
60 physically changing to allow the migration of fluid from
61 one formation to another, no such permit shall be
62 hereafter issued unless the lease or leases or other
63 continuing contract or contracts by which the right to
extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

(1) A brief description of the tract of land including the district and county wherein the tract is located;

(2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;

(3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and

(4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce or market the oil or gas is based upon a lease or leases or other continuing contract or contracts providing for flat well royalty or any similar provision for compensation to the owner of the oil or gas in place which is not inherently related to the volume of oil and gas so extracted, produced and marketed.

(e) To avoid the permit prohibition of subsection (d), the applicant may file with such application an affidavit which certifies that the affiant is authorized by the owner of the working interest in the well to state that it shall tender to the owner of the oil or gas in place not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas.
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in place, on all such oil or gas to be extracted, produced
or marketed from the well. If such affidavit be filed
with such application, then such application for permit
shall be treated as if such lease or leases or other
continuing contract or contracts comply with the
provisions of this section.

(f) The owner of the oil or gas in place shall have a
cause of action to enforce the owner's rights established
by this section.

(g) The provisions of this section shall not affect or
apply to any lease or leases or other continuing contract
or contracts for the underground storage of gas or any
well utilized in connection therewith or otherwise
subject to the provisions of article nine of this chapter.

(h) The director shall enforce this requirement
irrespective of when the lease or other continuing
contract was executed.

(i) The provisions of this section shall not adversely
affect any rights to free gas.

§22-6-9. Notice to property owners.

(a) No later than the filing date of the application, the
applicant for a permit for any well work shall deliver
by personal service or by certified mail, return receipt
requested, copies of the application, well plat and
erosion and sediment control plan required by section
six of this article to each of the following persons:

(1) The owners of record of the surface of the tract
on which the well is, or is to be located; and

(2) The owners of record of the surface tract or tracts
overlying the oil and gas leasehold being developed by
the proposed well work, if such surface tract is to be
utilized for roads or other land disturbance as described
in the erosion and sediment control plan submitted
pursuant to section six of this article.

(b) If more than three tenants in common or other co-
owners of interests described in subsection (a) of this
section hold interests in such lands, the applicant may
serve the documents required upon the person described
in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code, or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice and information as the director shall prescribe by rule, with the first publication date being at least ten days prior to the filing of the permit application: Provided, That all owners occupying the tracts where the well work is, or is proposed to be located at the filing date of the permit application shall receive actual service of the documents required by subsection (a) of this section.

(c) Materials served upon persons described in subsections (a) and (b) of this section shall contain a statement of the methods and time limits for filing comments, who may file comments and the name and address of the director for the purpose of filing comments and obtaining additional information and a statement that such persons may request, at the time of submitting comments, notice of the permit decision and a list of persons qualified to test water as provided in this section.

(d) Any person entitled to submit comments shall also be entitled to receive a copy of the permit as issued or a copy of the order denying the permit if such person requests the receipt thereof as a part of the comments concerning said permit application.

(e) Persons entitled to notice may contact the district office of the division to ascertain the names and location of water testing laboratories in the area capable and qualified to test water supplies in accordance with standard accepted methods. In compiling such list of names the division shall consult with the state bureau of public health and local health departments.

§22-6-10. Procedure for filing comments; certification of notice.

(a) All persons described in subsections (a) and (b), section nine of this article may file comments with the director as to the location or construction of the
applicant's proposed well work within fifteen days after the application is filed with the director.

(b) Prior to the issuance of any permit for well work, the applicant shall certify to the director that the requirements of section nine of this article have been completed by the applicant. Such certification may be by affidavit of personal service or the return receipt card, or other postal receipt for certified mailing.

§22-6-11. Review of application; issuance of permit in the absence of objections; copy of permits to county assessor.

The director shall review each application for a well work permit and shall determine whether or not a permit shall be issued.

No permit shall be issued less than fifteen days after the filing date of the application for any well work except plugging or replugging; and no permit for plugging or replugging shall be issued less than five days after the filing date of the application except a permit for plugging or replugging a dry hole: Provided, That if the applicant certifies that all persons entitled to notice of the application under the provisions of this article have been served in person or by certified mail, return receipt requested, with a copy of the well work application, including the erosion and sediment control plan, if required, and the plat required by section six of this article, and further files written statements of no objection by all such persons, the director may issue the well work permit at any time.

The director may cause such inspections to be made of the proposed well work location as to assure adequate review of the application. The permit shall not be issued, or shall be conditioned including conditions with respect to the location of the well and access roads prior to issuance if the director determines that:

(1) The proposed well work will constitute a hazard to the safety of persons; or

(2) The plan for soil erosion and sediment control is not adequate or effective; or
(3) Damage would occur to publicly owned lands or resources; or

(4) The proposed well work fails to protect fresh water sources or supplies.

The director shall promptly review all comments filed. If after review of the application and all comments received, the application for a well work permit is approved, and no timely objection or comment has been filed with the director or made by the director under the provisions of section fifteen, sixteen or seventeen of this article, the permit shall be issued, with conditions, if any. Nothing in this section shall be construed to supersede the provisions of sections six, twelve, thirteen, fourteen, fifteen, sixteen and seventeen of this article.

The director shall mail a copy of the permit as issued or a copy of the order denying a permit to any person who submitted comments to the director concerning said permit and requested such copy.

Upon the issuance of any permit pursuant to the provisions of this article, the director shall transmit a copy of such permit to the office of the assessor for the county in which the well is located.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well and the date of drilling completion of a well when it is
proposed that such well be fractured and shall forward
by registered or certified mail a copy of the plat to the
director. In the event the tract of land on which the said
well proposed to be drilled or fractured is located is
known to be underlaid with one or more coal seams,
copies of the plat shall be forwarded by registered or
certified mail to each and every coal operator operating
said coal seams beneath said tract of land, who has
mapped the same and filed such maps with the office
of miners' health, safety and training in accordance with
chapter twenty-two-a of this code and the coal seam
owner of record and lessee of record, if any, if said
owner or lessee has recorded the declaration provided
in section thirty-six of this article, and if said owner or
lessee is not yet operating said coal seams beneath said
tract of land. With each of such plats there shall be
enclosed a notice (form for which shall be furnished on
request by the director) addressed to the director and
to each such coal operator, owner and lessee, if any, at
their respective addresses, informing them that such
plat and notice are being mailed to them respectively
by registered or certified mail, pursuant to the require-
ments of this article.

(b) If no objections are made, or are found by the
director, to such proposed location or proposed fractur-
ing within fifteen days from receipt of such plat and
notice by the director, the same shall be filed and
become a permanent record of such location or fractur-
ing subject to inspection at any time by any interested
person, and the director may forthwith issue to the well
operator a permit reciting the filing of such plat, that
no objections have been made by the coal operators,
owners and lessees, if any, or found thereto by the
director, and authorizing the well operator to drill at
such location, or to fracture the well. Unless the director
has objections to such proposed location or proposed
fracturing or stimulating, such permit may be issued
prior to the expiration of such fifteen-day period upon
the obtaining by the well operator of the consent in
writing of the coal operator or operators, owners and
lessees, if any, to whom copies of the plat and notice
shall have been mailed as herein required, and upon
presentation of such written consent to the director. The notice above provided for may be given to the coal operator by delivering or mailing it by registered or certified mail as above to any agent or superintendent in actual charge of mines.

(c) A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is accompanied by a bond as provided in section twenty-six of this article.

§22-6-13. Notice to coal operators, owners or lessees and director of intention to fracture certain other wells; contents of such notice; bond; permit required.

Before fracturing any well the well operator shall, by registered or certified mail, forward a notice of intention to fracture such well to the director and to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code, and the coal seam owner and lessee, if any, if said owner of record or lessee of record has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said coal seams beneath said tract of land.

The notice shall be addressed to the director and to each such coal operator at their respective addresses, shall contain the number of the drilling permit for such well and such other information as may be required by the director to enable the division and the coal operators to locate and identify such well and shall inform them that such notice is being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this article. The form for such notice of intention shall be furnished on request by the director.

If no objections are made, or are found by the director to such proposed fracturing within fifteen days from receipt of such notice by the director, the same shall be filed and become a permanent record of such fracturing, subject to inspection at any time by any interested
person, and the director shall forthwith issue to the well
operator a permit reciting the filing of such notice, that
no objections have been made by the coal operators, or
found thereto by the director, and authorizing the well
operator to fracture such well. Unless the director has
objections to such proposed fracturing, such permit shall
be issued prior to the expiration of such fifteen-day
period upon the obtaining by the well operator of the
consent in writing of the coal operator or operators,
owners or lessees, if any, to whom notice of intention to
fracture shall have been mailed as herein required, and
upon presentation of such written consent to the
director. The notice above provided for may be given to
the coal operator by delivering or mailing it by
registered or certified mail as above to any agent or
superintendent in actual charge of mines.

§22-6-14. Plats prerequisite to introducing liquids or
waste into wells; preparation and contents;
notice and information furnished to coal
operators, owners or lessees and director;
issuance of permits; performance bonds or
security in lieu thereof.

1 (a) Before drilling a well for the introduction of
2 liquids for the purposes provided for in section twenty-
3 five of this article or for the introduction of liquids for
4 the disposal of pollutants or the effluent therefrom on
5 any tract of land, or before converting an existing well
6 for such purposes, the well operator shall have a plat
7 prepared by a registered engineer or licensed land
8 surveyor showing the district and county in which the
9 tract of land is located, the name and acreage of the
10 same, the names of the owners of all adjacent tracts, the
11 proposed or actual location of the well or wells deter-
12 mined by a survey, the courses and distances of such
13 location from two permanent points of land marked on
14 said tract and the number to be given to the well, and
15 shall forward by registered or certified mail the original
16 and one copy of the plat to the director. In addition, the
17 well operator shall provide the following information on
18 the plat or by way of attachment thereto to the director
19 in the manner and form prescribed by the director's
rules: (1) The location of all wells, abandoned or otherwise located within the area to be affected; (2) where available, the casing records of all such wells; (3) where available, the drilling log of all such wells; (4) the maximum pressure to be introduced; (5) the geological formation into which such liquid or pressure is to be introduced; (6) a general description of the liquids to be introduced; (7) the location of all water-bearing horizons above and below the geological formation into which such pressure, liquid or waste is to be introduced; and (8) such other information as the director by rule may require.

(b) In the event the tract of land on which said well proposed to be drilled or converted for the purposes provided for in this section is located is known to be underlaid with coal seams, copies of the plat and all information required by this section shall be forwarded by the operator by registered or certified mail to each and every coal operator operating coal seams beneath said tract of land, who has mapped the same and filed such maps with the office of miners' health, safety and training in accordance with chapter twenty-two-a of this code, and the coal seam owner of record and lessee of record, if any, if said owner or lessee has recorded the declaration provided in section thirty-six of this article, and if said owner or lessee is not yet operating said seams beneath said tract of land. With each of such plats, there shall be enclosed a notice (form for which shall be furnished on request by the director) addressed to the director and to each such coal operator, owner or lessee, if any, at their respective addresses, informing them that such plat and notice are being mailed to them, respectively, by registered or certified mail, pursuant to the requirements of this section.

(c) If no objections are made by any such coal operator, owner or lessee, or the director such proposed drilling or converting of the well or wells for the purposes provided for in this section within thirty days from the receipt of such plat and notice by the director, the same shall be filed and become a permanent record of such location or well, subject to inspection at any time.
by any interested person, and the director may after
public notice and opportunity to comment, issue such
permit authorizing the well operator to drill at such
location or convert such existing well or wells for the
purposes provided for in this section. The notice above
provided for may be given to the coal operator by
delivering or mailing it by registered or certified mail
as above to any agent or superintendent in actual charge
of the mines.

(d) A permit to drill a well or wells or convert an
existing well or wells for the purposes provided for in
this section shall not be issued until all of the bonding
provisions required by the provisions of section twelve
of this article have been fully complied with and all such
bonding provisions shall apply to all wells drilled or
converted for the purposes provided for in this section
as if such wells had been drilled for the purposes
provided for in section twelve of this article, except that
such bonds shall be conditioned upon full compliance
with all laws, rules relating to the drilling of a well or
the converting of an existing well for the purposes
provided for in said section twenty-five, or introducing
of liquids for the disposal of pollutants including the
redrilling, deepening, casing, plugging or abandonment
of all such wells.

§22-6-15. Objections to proposed drilling of deep wells
and oil wells; objections to fracturing; notices and hearings; agreed locations or conditions; indication of changes on plats, etc.; issuance of permits.

(a) When a proposed deep well drilling site or oil well
drilling site or any site is above a seam or seams of coal,
then the coal operator operating said coal seams beneath
the tract of land, or the coal seam owner or lessee, if
any, if said owner or lessee is not yet operating said coal
seams, may within fifteen days from the receipt by the
director of the plat and notice required by section twelve
of this article, or within fifteen days from the receipt
by the director of notice required by section thirteen of
this article, file objections in writing (forms for which
will be furnished by the director on request) to such
proposed drilling or fracturing with the director, setting out therein as definitely as is reasonably possible the ground or grounds on which such objections are based.

If any objection is filed, or if any objection is made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than fifteen days from the end of said fifteen-day period, at which such objections will be considered of which time and place the well operator and all objecting coal operators, owners or lessees, if any, shall be given at least ten days' written notice by the director, by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, shall proceed to consider the objections.

In the case of proposed drilling, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat on file with the director, and the distance and direction of the new location from the original location shall be shown, and as so altered, the plat shall be filed and become a permanent record, and in the case of proposed fracturing, such parties present or represented may agree upon conditions under which the well is to be fractured which will protect life and property and which will satisfy all objections and meet the approval of the director, at which time the plat and notice required by section twelve or the notice required by section thirteen, as the case may be, shall be filed and become a permanent record. Whereupon the director shall forthwith issue to the well operator a drilling or fracturing permit, as the case may be, reciting the filing of the plat and notice required by said section twelve, or the notice required by said section thirteen, as the case may be, that at a hearing duly held a location as shown on the plat or the conditions under which the fracturing is to take place for the protection of life and property were agreed upon and approved, and that the well operator is authorized to drill at such
(b) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing are unable to agree upon a drilling location, or upon a drilling location that meets the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with the article. The director shall take into consideration in arriving at his decision:

1. Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travel-way, airway, haulageway, drainageway or passageway, or to any proposed extension thereof in any operated or abandoned or operating coal mine or coal mines already surveyed and platted, but not yet being operated;

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

3. Whether a well can be drilled safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

4. The extent to which the proposed drilling location unreasonably interferes with the safe recovery of coal, oil and gas.

At the close of the hearing or within ten days thereafter the director shall issue an order: (1) Refusing to issue a permit;

(2) Issuing a permit for the proposed drilling location;

or

(3) Issuing a permit for a drilling location different from that requested by the well operator.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered
or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the new drilling location on the plat on file and shall number and keep an index of and docket each plat and notice received by mail as provided in section twelve of this article, and each notice mailed as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

(c) In the event the well operator and the objecting coal operators, owners or lessees, if any, or such as are present or represented at such hearing, are unable to agree upon the conditions under which the well is to be fractured as to protect life and property, or upon conditions of fracturing that meet with the approval of the director, then the director shall proceed to hear the evidence and testimony in accordance with sections one and two, article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this article.

The director shall take into consideration whether the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other disturbances.

At the close of the hearing, or within ten days thereafter, the director shall issue an order stating the conditions under which the well is to be fractured, provided the well can be fractured safely, taking into consideration the dangers from creeps, squeezes or other
disturbances. If such fracturing cannot be done safely, the director shall issue an order stating with particularity the reasons for refusing to issue a permit.

The order shall state with particularity the reasons for the director's order and shall be mailed by registered or certified mail to the parties present or represented at such hearing. If the director has ruled that a permit will be issued, the director shall issue a permit effective ten days after such order is mailed, except that for good cause shown, the director may stay the issuance of a permit for a period not to exceed thirty days.

If a permit is issued, the director shall indicate the well to be fractured on the plat on file and shall number and keep an index of and docket each plat and notice received by mail as provided in section twelve of this article, and each notice received by mail as provided in section thirteen of this article, entering in such docket the name of the well operator, the names and addresses of all persons notified, the dates of hearings and all actions taken by the director. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22-6-16. Objections to proposed drilling or converting for introducing liquids or waste into wells; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits; docket of proceeding.

(a) When a well is proposed to be drilled or converted for the purposes provided for in section fourteen of this article, and is above a seam or seams of coal, then the coal operator operating said coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams, may within fifteen days from the receipt by the director of the plat and notice required by section fourteen of this article, file objections in writing (forms...
for which will be furnished by the director on request) to such proposed drilling or conversion.

(b) In any case wherein a well proposed to be drilled or converted for the purposes provided for in section fourteen of this article shall, in the opinion of the chief of the office of water resources, affect detrimentally the reasonable standards of purity and quality of the waters of the state, such chief shall, within the time period established by the director for the receipt of public comment on such proposed drilling conversion, file with the director such objections in writing to such proposed drilling or conversion, setting out therein as definitely as is reasonably possible the ground or grounds upon which such objections are based and indicating the conditions, consistent with the provisions of this article and the rules promulgated thereunder, as may be necessary for the protection of the reasonable standards of the purity and quality of such waters under which such proposed drilling or conversion may be completed to overcome such objections, if any.

(c) If any objection or objections are so filed, or are made by the director, the director shall notify the well operator of the character of the objections and by whom made and fix a time and place, not less than thirty days from the end of said thirty-day period, at which such objections will be considered, of which time and place the well operator and all objecting coal operators, the owners or lessees, if any, or such chief, shall be given at least ten days' written notice by the director by registered or certified mail, and summoned to appear. At the time and place so fixed the well operator and the objecting coal operators, owners or lessees, if any, or such of them as are present or represented, or such chief, shall proceed to consider the objections. In the case of proposed drilling or converting of a well for the purposes provided for in section fourteen of this article, such parties present or represented may agree upon either the location as made or so moved as to satisfy all objections and meet the approval of the director, and any change in the original location so agreed upon and approved by the director shall be indicated on said plat.
on file with the director, and the distance and direction
of the new location from the original location shall be
shown, and, as so altered, the plat shall be filed and
become a permanent record. In the case of proposed
conversion, such parties present or represented may
agree upon conditions under which the conversion is to
take place for the protection of life and property or for
protection of reasonable standards of purity and quality
of the waters of the state. At which time the plat and
notice required by section fourteen shall be filed and
become a permanent record. Whereupon the director
may issue to the well operator a permit to drill or
convert, as the case may be, reciting the filing of the
plat and notice required by said section fourteen that at
a hearing duly held a location as shown on the plat or
the conditions under which the conversion is to take
place for the protection of life and property and
reasonable standards of purity and quality of the waters
of the state where agreed upon and approved, and that
the well operator is authorized to drill at such location
or to convert at the site shown on such plat, as the case
may be.

(d) (1) In the case the well operator and the objecting
coal operators, owners or lessees, if any, and such chief,
or such as are present or represented at such hearing
are unable to agree upon a drilling location, or upon a
drilling location that meets the approval of the director,
then the director shall proceed to hear the evidence and
testimony in accordance with sections one and two,
article five, chapter twenty-nine-a of this code, except
where such provisions are inconsistent with this article.
The director shall take into consideration upon decision:

(A) Whether the drilling location is above or in close
proximity to any mine opening or shaft, entry, traveling,
air haulage, drainage or passageway, or to any proposed
extension thereof, in any operated or abandoned or
operating coal mine, or coal mine already surveyed and
platted, but not yet being operated;

(B) Whether the proposed drilling can reasonably be
done through an existing or planned pillar of coal, or
in close proximity to an existing well or such pillar of
92 coal, taking into consideration the surface topography;
93 (C) Whether a well can be drilled safely, taking into
94 consideration the dangers from creeps, squeezes or other
95 disturbances, due to the extraction of coal; and
96 (D) The extent to which the proposed drilling location
97 unreasonably interferes with the safe recovery of coal,
98 oil and gas.
99 (2) At the close of the hearing or within ten days
100 thereafter the director shall issue an order:
101 (A) Refusing to issue a permit;
102 (B) Issuing a permit for the proposed drilling location;
103 or
104 (C) Issuing a permit for a drilling location different
105 than that requested by the well operator.
106 The order shall state with particularity the reasons for
107 the director's order and shall be mailed by registered
108 or certified mail to the parties present or represented
109 at such hearing. If the director has ruled that a permit
110 will be issued, the director shall issue a permit effective
111 ten days after such order is mailed: Except that for good
112 cause shown, the director may stay the issuance of a
113 permit for a period not to exceed thirty days.
114 (3) If a permit is issued, the director shall indicate the
115 new drilling location on the plat on file with the director
116 and shall number and keep an index of and docket each
117 plat and notice mailed to the director as provided in
118 section twelve of this article, and each notice mailed to
119 the director as provided in section thirteen of this
120 article, entering in such docket the name of the well
121 operator, and the names and addresses of all persons
122 notified, the dates of hearings and all actions taken by
123 the director, permits issued or refused, the papers filed
124 and a transcript of the hearing. This shall constitute a
125 record of the proceedings before the director and shall
126 be open to inspection by the public.
127 (e)(1) In the case, the well operator and the objecting
128 coal operators, owners or lessees, if any, and such chief,
129 or such as are present or represented at such hearing,
are unable to agree upon the conditions under which the
well is to be converted as to protect life and property,
and the reasonable standards of purity and quality of
the waters of the state, or upon conditions of converting
that meet with the approval of the director, then the
director shall proceed to hear the evidence and testi-
mony in accordance with sections one and two, article five,
chapter twenty-nine-a of this code, except where such
provisions are inconsistent with this article. The director
shall take into consideration upon decision:

(A) Whether the well can be converted safely, taking
into consideration the dangers from creeps, squeezes or
other disturbances;

(B) Whether the well can be converted, taking into
consideration the reasonable standards of the purity and
quality of the waters of the state.

(2) At the close of the hearing, or within ten days
thereafter, the director shall issue an order stating the
conditions under which the conversion is to take place,
providing the well can be converted safely, taking into
consideration the dangers from creeps, squeezes or other
disturbances and the reasonable standards of purity and
quality of the waters of this state. If such converting
cannot be done safely, or if the reasonable standards of
purity and quality of such waters will be endangered,
the director shall issue an order stating with particu-
larity the reasons for refusing to issue a permit.

(3) The order shall state with particularity the reasons
for the director's order and shall be mailed by registered
or certified mail to the parties present or represented
at such hearing. If the director has ruled that a permit
will be issued, such permit shall become effective ten
days after the division has mailed such order: Except
for good cause shown, the director may stay the issuance
of a permit for a period not to exceed thirty days.

(4) If a permit is issued, the director shall indicate the
well to be converted on the plat on file with the director,
and shall number and keep an index of and docket each
plat and notice mailed to the director as provided in
section fourteen of this article, entering in such docket
the name of the well operator, and the names and
addresses of all persons notified, the dates of hearings
and all actions taken by the director, permits issued or
refused, the papers filed and a transcript of the
hearings. This shall constitute a record of the proceed-
ings before the director and shall be open to inspection
by the public.

§22-6-17. Objections to proposed drilling of shallow gas
wells; notice to chair of review board; indica-
tion of changes on plats; issuance of
permits.

When a proposed shallow well drilling site is above
a seam or seams of coal, then the owner of any such coal
seam may, within fifteen days from the receipt by the
director of the plat and notice required by section twelve
of this article, file objections in writing (forms for which
will be furnished by the director on request) to such
proposed drilling with the director, setting out therein
as definitely as is reasonably possible the ground or
grounds on which such objections are based.

If any such objection is filed, or if any objection is
made by the director, the director shall forthwith mail,
by registered or certified mail, to the chair of the review
board, a notice that an objection to the proposed drilling
or deepening of a shallow well has been filed with or
made by the director, and shall enclose in such notice
a copy of all objections and of the application and plat
filed with the director in accordance with the provisions
of section twelve of this article.

Thereafter, no further action shall be taken on such
application by the director until an order is received
from the review board directing the director to:

(a) Refuse a drilling permit; or

(b) Issue a drilling permit for the proposed drilling
location; or

(c) Issue a drilling permit for an alternate drilling
location different from that requested by the well
operator; or
(d) Issue a drilling permit either for the proposed drilling location or for an alternate drilling location different from that requested by the well operator, but not allow the drilling of the well for a period of not more than one year from the date of issuance of such permit.

Upon receipt of such board order, the director shall promptly undertake the action directed by the review board, except that the director shall not issue a drilling permit unless all other provisions of this article (except section fifteen) pertaining to the application for and approval of a drilling permit have been complied with. All permits issued by the director pursuant to this section shall be effective ten days after issuance unless the review board orders the director to stay the effectiveness of a permit for a period not to exceed thirty days from the date of issuance.

If a permit is issued, the director shall indicate the approved drilling location on the plat filed with the director in accordance with the provisions of section twelve of this article and shall number and keep an index of and docket each plat and notice mailed to the director as provided in section twelve of this article, and each notice mailed to the director as provided in section thirteen of this article, entering in such docket the name of the well operator, and the names and addresses of all persons notified, the dates of conferences, hearings and all other actions taken by the director and the review board. The director shall also prepare a record of the proceedings, which record shall include all applications, plats and other documents filed with the director, all notices given and proof of service thereof, all orders issued, all permits issued and a transcript of the hearing. The record prepared by the director shall be open to inspection by the public.

§22-6-18. Protective devices — When well penetrates workable coal bed; when gas is found beneath or between workable coal beds.

(a) When a well penetrates one or more workable coal beds, the well operator shall run and cement a string of casing in the hole through the workable coal bed or
beds in such a manner as will exclude all oil, gas or gas
pressure from the coal bed or beds, except such oil, gas
or gas pressure as may be found in such coal bed or
beds. Such string of casing shall be run to a point at
least thirty feet below the lowest workable coal bed
which the well penetrates and shall be circulated and
cemented from such point to the surface in such a
manner as provided for in reasonable rules promulgated
by the director in accordance with the provisions of
chapter twenty-nine-a. After any such string of casing
has been so run and cemented to the surface, drilling
may proceed to the permitted depth.

(b) In the event that gas is found beneath a workable
coal bed before the hole has been reduced from the size
it had at the coal bed, a packer shall be placed below
the coal bed, and above the gas horizon, and the gas by
this means diverted to the inside of the adjacent string
of casing through perforations made in such casing, and
through it passed to the surface without contact with the
coal bed. Should gas be found between two workable
beds of coal, in a hole, of the same diameter from bed
to bed, two packers shall be placed, with perforations
in the casing between them, permitting the gas to pass
to the surface inside the adjacent casing. In either of the
cases here specified, the strings of casing shall extend
from their seats to the top of the well.

§22-6-19. Same — Continuance during life of well; dry or
abandoned wells.

In the event that a well becomes productive of natural
gas or petroleum, or is drilled for or converted for the
introduction of pressure, whether liquid or gas, or for
the introduction of liquid for the purposes provided for
in section twenty-five of this article or for the disposal
of pollutants or the effluent therefrom, all coal-protect-
ing strings of casing and all water-protecting strings of
casing shall remain in place until the well is plugged
or abandoned. During the life of the well the annular
spaces between the various strings of casing adjacent to
workable beds of coal shall be kept open, and the top
ends of all such strings shall be provided with casing
heads, or such other suitable devices as will permit the
free passage of gas and prevent filling of such annular spaces with dirt or debris.

Any well which is completed as a dry hole or which is not in use for a period of twelve consecutive months shall be presumed to have been abandoned and shall promptly be plugged by the operator in accordance with the provisions of this article, unless the operator furnishes satisfactory proof to the director that there is a bona fide future use for such well.

§22-6-20. Same — When well is drilled through horizon of coal bed from which coal has been removed.

When a well is drilled through the horizon of a coal bed from which the coal has been removed, the hole shall be drilled at least thirty feet below the coal bed, of a size sufficient to permit the placing of a liner which shall start not less than twenty feet beneath the horizon of the coal bed and extend not less than twenty feet above it. Within this liner, which may be welded to the casing to be used, shall be centrally placed the largest sized casing to be used in the well, and the space between the liner and casing shall be filled with cement as they are lowered into the hole. Cement shall be placed in the bottom of the hole to a depth of twenty feet to form a sealed seat for both liner and casing. Following the setting of the liner, drilling shall proceed in the manner provided above. Should it be found necessary to drill through the horizon of two or more workable coal beds from which the coal has been removed, such liner shall be started not less than twenty feet below the lowest such horizon penetrated and shall extend to a point not less than twenty feet above the highest such horizon.

§22-6-21. Same — Installation of fresh water casings.

When a permit has been issued for the drilling of an oil or gas well or both, each well operator shall run and permanently cement a string of casing in the hole through the fresh water bearing strata in such a manner and to the extent provided for in rules promulgated by the director in accordance with the provisions of this
No oil or gas well shall be drilled nearer than two hundred feet from an existing water well or dwelling without first obtaining the written consent of the owner of such water well or dwelling.

§22-6-22. Well log to be filed; contents; authority to promulgate rules.

Within a reasonable time after the completion of the drilling of a well, the well operator shall file with the director an accurate log. Such log shall contain the character, depth and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine and oil and gas bearing formations and such other information as the director may require to effectuate the purposes of this chapter.

The director may promulgate such reasonable rules in accordance with article three, chapter twenty-nine-a of this code, as he may deem necessary to insure that the character, depth and thickness of geological formations encountered are accurately logged: Provided, That the director shall not require logging by the use of an electrical logging device.

§22-6-23. Plugging, abandonment and reclamation of well; notice of intention; bonds; affidavit showing time and manner.

All dry or abandoned wells or wells presumed to be abandoned under the provisions of section nineteen of this article shall be plugged and reclaimed in accordance with this section and the other provisions of this article and in accordance with the rules promulgated by the director.

Prior to the commencement of plugging operations and the abandonment of any well, the well operator shall either (a) notify, by registered or certified mail, the director and the coal operator operating coal seams, the coal seam owner of record or lessee of record, if any, to whom notices are required to be given by section twelve of this article, and the coal operators to whom notices are required to be given by section thirteen of this
article, of its intention to plug and abandon any such
well (using such form of notice as the director may
provide), giving the number of the well and its location
and fixing the time at which the work of plugging and
filling will be commenced, which time shall be not less
than five days after the day on which such notice so
mailed is received or in due course should be received
by the director, in order that a representative or
representatives of the director and such coal operator,
owner or lessee, if any, may be present at the plugging
and filling of the well: Provided, That whether such
representatives appear or do not appear, the well
operator may proceed at the time fixed to plug and fill
the well in the manner hereinafter described, or (b) first
obtain the written approval of the director and such coal
operator, owner or lessee, if any, or (c) in the event the
well to be plugged and abandoned is one on which
drilling or reworking operations have been continuously
progressing pursuant to authorization granted by the
director, first obtain the verbal permission of the
director or the director's designated representative to
plug and abandon such well, except that the well
operator shall, within a reasonable period not to exceed
five days after the commencement of such plugging
operations, give the written notices required by subdi-
vision (a) above.

No well may be plugged or abandoned unless prior to
the commencement of plugging operations and the
abandonment of any well the director is furnished a
bond as provided in section twenty-six of this article.

When the plugging, filling and reclamation of a well
have been completed, an affidavit, in triplicate, shall be
made (on a form to be furnished by the director) by two
experienced persons who participated in the work, the
director or the director's designated representative, in
which affidavit shall be set forth the time and manner
in which the well was plugged and filled and the land
reclaimed. One copy of this affidavit shall be retained
by the well operator, another (or true copies of same)
shall be mailed to the coal operator or operators, if any,
and the third to the director.
§22-6-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation
2 of any well drilled for natural gas or petroleum, or
3 drilled or converted for the introduction of pressure,
4 whether liquid or gas, or for the introduction of liquid
5 for the purposes provided for in section twenty-five of
6 this article or for the disposal of pollutants or the
7 effluent therefrom the well operator, at the time of such
8 abandonment or cessation, shall fill and plug the well
9 in the following manner:

10 (a) Where the well does not penetrate workable coal
11 beds, it shall either be filled with mud, clay or other
12 nonporous material from the bottom of the well to a
13 point twenty feet above the top of its lowest oil, gas or
14 water-bearing stratum; or a permanent bridge shall be
15 anchored thirty feet below its lowest oil, gas or water-
16 bearing stratum, and from such bridge it shall be filled
17 with mud, clay or other nonporous material to a point
18 twenty feet above such stratum; at this point there shall
19 be placed a plug of cement or other suitable material
20 which will completely seal the hole. Between this sealing
21 plug and a point twenty feet above the next higher oil,
22 gas or water-bearing stratum, the hole shall be filled,
23 in the manner just described; and at such point there
24 shall be placed another plug of cement or other suitable
25 material which will completely seal the hole. In like
26 manner the hole shall be filled and plugged, with
27 reference to each of its oil, gas or water-bearing strata.
28 However, whenever such strata are not widely separated
29 and are free from water, they may be grouped and
30 treated as a single sand, gas or petroleum horizon, and
31 the aforesaid filling and plugging be performed as
32 though there were but one horizon. After the plugging
33 of all oil, gas or water-bearing strata, as aforesaid, a
34 final cement plug shall be placed approximately ten feet
35 below the bottom of the largest casing in the well; from
36 this point to the surface the well shall be filled with
37 mud, clay or other nonporous material. In case any of
38 the oil or gas-bearing strata in a well shall have been
39 shot, thereby creating cavities which cannot readily be
40 filled in the manner above described, the well operator
shall follow either of the following methods:

(1) Should the stratum which has been shot be the lowest one in the well, there shall be placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of cement or other suitable material which will completely seal the hole. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in the manner specified shall be done at the nearest suitable point, but not less than twenty feet below and above the stratum shot, or (2), when such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner shall be placed which shall extend from below the stratum to a suitable point, but not less than twenty feet above the stratum in which shooting has been done. In the event, however, that the shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the stratum in which shooting has been done. Following the placing of the liner in the manner here specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

(b) Where the well penetrates one or more workable coal beds and a coal protection string of casing has been circulated and cemented in to the surface, the well shall be filled and securely plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately one hundred feet below the bottom of the coal protection string of casing. A one hundred foot plug of expanding cement shall then be placed in the well so that the top of such plug is located at a point just below the coal protection string of casing. After such plug has been securely placed in the well, the coal protection string of casing shall be emptied of liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the bottom of the coal protection string of casing, whichever is shallower. A vent or other device approved by the director shall then be installed on the top of the
coal protection string of casing in such a manner that
will prevent liquids and solids from entering the well
but will permit ready access to the full internal
diameter of the coal protection string of casing when
required. The coal protection string of casing and the
vent or other device approved by the director shall
extend, when finally in place, a distance of not less than
thirty inches above ground level and shall be perman-
ently marked with the well number assigned by the
director;

(c) Where the well penetrates one or more workable
coal beds and a coal protection string of casing has not
been circulated and cemented in to the surface, the well
shall be filled and securely plugged in the manner
provided in subsection (a) of this section to a point fifty
feet below the lowest workable coal bed. Thereafter, a
plug of cement shall be placed in the well at a point not
less than forty feet below the lowest workable coal bed.
After the cement plug has been securely placed in the
well, the well shall be filled with cement to a point
twenty feet above the lowest workable coal bed. From
this point the well shall be filled with mud, clay or other
nonporous material to a point forty feet beneath the next
overlying workable coal bed, if such there be, and the
well shall then be filled with cement from this point to
a point twenty feet above such workable coal bed, and
similarly, in case there are more overlying workable
coal beds. After the filling and plugging of the well to
a point above the highest workable coal bed, filling and
plugging of the well shall continue in the manner
provided in subsection (a) of this section to a point fifty
feet below the surface, and a plug of cement shall be
installed from the point fifty feet below the surface to
the surface with a monument installed therein extend-
ing thirty inches above ground level;

(d) (1) Where the well penetrates one or more
workable coal beds and a coal protection string of casing
has not been circulated and cemented in to the surface,
a coal operator or coal seam owner may request that the
well be plugged in the manner provided in subdivision
(3) of this subsection rather than by the method provided
in subsection (c) of this section. Such request (forms for
which shall be provided by the director) must be filed
in writing with the director prior to the scheduled
plugging of the well, and must include the number of
the well to be plugged and the name and address of the
well operator. At the time such request is filed with the
director, a copy of such request must also be mailed by
registered or certified mail to the well operator named
in the request.

(2) Upon receipt of such request, the director shall
issue an order staying the plugging of the well and shall
promptly determine the cost of plugging the well in the
manner provided in subdivision (3) of this subsection
and the cost of plugging the well in the manner provided
in subsection (c) of this section. In making such
determination, the director shall take into consideration
any agreement previously made between the well
operator and the coal operator or coal seam owner
making the request. If the director determines that the
cost of plugging the well in the manner provided in
subsection (c) of this section exceeds the cost of plugging
the well in the manner provided in subdivision (3) of this
subsection, the director shall grant the request of the
cal operator or owner and shall issue an order
requiring the well operator to plug the well in the
manner provided in subdivision (3) of this subsection. If
the director determines that the cost of plugging the
well in the manner provided in subsection (c) of this
section is less than the cost of plugging the well in the
manner provided in subdivision (3) of this subsection,
the director shall request payment into escrow of the
difference between the determined costs by the coal
operator or coal seam owner making the request. Upon
receipt of satisfactory notice of such payment, or upon
receipt of notice that the well operator has waived such
payment, the director shall grant the request of the coal
operator or coal seam owner and shall issue an order
requiring the well operator to plug the well in the
manner provided in subdivision (3) of this subsection. If
satisfactory notice of payment into escrow, or notice that
the well operator has waived such payment, is not
received by the director within fifteen days after the
request for payment into escrow, the director shall issue an order permitting the plugging of the well in the manner provided in subsection (c) of this section. Copies of all orders issued by the director shall be sent by registered or certified mail to the coal operator or coal seam owner making the request and to the well operator. When the escrow agent has received certification from the director of the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is, the difference between the director's determination of plugging cost in the manner provided in subsection (c) of this section and the well operator's actual plugging cost in the manner provided in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well operator or the well operator's nominee from the payment into escrow to the extent available. The amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or the well operator's nominee is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall pay the deficiency to the well operator or the well operator's nominee within thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall have a right of action and be entitled to recover damages as if for wrongful conversion of personalty, and reasonable attorney fees.

(3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision (1) of this subsection has been granted by the director, the well shall be plugged in the manner provided in subsection (a) of this section, except that expanding cement shall be used instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning at the point approximately two hundred feet below the lowest workable coal bed and extending to a point approximately one hundred feet below the lowest workable coal bed. A string of casing with an outside diameter no less than four and one-half inches shall then be run into the
well to a point approximately one hundred feet below
the lowest workable coal bed and such string of casing
shall be circulated and cemented in to the surface. The
casing shall then be emptied of liquid from a point
approximately one hundred feet below the lowest
workable coal bed to the surface, and a vent or other
device approved by the director shall be installed on the
top of the string of casing in such a manner that it will
prevent liquids and solids from entering the well but
will permit ready access to the full internal diameter of
the coal protection string of casing when required. The
string of casing and the vent or other device approved
by the director shall extend, when finally in place, a
distance of no less than thirty inches above ground level
and shall be permanently marked with the well number
assigned by the director. Notwithstanding the foregoing
provisions of this subdivision, if under particular
circumstances a different method of plugging is
required to obtain the approval of another governmental
agency for the safe mining through of said well, the
director may approve such different method of plugging
if the director finds the same to be as safe for mining
through and otherwise adequate to prevent gas or other
fluid migration from the oil and gas reservoirs as the
method above specified.

(e) Any person may apply to the director for an order
to clean out and replug a previously plugged well in a
manner which will permit the safe mining through of
such well. Such application shall be filed with the
director and shall contain the well number, a general
description of the well location, the name and address
of the owner of the surface land upon which the well
is located, a copy of or record reference to a deed, lease
or other document which entitles the applicant to enter
upon the surface land, a description of the methods by
which the well was previously plugged, and a descrip-
tion of the method by which such applicant proposes to
clean out and replug the well. At the time an application
is filed with the director, a copy shall be mailed by
registered or certified mail to the owner or owners of
the land, and the oil and gas lessee of record, if any, of
the site upon which the well is located. If no objection
to the replugging of the well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the application, and if the director determines that the method proposed for replugging the well will permit the safe mining through of such well, the director shall grant the application by an order authorizing the replugging of the well. Such order shall specify the method by which the well shall be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which such well is located. If any such landowner or oil and gas lessee objects to the replugging of the well, the director shall notify the applicant of such objection. Thereafter, the director shall schedule a hearing to consider the objection, which hearing shall be held after notice by registered or certified mail to the objectors and the applicant. After consideration of the evidence presented at the hearing, the director shall issue an order authorizing the replugging of the well if the director determines that replugging of the well will permit the safe mining through of such well. Such order shall specify the manner in which the well shall be replugged and copies thereof shall be sent by registered or certified mail to the applicant and objectors. The director shall issue an order rejecting the application if the director determines that the proposed method for replugging the well will not permit the safe mining through of such well;

(f) All persons adversely affected, by a determination or order of the director issued pursuant to the provisions of this section shall be entitled to judicial review in accordance with the provisions of articles five and six, chapter twenty-nine-a of this code.

§22-6-25. Introducing liquid pressure into producing strata to recover oil contained therein.

The owner or operator of any well or wells which produce oil or gas may allow such well or wells to remain open for the purpose of introducing water or other liquid pressure into and upon the producing strata for the purpose of recovering the oil contained therein,
and may drill additional wells for like purposes, provided that the introduction of such water or other liquid pressure shall be controlled as to volume and pressure and shall be through casing or tubing which shall be so anchored and packed that no water-bearing strata or other oil, or gas-bearing sand or producing stratum, above or below the producing strata into and upon which such pressure is introduced, shall be affected thereby, fulfilling requirements as set forth under section fourteen.

§22-6-26. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond as described in subsection (d) of this section which is required for a particular activity by this article is or has been furnished as provided in this section.

(b) A separate bond as described in subsection (d) of this section may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond as described in subsection (d) of this section shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Every such bond shall be in the sum of ten thousand dollars, payable to the state of West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing and stimulating of oil and gas wells (or, if applicable, with all laws, rules relating to drilling or converting wells for the introduction of liquids for the purposes provided for in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas wells or to drill or convert a number of wells for the
introduction of liquids for the purposes provided in
section twenty-five of this article, the operator may in
lieu of furnishing a separate bond furnish a blanket
bond in the sum of fifty thousand dollars, payable to the
state of West Virginia, and conditioned as aforesaid in
subsection (b) of this section.

(d) The form of the bond required by this article shall
be approved by the director and may include, at the
option of the operator, surety bonding, collateral
bonding (including cash and securities) letters of credit,
establishment of an escrow account, self-bonding or a
combination of these methods. If collateral bonding is
used, the operator may elect to deposit cash, or collateral
securities or certificates as follows: Bonds of the United
States or its possessions, of the federal land bank, or the
homeowners’ loan corporation; full faith and credit
general obligation bonds of the state of West Virginia,
or other states, and of any county, district or municipal-
ity of the state of West Virginia or other states; or
certificates of deposit in a bank in this state, which
cash deposit or market value of such securities or certificates
shall be equal to or greater than the amount of the bond.
The director shall, upon receipt of any such deposit of
cash, securities or certificates, promptly place the same
with the treasurer of the state of West Virginia whose
duty it shall be to receive and hold the same in the name
of the state in trust for the purpose of which the deposit
is made when the permit is issued. The operator shall
be entitled to all interest and income earned on the
collateral securities filed by such operator. The operator
making the deposit shall be entitled from time to time
to receive from the state treasurer, upon the written
approval of the director, the whole or any portion of any
cash, securities or certificates so deposited, upon
depositing with the treasurer in lieu thereof, cash or
other securities or certificates of the classes herein
specified having value equal to or greater than the
amount of the bond.

(e) When an operator has furnished a separate bond
from a corporate bonding or surety company to drill,
fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is ten thousand dollars. When the sum of the cash deposited is ten thousand dollars, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the treasurer of the state of West Virginia. The treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as the operator has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities or other forms of security, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities or other forms of security are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities or other forms of security are accepted by the treasurer of the state of West Virginia. If the operator does not furnish a new bond or collateral securities or other forms of security, as provided in the next preceding paragraph of this section, with the director, the operator shall immediately plug, fill and reclaim the well in
accordance with all of the provisions of law and rules applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws and rules.

(f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue to be valid for all work on the well permitting prior to the eleventh day of July, one thousand nine hundred eighty-five; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond shall be discharged by operation of law; and if the director determines that any operator has not furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond within sixty days after receipt of the notice from the director shall work a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five.

(g) Any such bond shall remain in force until released by the director and the director shall release the same upon satisfaction that the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the director to the operator who deposited same.

(h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the department of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than five days after the date of the assignment or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name
and the permit number of the subject well, the county
and district in which the subject well is located, the
names and addresses of the assignor or transferor, and
assignee or transferee, a copy of the instrument of
assignment or transfer accompanied by the applicable
bond, cash, collateral security or other forms of security,
described in section twelve, fourteen, twenty-three or
twenty-six of this article, and the name and address of
the assignee's or transferee's designated agent if
assignee or transferee would be required to designate
such an agent under section six of this article, if
assignee or transferee were an applicant for a permit
under said section six. Every well operator required to
designate an agent under this section shall within five
days after the termination of such designation notify the
department of such termination and designate a new
agent.

Upon compliance with the requirements of this section
by assignor or transferor and assignee or transferee, the
director shall release assignor or transferor from all
duties and requirements of this article, and the deputy
director shall give written notice of release unto
assignor or transferor of any bond and return unto
assignor or transferor any cash or collateral securities
deposited pursuant to section twelve, fourteen, twenty-
three or twenty-six of this article.

(i) If any of the requirements of this article or rules
promulgated pursuant thereto or the orders of the
director have not been complied with within the time
limit set by the violation notice as defined in sections
three, four and five of this article, the performance bond
shall then be forfeited.

(j) When any bond is forfeited pursuant to the
provisions of this article or rules promulgated pursuant
thereto, the director shall give notice to the attorney
general who shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the treasury
of the state of West Virginia in the special reclamation
fund as defined in section twenty-nine of this article.

§22-6-27. Cause of action for damages caused by
explosions.

Any person suffering personal injury or property damage due to any explosion caused by any permittee, shall have a cause of action against such permittee for three years after the explosion regardless of when the explosion occurred.

§22-6-28. Supervision by director over drilling and reclamation operations; complaints; hearings; appeals.

(a) The director shall exercise supervision over the drilling, casing, plugging, filling and reclamation of all wells and shall have such access to the plans, maps and other records and to the properties of the well operators as may be necessary or proper for this purpose, and, either as the result of its own investigations or pursuant to charges made by any well operator or coal operator, the director may enter, or shall permit any aggrieved person to file before the director, a formal complaint charging any well operator with not drilling or casing, or not plugging or filling, or reclaiming any well in accordance with the provisions of this article, or to the order of the director. True copies of any such complaints shall be served upon or mailed by registered mail to any person so charged, with notice of the time and place of hearing, of which the operator or operators so charged shall be given at least five days' notice. At the time and place fixed for hearing, full opportunity shall be given any person so charged or complaining to be heard and to offer such evidence as desired, and after a full hearing, at which the director may offer in evidence the results of such investigations as the director may have made, the director shall make findings of fact and enter such order as in the director's judgment is just and right and necessary to secure the proper administration of this article, and if the director deems necessary, restraining the well operator from continuing to drill or case any well or from further plugging, filling or reclaiming the same, except under such conditions as the director may impose in order to ensure a strict compliance with the provisions of this article relating to such matters.
(b) Except as provided in subsection (c) of this section, any well operator or coal operator adversely affected by a final decision or order of the director, may appeal in the manner prescribed in section four, article five, chapter twenty-nine-a of this code.

(c) Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit, or by the permit's terms and conditions, where the subject to such order, permits or terms and conditions is solid waste, may appeal to the environmental quality board in the same manner as appeals are taken under the solid waste management act, section sixteen, article fifteen of this chapter. For the purpose of this subsection the term solid waste has the same meaning as would be given that term pursuant to section two, article fifteen of this chapter but for the exemption related to waste or material regulated by this chapter, chapter twenty-two-b or chapter twenty-two-c of this code.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

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

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

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

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

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

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

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

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

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

§22-6-30. Reclamation requirements.

The operator of a well shall reclaim the land surface
within the area disturbed in siting, drilling, completing
or producing the well in accordance with the following
requirements:

(a) Within six months after the completion of the
drilling process, the operator shall fill all the pits for
containing muds, cuttings, salt water and oil that are
not needed for production purposes, or are not required
or allowed by state or federal law or rule and remove
all concrete bases, drilling supplies and drilling
equipment. Within such period, the operator shall grade
or terrace and plant, seed or sod the area disturbed that
is not required in production of the well where necessary
to bind the soil and prevent substantial erosion and
sedimentation. No pit may be used for the ultimate
disposal of salt water. Salt water and oil shall be
periodically drained or removed, and properly disposed
of, from any pit that is retained so the pit is kept
reasonably free of salt water and oil.

(b) Within six months after a well that has produced
oil or gas is plugged, or after the plugging of a dry hole,
the operator shall remove all production and storage
structures, supplies and equipment, and any oil, salt
water and debris, and fill any remaining excavations.
Within such period, the operator shall grade or terrace
and plant, seed or sod the area disturbed where
necessary to bind the soil and prevent substantial
erosion and sedimentation.

The director may, upon written application by an
operator showing reasonable cause, extend the period
within which reclamation shall be completed, but not to
exceed a further six-month period.

If the director refuses to approve a request for
extension, the refusal shall be by order.

(c) It shall be the duty of an operator to commence
the reclamation of the area of land disturbed in siting,
drilling, completing or producing the well in accordance
with soil erosion and sediment control plans approved
by the director or the director's designate.

(d) The director shall promulgate rules setting forth
requirements for the safe and efficient installation and
burying of all production and gathering pipelines where
practical and reasonable except that such rules shall not
apply to those pipelines regulated by the public service
commission.

§22-6-31. Preventing waste of gas; plan of operation
required for wasting gas in process of
producing oil; rejection thereof.

Natural gas shall not be permitted to waste or escape
from any well or pipeline, when it is reasonably possible
to prevent such waste, after the owner or operator of
such gas, or well, or pipeline, has had a reasonable
length of time to shut in such gas in the well, or make
the necessary repairs to such well or pipeline to prevent
such waste: Provided, That (a) if, in the process of
drilling a well for oil or gas, or both, gas is found in
such well, and the owner or operator thereof desires to
continue to search for oil or gas, or both, by drilling
deeper in search of lower oil or gas-bearing strata, or
(b) if it becomes necessary to make repairs to any well
producing gas, commonly known as "cleaning out," and
if in either event it is necessary for the gas in such well
to escape therefrom during the process of drilling or
making repairs, as the case may be, then the owner or
operator of such well shall prosecute such drilling or
repairs with reasonable diligence, so that the waste of
gas from the well shall not continue longer than
reasonably necessary, and if, during the progress of such
deeper drilling or repairs, any temporary suspension
thereof becomes necessary, the owner or operator of
such well shall use all reasonable means to shut in the
gas and prevent its waste during such temporary
suspension: Provided, however, That in all cases where
both oil and gas are found and produced from the same
oil and gas-bearing stratum, and where it is necessary
for the gas therefrom to waste in the process of
producing the oil, the owner or operator shall use all
reasonable diligence to conserve and save from waste so
much of such gas as it is reasonably possible to save, but
in no case shall such gas from any well be wasted in
the process of producing oil therefrom until the owner
or operator of such well shall have filed with the
director a plan of operation for said well showing,
among other things, the gas-oil production ratio involved
in such operation, which plan shall govern the operation
of said well unless the director shall, within ten days
from the date on which such plan is submitted to the
director, make a finding that such plan fails, under all
the facts and circumstances, to propose the exercise of
all reasonable diligence to conserve and save from waste
so much of such gas as it is reasonably possible to save,
in which event production of oil at such well by the
wasting of gas shall cease and desist until a plan of
operation is approved by the director. Successive plans
of operation may be filed by the owner or operator of
any such well with the director.

§22-6-32. Right of adjacent owner or operator to prevent
waste of gas; recovery of cost.

If the owner or operator of any such well shall neglect
or refuse to drill, case and equip, or plug and abandon,
or shut in and conserve from waste the gas produced
therefrom, as required to be done and performed by the
preceding sections of this article, for a period of twenty
days after a written notice so to do, which notice may
be served personally upon the owner or operator, or may
be posted in a conspicuous place at or near the well, it
shall be lawful for the owner or operator of any adjacent
or neighboring lands or the director to enter upon the
premises where such well is situated and properly case
and equip such well, or, in case the well is to be
abandoned, to properly plug and abandon it, or in case
the well is wasting gas, to properly shut it in and make
such needed repairs to the well to prevent the waste of
gas, in the manner required to be done by the preceding
sections of this article; and the reasonable cost and
expense incurred by an owner or operator or the
director in so doing shall be paid by the owner or
operator of such well and may be recovered as debts of
like amount are by law recoverable.

The director may utilize funds and procedures
established pursuant to section twenty-nine of this
article for the purposes set out in the section. Amounts
recovered by the director pursuant to this section shall
be deposited in the oil and gas reclamation fund
established pursuant to section twenty-nine of this
article.

§22-6-33. Restraining waste.

Aside from and in addition to the imposition of any
penalties under this article, it shall be the duty of any
circuit court in the exercise of its equity jurisdiction to
hear and determine any action which may be filed to
restrain the waste of natural gas in violation of this
article, and to grant relief by injunction or by other
decrees or orders, in accordance with the principles and
practice in equity. The plaintiff in such action shall have
sufficient standing to maintain the same if the plaintiff
shall aver and prove that the plaintiff is interested in
the lands situated within the distance of one mile from
such well, either as an owner of such land, or of the oil
or gas, or both, thereunder, in fee simple, or as an owner
of leases thereof or of rights therein for the production
of oil and gas or either of them or as the director.

§22-6-34. Offenses; penalties.

(a) Any person or persons, firm, partnership, partner-
ship association or corporation who willfully violates any
provision of this article or any rule or order promul-
gated hereunder shall be subject to a civil penalty not
exceeding two thousand five hundred dollars. Each day
a violation continues after notice by the division
constitutes a separate offense. The penalty shall be
recovered by a civil action brought by the division, in
the name of the state, before the circuit court of the
county in which the subject well or facility is located.
All such civil penalties collected shall be credited to the
general fund of the state.

(b) Any person or persons, firm, partnership, partner-
ship association or corporation willfully violating any of
the provisions of this article which prescribe the manner
of drilling and casing or plugging and filling any well,
or which prescribe the methods of conserving gas from
waste, shall be guilty of a misdemeanor, and, upon
conviction thereof, shall be punished by a fine not
exceeding five thousand dollars, or imprisonment in jail
for not exceeding twelve months, or both, in the
discretion of the court, and prosecutions under this
section may be brought in the name of the state of West
Virginia in the court exercising criminal jurisdiction in
the county in which the violation of such provisions of
the article or terms of such order was committed, and
at the instance and upon the relation of any citizens of
this state.

§22-6-35. Civil action for contamination or deprivation of
fresh water source or supply; presumption.

In any action for contamination or deprivation of a
fresh water source or supply within one thousand feet
of the site of drilling for an oil or gas well, there shall
be a rebuttable presumption that such drilling, and such
oil or gas well, or either, was the proximate cause of the
contamination or deprivation of such fresh water source
or supply.

§22-6-36. Declaration of oil and gas notice by owners and
lessees of coal seams.

For purposes of notification under this article, any
owner or lessee of coal seams shall file a declaration of
the owner's or lessee's interest in such coal seams with
the clerk of the county commission in the county where
such coal seams are located. Said clerk shall file and
index such declaration in accordance with section two,
article one, chapter thirty-nine of this code, and shall
index the name of the owner or lessee of such coal seams
in the grantor index of the record maintained for the indexing of leases.

The declaration shall entitle such owner or lessee to the notices provided in sections twelve, thirteen, fourteen and twenty-three of this article: Provided, That the declaring owner shall be the record owner of the coal seam, and the declaring lessee shall be the record lessee with the owner's or lessee's source or sources of title recorded prior to recording such lessee's declaration.

The declaration shall be acknowledged by such owner or lessee, and in the case of a lessee, may be a part of the coal lease under which the lessee claims. Such declaration may be in the following language:

"DECLARATION OF OIL AND GAS NOTICE"

"The undersigned hereby declares:

(1) The undersigned is the ('owner' or 'lessee') of one or more coal seams or workable coal beds as those terms are defined in section one of this article.

(2) The coal seam(s) or workable coal bed(s) owned or leased partly or wholly by the undersigned lie(s) under the surface of lands described as follows:

(Here insert a description legally adequate for a deed, whether by metes and bounds or other locational description, or by title references such as a book and page legally sufficient to stand in lieu of a locational description.)

(3) The undersigned desires to be given all notices of oil and gas operations provided by sections twelve, thirteen, fourteen and twenty-three, of this article, addressed as follows:

(Here insert the name and mailing address of the undersigned owner or lessee.)

(Signature)

(Here insert an acknowledgment legally adequate for a deed)."
The benefits of the foregoing declaration shall be personal to the declaring owner or lessee, and not transferable or assignable in any way.

§22-6-37. Rules, orders and permits remain in effect.

1 The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of former article one, chapter twenty-two-b of this code, shall remain in full force and effect as if such rules, orders and permits were adopted by the director established in this chapter but all such rules, orders and permits shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

§22-6-38. Application of article; exclusions.

1 This article shall not apply to or affect any well work permitted prior to the effective date of this article under former article one, chapter twenty-two-b of this code, unless such well is, after completion, whether such completion is prior to or subsequent to the effective date of this article, deepened subsequent to the effective date of this article through another coal seam to another formation above the top of the uppermost member of the “Onondaga Group” or to a depth of less than six thousand feet, whichever is shallower.

§22-6-39. Injunctive relief.

1 (a) In addition to other remedies, and aside from various penalties provided by law, whenever it appears to the director that any person is violating or threatening to violate any provision of this article, any order or final decision of the director, or any lawful rule promulgated hereunder, the director may apply in the name of the state to the circuit court of the county in which the violations or any part thereof has occurred, is occurring or is about to occur, or the judge thereof in vacation, for an injunction against such persons and any other other persons who have been, are or are about to be involved in any practices, acts or admissions so in violation, enjoining such person or persons from any violation or violations. Such application may be made
and prosecuted to conclusion, whether or not any
violation or violations have resulted or shall result, in
prosecution or conviction under the provisions of this
article.

(b) Upon application by the director, the circuit courts
of this state may, by mandatory or prohibitory injunc-
tion compel compliance with the provisions of this
article, and all orders and final decisions of the director.
The court may issue a temporary injunction in any case
pending a decision on the merits of any application filed.
Any other section of this code to the contrary notwith-
standing, the state shall not be required to furnish bond
or other undertaking as a prerequisite to obtaining
mandatory, prohibitory or temporary injunctive relief
under the provisions of this article.

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

(d) The director shall be represented in all such
proceedings by the attorney general or the attorney
general's assistants or in such proceedings in the circuit
courts by the prosecuting attorney of the several
counties as well, all without additional compensation.
The director, with the written approval of the attorney
general, may employ special counsel to represent the
director in any such proceedings.

(e) If the director shall refuse or fail to apply for an
injunction to enjoin a violation or threatened violation
of any provision of this article, any order or final
decision of the director, or any rules promulgated
hereunder, within ten days after receipt of a written
request to do so by any well operator, coal operator,
operating coal seams beneath the tract of land, or the
coal seam owner or lessee, if any, if said owner or lessee
is not yet operating said coal seams beneath said tract
of land, adversely affected by such violation or threa-
tened violation, the person making such request may
apply on their own behalf for an injunction to enjoin such violation or threatened violation in any court in which the director might have brought suit. The director shall be made party defendant in such application in addition to the person or persons violating or threatening to violate any provisions of this article, any final order or decision of the director, or any rule promulgated hereunder. The application shall proceed and injunctive relief may be granted in the same manner as if the application had been made by the director: Except that the court may require a bond or other undertaking from the plaintiff.

§22-6-40. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

Any party to the proceeding under section fifteen of this article or section seven, article eight, chapter twenty-two-c of this code, adversely affected by the issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section.

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

§22-6-41. Appeal from order of issuance or refusal of permit for drilling location for introduction of liquids or waste or from conditions of converting procedure.

Any party to the proceedings under section sixteen of this article adversely affected by the order of issuance of a drilling permit or to the issuance of a fracturing permit or the refusal of the director to grant a drilling permit or fracturing permit is entitled to judicial review thereof. All of the pertinent provisions of section four,
article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of section four were set forth in extenso in this section. The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION.

§22-7-1. Legislative findings and purpose.

(a) The Legislature finds the following:

(1) Exploration for and development of oil and gas reserves in this state must coexist with the use, agricultural or otherwise, of the surface of certain land and that each constitutes a right equal to the other.

(2) Modern methods of extraction of oil and gas require the use of substantially more surface area than the methods commonly in use at the time most mineral estates in this state were severed from the fee tract; and, specifically, the drilling of wells by the rotary drilling method was virtually unknown in this state prior to the year one thousand nine hundred sixty, so that no person severing their oil and gas from their surface land and no person leasing their oil and gas with the right to explore for and develop the same could reasonably have known nor could it have been reasonably contemplated that rotary drilling operations imposed a greater burden on the surface than the cable tool drilling method heretofore employed in this state; and since the year one thousand nine hundred sixty, the use of rotary drilling methods has spread slowly but steadily in this state, with concomitant public awareness of its impact on surface land; and that the public interest requires that the surface owner be entitled to fair compensation for the loss of the use of surface area during the rotary drilling operation, but recognizing the right of the oil and gas operator to conduct rotary drilling operations as allowed by law.

(3) Prior to the first day of January, one thousand nine
hundred sixty, the rotary method of drilling oil or gas wells was virtually unknown to the surface owners of this state nor was such method reasonably contemplated during the negotiations which occasioned the severance of either oil or gas from the surface.

(4) The Legislature further finds and creates a rebuttable presumption that even after the thirty-first day of December, one thousand nine hundred fifty-nine, and prior to the ninth day of June, one thousand nine hundred eighty-three, it was unlikely that any surface owner knew or should have known of the rotary method of drilling oil or gas wells, but, that such knowledge was possible and that the rotary method of drilling oil or gas wells could have, in some instances, been reasonably contemplated by the parties during the negotiations of the severance of the oil and gas from the surface. This presumption against knowledge of the rotary drilling method may be rebutted by a clear preponderance of the evidence showing that the surface owner or the surface owner's predecessor of record did in fact know of the rotary drilling method at the time the owner or the owner's predecessor executed a severance deed or lease of oil and gas and that the owner or owner's predecessor fairly contemplated the rotary drilling method and received compensation for the same.

(b) Any surface owner entitled to claim any finding or any presumption which is not rebutted as provided in this section shall be entitled to the compensation and damages of this article.

(c) The Legislature declares that the public policy of this state shall be that the compensation and damages provided in this article for surface owners may not be diminished by any provision in a deed, lease or other contract entered into after the ninth day of June, one thousand nine hundred eighty-three.

(d) It is the purpose of this article to provide constitutionally permissible protection and compensa-
tion to surface owners of lands on which oil and gas wells are drilled from the burden resulting from drilling operations commenced after the ninth day of
June, one thousand nine hundred eighty-three. This article is to be interpreted in the light of the legislative intent expressed herein. This article shall be interpreted to benefit surface owners, regardless of whether the oil and gas mineral estate was separated from the surface estate and regardless of who executed the document which gave the oil and gas developer the right to conduct drilling operations on the land. Section four of this article shall be interpreted to benefit all persons.

§22-7-2. Definitions.

(a) In this article, unless the context or subject matter otherwise requires:

(1) “Agricultural production” means the production of any growing grass or crop attached to the surface of the land, whether or not the grass or crop is to be sold commercially, and the production of any farm animals, whether or not the animals are to be sold commercially;

(2) “Drilling operations” means the actual drilling or redrilling of an oil or gas well commenced subsequent to the ninth day of June, one thousand nine hundred eighty-three, and the related preparation of the drilling site and access road, which requires entry, upon the surface estate;

(3) “Oil and gas developer” means the person who secures the drilling permit required by article six of this chapter;

(4) “Person” means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or agency thereof;

(5) “Surface estate” means an estate in or ownership of the surface of a particular tract of land overlying the oil or gas leasehold being developed; and

(6) “Surface owner” means a person who owns an estate in fee in the surface of land, either solely or as a co-owner.
§22-7-3. Compensation of surface owners for drilling operations.

(a) The oil and gas developer shall be obligated to pay the surface owner compensation for:

1. Lost income or expenses incurred as a result of being unable to dedicate land actually occupied by the driller's operation or to which access is prevented by such drilling operation to the uses to which it was dedicated prior to commencement of the activity for which a permit was obtained measured from the date the operator enters upon the land until the date reclamation is completed,
2. The market value of crops destroyed, damaged or prevented from reaching market,
3. Any damage to a water supply in use prior to the commencement of the permitted activity,
4. The cost of repair of personal property up to the value of replacement by personal property of like age, wear and quality,
5. The diminution in value, if any, of the surface lands and other property after completion of the surface disturbance done pursuant to the activity for which the permit was issued determined according to the actual use made thereof by the surface owner immediately prior to the commencement of the permitted activity.

The amount of damages may be determined by any formula mutually agreeable between the surface owner and the oil and gas developer.

(b) Any reservation or assignment of the compensation provided in this section apart from the surface estate except to a tenant of the surface estate is prohibited.

(c) In the case of surface lands owned by more than one person as tenants in common, joint tenants or other co-ownership, any claim for compensation under this article shall be for the benefit of all such co-owners. The resolution of a claim for compensation provided in this article shall operate as a bar to the assertion of additional claims under this section arising out of the same drilling operations.

§22-7-4. Common law right of action preserved; offsets.
(a) Nothing in section three or elsewhere in this article shall be construed to diminish in any way the common law remedies, including damages, of a surface owner or any other person against the oil and gas developer for the unreasonable, negligent or otherwise wrongful exercise of the contractual right, whether express or implied, to use the surface of the land for the benefit of the developer's mineral interest.

(b) An oil and gas developer shall be entitled to offset compensation agreed to be paid or awarded to a surface owner under section three of this article against any damages sought by or awarded to the surface owner through the assertion of common law remedies respecting the surface land actually occupied by the same drilling operation.

(c) An oil and gas developer shall be entitled to offset damages agreed to be paid or awarded to a surface owner through the assertion of common-law remedies against compensation sought by or awarded to the surface owner under section three of this article respecting the surface land actually occupied by the same drilling operation.

§22-7-5. Notification of claim.

Any surface owner, to receive compensation under section three of this article, shall notify the oil and gas developer of the damages sustained by the person within two years after the date that the oil and gas developer files notice that reclamation is commencing under section thirty, article six of this chapter. Such notice shall be given to surface owners by registered or certified mail, return receipt requested, and shall be complete upon mailing. If more than three tenants in common or other co-owners hold interests in such lands, the developer may give such notice to the person described in the records of the sheriff required to be maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the county in which the well is located or to be located a Class II legal advertisement as described in section two, article three, chapter fifty-nine of this code, containing such notice...
§22-7-6. Agreement; offer of settlement.

Unless the parties provide otherwise by written agreement, within sixty days after the oil and gas developer received the notification of claim specified in section five of this article, the oil and gas developer shall either make an offer of settlement to the surface owner seeking compensation, or reject the claim. The surface owner may accept or reject any offer so made.

§22-7-7. Rejection; legal action; arbitration; fees and costs.

(a) Unless the oil and gas developer has paid the surface owner a negotiated settlement of compensation within sixty days after the date the notification of claim was mailed under section five of this article, the surface owner may, within eighty days after the notification mail date, either (i) bring an action for compensation in the circuit court of the county in which the well is located, or (ii) elect instead, by written notice delivered by personal service or by certified mail, return receipt requested, to the designated agent named by the oil and gas developer under the provisions of section six, article six of this chapter, to have his compensation finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

Settlement negotiations, offers and counter-offers between the surface owner and the oil and gas developer shall not be admissible as evidence in any arbitration or judicial proceeding authorized under this article, or in any proceeding resulting from the assertion of common law remedies.

(b) The compensation to be awarded to the surface owner shall be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in such party's notice of election under this section to the oil and gas developer; the second arbitrator shall be chosen by the oil and gas developer within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly
by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which rotary drilling is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the amount of compensation to be paid to the surface owner. However, no award of compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's arbitrator and one half of the compensation of the third arbitrator, or such party's own court costs as the case may be.
§22-7-8. Application of article.

1 The remedies provided by this article shall not
2 preclude any person from seeking other remedies
3 allowed by law.

ARTICLE 8. TRANSPORTATION OF OILS.

§22-8-1. Scope of article.

1 Every person, corporation or company now engaged,
2 or which shall hereafter engage, in the business of
3 transporting or storing petroleum, by means of pipeline
4 or lines or storage by tanks, shall be subject to the
5 provisions of this article and shall conduct such business
6 in conformity herewith: Provided, That the provisions of
7 this article shall be subject to all federal laws regulating
8 interstate commerce on the same subject.

§22-8-2. Duty of pipeline companies to accept and
transport oil.

1 Any company heretofore or hereafter organized for
2 the purpose of transporting petroleum or other oils or
3 liquids by means of pipeline or lines shall be required
4 to accept all petroleum offered to it in merchantable
5 order in quantities of not less than two thousand gallons
6 at the wells where the same is produced, making at its
7 own expense all necessary connections with the tanks or
8 receptacles containing such petroleum, and to transport
9 and deliver the same at any delivery station, within or
10 without the state, on the route of its line of pipes, which
11 may be designated by the owners of the petroleum so
12 offered.

§22-8-3. Oil of 35 degrees Baume at 60 degrees Fahren­
heit; inspection, grading and measurement; receipt; deduction for waste.

1 All petroleum of a gravity of thirty-five degrees
2 Baume or under, at a temperature of sixty degrees
3 Fahrenheit, offered for transportation by means of
4 pipeline or lines, shall, before the same is transported,
5 as provided by section two of this article, be inspected,
6 graded and measured at the expense of the pipeline
7 company, and the company accepting the same for
transportation shall give to the owner thereof a receipt stating therein the number of barrels or gallons so received, and the grade, gravity and measurement thereof, and within a reasonable time thereafter, upon demand of the owner or the owner's assigns, shall deliver to the owner or the owner's assigns at the point of delivery a like quantity and grade or gravity of petroleum in merchantable condition as specified in such receipt; except that the company may deduct for waste one percent of the amount of petroleum specified in such receipt.

§22-8-4. Oil over 35 degrees Baume at 60 degrees Fahrenheit; inspection and measurement; loss.

All petroleum of a gravity exceeding thirty-five degrees Baume, at a temperature of sixty degrees Fahrenheit, offered for transportation by means of pipeline or lines, shall be inspected and measured at the expense of the company transporting the same, before the same is transported. The company accepting the same for transportation shall give to the owner thereof, or to the person in charge of the well or wells from which such petroleum has been produced and run, a ticket signed by its gauger, stating the number of feet and inches of petroleum which were in the tank or receptacle containing the same before the company began to run the contents from such tank, and the number of feet and inches of petroleum which remained in the tank after such run was completed. All deductions made for water, sediment or the like shall be made at the time such petroleum is measured. Within a reasonable time thereafter the company shall, upon demand, deliver from the petroleum in its custody to the owner thereof, or to the owner's assignee, at such delivery station on the route of its line of pipes as the owner or the owner's assignee may elect, a quantity of merchantable petroleum, equal to the quantity of petroleum run from such tank, or receptacle, which shall be ascertained by computation; except that the company transporting such petroleum may deduct for evaporation and waste two percent of the amount of petroleum...
so run, as shown by such run ticket, and except that in
29 case of loss of any petroleum while in the custody of the
30 company caused by fire, lightning, storm or other like
31 unavoidable cause, such loss shall be borne pro rata by
32 all the owners of such petroleum at the time thereof. But
33 the company shall be liable for all petroleum that is lost
34 while in its custody by the bursting of pipes or tanks,
35 or by leakage from pipes or tanks; and it shall also be
36 liable for all petroleum lost from tanks at the wells
37 produced before the same has been received for trans-
38 portation, if such loss be due to faulty connections made
39 to such tanks; and the company shall be liable for all
40 petroleum lost by the overflow of any tanks with which
41 pipeline connections have been made, if such overflow
42 be due to the negligence of such company, and for all
43 the petroleum lost by the overflow of any tanks with
44 which pipeline connections should have been made
45 under the provisions of this article, but were not so made
46 by reason of negligence or delay on the part of the
47 company.

§22-8-5. Lien for charges.

Any company engaged in transporting or storing
petroleum shall have a lien upon such petroleum until
all charges for transporting and storing the same are
paid.

§22-8-6. Accepted orders and certificates for oil —
Negotiability.

Accepted orders and certificates for petroleum, issued
by any company engaged in the business of transporting
and storing petroleum in this state by means of pipeline
or lines and tanks, shall be negotiable, and may be
transferred by indorsement either in blank or to the
order of another, and any person to whom such accepted
orders and certificates shall be so transferred shall be
deemed and taken to be the owner of the petroleum
therein specified.

§22-8-7. Same — Further provisions.

No receipt, certificate, accepted order or other
voucher shall be issued or put in circulation, nor shall
any order be accepted or liability incurred for the
delivery of any petroleum, crude or refined, unless the
amount of such petroleum represented in or by such
receipt, certificate, accepted order, or other voucher or
liability, shall have been actually received by and shall
then be in the tanks and lines, custody and control of
the company issuing or putting in circulation such
receipt, certificate, accepted order or voucher, or
written evidence of liability. No duplicate receipt,
certificate, accepted order or other voucher shall be
issued or put in circulation, or any liability incurred for
any petroleum, crude or refined, while any former
liability remains in force, or any former receipt,
certificate, accepted order or other voucher shall be
outstanding and uncanceled, except such original papers
shall have been lost, in which case a duplicate, plainly
marked "duplicate" upon the face, and dated and
numbered as the lost original was dated and numbered,
may be issued. No receipt, voucher, accepted order,
certificate or written evidence of liability of such
company on which petroleum, crude or refined, has been
delivered, shall be reissued, used or put in circulation.
No petroleum, crude or refined, for which a receipt,
voucher, accepted order, certificate or liability incurred,
shall have been issued or put in circulation, shall be
delivered, except upon the surrender of the receipt,
voucher, order or liability representing such petroleum,
except upon affidavit of loss of such instrument made
by the former holder thereof. No duplicate receipt,
certificate, voucher, accepted order or other evidence of
liability, shall be made, issued or put in circulation until
after notice of the loss of the original, and of the
intention to apply for a duplicate thereof, shall have
been given by advertisement over the signature of the
owner thereof as a Class II legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county where such duplicate is
to be issued. Every receipt, voucher, accepted order,
certificate or evidence of liability, when surrendered or
the petroleum represented thereby delivered, shall be
immediately canceled by stamping and punching the
same across the face in large and legible letters with the
word "canceled," and giving the date of such cancella-
tion; and it shall then be filed and preserved in the
principal office of such company for a period of six
years.

§22-8-8. Dealing in oil without consent of owner.

No company, its officers or agents, or any person or
persons engaged in the transportation or storage of
petroleum, crude or refined, shall sell or encumber,
ship, transfer, or in any manner remove or procure, or
permit to be sold, encumbered, shipped, transferred, or
in any manner removed from the tanks or pipes of such
company engaged in the business aforesaid, any petro-
leum, crude or refined, without the written order of the
owner or a majority of the owners in interest thereof.


Every company now or hereafter engaged in the
business of transporting by pipelines or storing crude or
refined petroleum in this state shall, on or before the
tenth day of each month, make or cause to be made and
posted in its principal business office in this state, in an
accessible and convenient place for the examination
thereof by any person desiring such examination, and
shall keep so posted continuously until the next succeed-
ing statement is so posted, a statement plainly written
or printed, signed by the officer, agent, person or
persons having charge of the pipes and tanks of such
company, and also by the officer or officers, person or
persons, having charge of the books and accounts
thereof, which statement shall show in legible and
intelligible form the following details of the business: (a)
How much petroleum, crude or refined, was in the
actual and immediate custody of such company at the
beginning and close of the previous month, and where
the same was located or held; describing in detail the
location and designation of each tank or place of deposit,
and the name of its owner; (b) how much petroleum,
crude or refined, was received by such company during
the previous month; (c) how much petroleum, crude or
refined, was delivered by such company during the
previous month; (d) for how much petroleum, crude or refined, such company was liable for the delivery or custody of to other corporations, companies or persons at the close of the month; (e) how much of such liability was represented by outstanding receipts or certificates, accepted orders or other vouchers, and how much was represented by credit balances; (f) that all the provisions of this article have been faithfully observed and obeyed during the previous month. The statement so required to be made shall also be sworn to by such officer, agent, person or persons before some officer authorized by law to administer oaths, which shall be in writing, and shall assert the familiarity and acquaintance of the deponent with the business and condition of such company, and with the facts sworn to, and that the statements made in such report are true.

§22-8-10. Statements of amount of oil.
1 All amounts in the statements required by this article, when the petroleum is handled in bulk, shall be given in barrels and hundredths of barrels, reckoning forty-two gallons to each barrel, and when such petroleum is handled in barrels or packages, the number of such barrels or packages shall be given, and such statements shall distinguish between crude and refined petroleum, and give the amount of each. Every company engaged in the business aforesaid shall at all times have in their pipes and tanks an amount of merchantable oil equal to the aggregate of outstanding receipts, certificates, accepted orders, vouchers, acknowledgments, evidences of liability, and credit balances, on the books thereof.

§22-8-11. Penalty — Wrongful issuance, sale or alteration of receipts, orders, etc.
1 Any company, or its officers or agents, who shall make or cause to be made, sign or cause to be signed, issue or cause to be issued, put in circulation or cause to be put in circulation, any receipt, accepted order, certificate, voucher or evidence of liability, or shall sell, transfer or alter the same, or cause such sale, transfer or alteration, contrary to the provisions of this article, or shall do or cause to be done any of the acts prohibited
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by section seven of this article, or omit to do any of the
acts by said section directed, shall be guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not exceeding one thousand dollars, and, if the
offender be a natural person, imprisoned not less than
ten days nor exceeding one year.

§22-8-12. Same — Dealing in oil without consent of owner in interest.

Any company, its officers or agents, who shall sell,
encumber, transfer or remove, or cause or procure to be
sold, transferred or removed from the tanks or pipes of
such company, any petroleum, crude or refined, without
the written consent of the owner or a majority of the
owners in interest thereof, shall be guilty of a misdemea-
nor, and, upon conviction thereof, shall be fined one
thousand dollars and, if the offender be a natural
person, imprisoned in the county jail not less than ninety
days nor more than one year.

§22-8-13. Same — Failure to make report and statement.

Any company engaged in the business of transporting
by pipelines or storing petroleum, crude or refined, and
each and every officer or agent of such company, who
shall neglect or refuse to make the report and statement
required by section nine of this article, within the time
and the manner directed by said section, shall forfeit
and pay the sum of one thousand dollars, and in addition
thereto the sum of five hundred dollars for each day
after the tenth day of the month that the report and
statement required by said section nine shall remain
unposted as therein directed.

ARTICLE 9. UNDERGROUND GAS STORAGE RESERVOIRS.

§22-9-1. Definitions.

In this article unless the context otherwise requires:

(1) The term "coal mine" means those operations in a
c coal seam which include the excavated and abandoned
portions as well as the places actually being worked; also
all underground workings and shafts, slopes, tunnels,
and other ways and openings and all such shafts, slopes,
tunnels and other openings in the course of being sunk or driven, together with all roads and facilities connected with them below the surface.

(2) The term "operating coal mine" means (a) a coal mine which is producing coal or has been in production of coal at any time during the twelve months immediately preceding the date its status is put in question under this article and any worked out or abandoned coal mine connected underground with or contiguous to such operating coal mine as herein defined and (b) any coal mine to be established or reestablished as an operating coal mine in the future pursuant to section four of this article.

(3) The term "outside coal boundaries" when used in conjunction with the term "operating coal mine" means the boundaries of the coal acreage assigned to such coal mine and which can be practicably and reasonably expected to be mined through such coal mine.

(4) The term "well" means a borehole drilled or proposed to be drilled within the storage reservoir boundary or reservoir protective area for the purpose of or to be used for producing, extracting or injecting any gas, petroleum or other liquid but excluding boreholes drilled to produce potable water to be used as such.

(5) The term "gas" means any gaseous substance.

(6) The term "storage reservoir" means that portion of any subterranean sand or rock stratum or strata into which gas is or may be injected for the purpose of storage or for the purpose of testing whether said stratum is suitable for storage.

(7) The term "bridge" means an obstruction placed in a well at any specified depth.

(8) The term "linear foot" means a unit of measurement in a straight line on a horizontal plane.

(9) The term "person" means any individual, association, partnership or corporation.

(10) The term "reservoir protective area" means all of that area outside of and surrounding the storage...
reservoir boundary but within two thousand linear feet thereof.

(11) The term "retreat mining" means the removal of such coal, pillars, ribs and stumps as remain after the development mining has been completed in that section of a coal mine.

(12) The term "pillar" means a solid block of coal surrounded by either active mine workings or a mined out area.

(13) The term "inactivate" means to shut off all flow of gas from a well by means of a temporary plug, or other suitable device or by injecting aquagel or other such equally nonporous material into the well.

(14) The term "storage operator" means any person as herein defined who proposes to or does operate a storage reservoir, either as owner or lessee.

(15) The term "workable coal seam" has the same meaning as the term "workable coal bed" as set out in section one, article six of this chapter.

(16) The terms "owner," "coal operator," "well operator," "plat," "casing," "oil" and "cement" shall have the meanings set out in section one, article six of this chapter.

§22-9-2. Filing of maps and data by persons operating or proposing to operate gas storage reservoirs.

(a) Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in a storage reservoir which underlies or is within three thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area shall, within sixty days thereafter, file with the division a copy of a map and certain data in the form and manner provided in this subsection.

Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in a storage reservoir which is not at such date under or within three thousand linear feet, but is
less than ten thousand linear feet from an operating coal mine which is operating in a coal seam that extends over the storage reservoir or the reservoir protective area, shall file such map and data within such time in excess of sixty days as the director may fix.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in a storage reservoir located as above shall file the required map and data with the director not less than six months prior to the starting of actual injection or storage.

The map provided for herein shall be prepared by a competent engineer or geologist. It shall show the stratum or strata in which the existing or proposed storage reservoir is or is to be located, the geographic location of the outside boundaries of the said storage reservoir and the reservoir protective area, the location of all known oil or gas wells which have been drilled into or through the storage stratum within the reservoir or within three thousand linear feet thereof, indicating which of these wells have been, or are to be cleaned out and plugged or reconditioned for storage and also indicating the proposed location of all additional wells which are to be drilled within the storage reservoir or within three thousand linear feet thereof.

The following information, if available, shall be furnished for all known oil or gas wells which have been drilled into or through the storage stratum within the storage reservoir or within three thousand linear feet thereof; name of the operator, date drilled, total depth, depth of production if the well was productive of oil or gas, the initial rock pressure and volume, the depths at which all coal seams were encountered and a copy of the driller's log or other similar information. At the time of the filing of the aforesaid maps and data such person shall file a detailed statement of what efforts have been made to determine, (1) that the wells shown on said map are accurately located thereon, and (2) that to the best of such person's knowledge the wells are all the oil or gas wells which have ever been drilled into or below the storage stratum within the proposed storage reservoir.
or within the reservoir protective area. This statement shall also include information as to whether or not the initial injection is for testing purposes, the maximum pressures at which injection and storage of gas is contemplated, and a detailed explanation of the methods to be used or which theretofore have been used in drilling, cleaning out, reconditioning or plugging wells in the storage reservoir or within the reservoir protective area. The map and data required to be filed hereunder shall be amended or supplemented semi-annually in case any material changes have occurred: Provided, That the director may require a storage operator to amend or supplement such map or data at more frequent intervals if material changes have occurred justifying such earlier filing.

At the time of the filing of the above maps and data, and the filing of amended or supplemental maps or data, the director shall give written notice of said filing to all persons who may be affected under the provisions of this subsection by the storage reservoir described in such maps or data. Such notices shall contain a description of the boundaries of such storage reservoir. When a person operating a coal mine or owning an interest in coal properties which are or may be affected by the storage reservoir, requests in writing a copy of any map or data filed with the director such copy shall be furnished by the storage operator.

(b) Any person who, on the eighth day of June, one thousand nine hundred fifty-five, is injecting gas into or storing gas in any other storage reservoir in this state not subject to subsection (a) of this section shall, on or before the first day of July, one thousand nine hundred eighty-three, file with the division a map in the same detail as the map required for a storage reservoir subject to subsection (a) of this section; and, if the initial injection of gas into the storage reservoir by such person or any predecessor occurred after the thirty-first day of December, one thousand nine hundred seventy, data in the same detail as the data required for a storage reservoir shall be filed subject to subsection (a) of this section: Provided, That in the case of a storage reservoir
the operation of which has been certified by the federal power commission or the federal energy regulatory commission under section seven of the federal Natural Gas Act, the person may, in lieu of the data, submit copies of the application and all amendments and supplements of record in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto.

Any person who, after the eighth day of June, one thousand nine hundred fifty-five, proposes to inject or store gas in any other storage reservoir in this state not subject to subsection (a) of this section shall file with the division a map and data in the same detail as the map and data required for a storage reservoir subject to subsection (a) of this section not less than six months prior to the starting of actual injection or storage: Provided, That in the case of a storage reservoir the operation of which will be required to be certificated by the federal energy regulatory commission, the person may, in lieu of the data, submit copies of the application and all amendments and supplementals filed in the federal docket, together with the certificate of public convenience and necessity and any amendments thereto, within twenty days after the same have been filed by such person or issued by the federal energy regulatory commission.

At the time of the filing of the above maps and data or documents in lieu of data and filing of amended or supplemental maps or data or documents in lieu of data, or upon receipt of an application filed with the federal energy regulatory commission for a new storage reservoir, the director shall give notice of said filing by a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, the publication area for which shall be the county or counties in which the storage reservoir is located. Such legal advertisements shall contain a description of the boundaries of such storage reservoir. The storage operator shall pay for the legal advertisement upon receipt of the invoice therefor from the division. When any person owning an interest in land which is or may
be affected by the storage reservoir requests in writing
a copy of any map or data or documents in lieu of data
filed with the division, such copy shall be furnished by
the storage operator.

(c) The director shall also intervene in the federal
docket, and participate in the proceedings for the
purpose of assuring that the certificate of public
convenience and necessity issued by the federal energy
regulatory commission does not authorize operations or
practices in conflict with the provisions of this article.
The director may cooperate with the public service
commission if the commission also intervenes. The
attorney general is hereby directed to provide legal
representation to the director to achieve the purposes of
this subsection.

(d) For all purposes of this article, the outside
boundaries of a storage reservoir shall be defined by the
location of those wells around the periphery of the
storage reservoir which had no gas production when
drilled in said storage stratum: Provided, however, That
the boundaries as thus defined shall be originally fixed
or subsequently changed where, based upon the number
and nature of such wells, upon the geological and
production knowledge of the storage stratum, its
character, permeability, and distribution, and operating
experience, it is determined in a conference or hearing
under section ten of this article that modification should
be made.

§22-9-3. Filing of maps and data by persons operating
coal mines.

(a) Any person owning or operating a coal mine, who
has not already done so pursuant to the former provi-
sions of article four, chapter twenty-two-b of this code,
shall, within thirty days from the effective date of this
article, file with the director a map, prepared by a
competent engineer, showing the outside coal boundar-
ies of the said operating coal mine, the existing
workings and exhausted areas and the relationship of
said boundaries to identifiable surface properties and
landmarks. Any person who is storing or contemplating
the storage of gas in the vicinity of such operating coal
mines shall, upon written request, be furnished a copy
of the aforesaid map by the coal operator and such
person and the director shall thereafter be informed of
any boundary changes at the time such changes occur.
The director shall keep a record of such information and
shall promptly notify both the coal operator and the
storage operator if it is found that the coal mine and the
storage reservoir are within ten thousand linear feet of
each other.

(b) Any person owning or operating any coal mine
which, on the tenth day of March, one thousand nine
hundred fifty-five, is or which thereafter comes within
ten thousand linear feet of a storage reservoir, and
where the coal seam being operated extends over the
storage reservoir or the reservoir protective area, shall
within forty-five days after such person has notice from
the director of such fact, file with the director and
furnish to the person operating such storage reservoir,
a map in the form hereinabove provided and showing
in addition, the existing and projected excavations and
workings of such operating coal mine for the ensuing
eighteen-month period, and also the location of any oil
or gas wells of which said coal operator has knowledge.
Such person owning or operating said coal mine shall
each six months thereafter file with the director and
furnish to the person operating such storage reservoir
a revised map showing any additional excavations and
workings, together with the projected excavations and
workings for the then ensuing eighteen-month period
which may be within ten thousand linear feet of said
storage reservoir: Provided, That the director may
require a coal operator to file such revised map at more
frequent intervals if material changes have occurred
justifying such earlier filing. Such person owning or
operating said coal mine shall also file with the director
and furnish the person operating said reservoir prompt
notice of any wells which have been cut into, together
with all available pertinent information.


(a) Any person owning or operating a coal mine on the
eighth day of June, one thousand nine hundred fifty-five, and having knowledge that it overlies or is within two thousand linear feet of a gas storage reservoir, shall within thirty days notify the director and the storage operator of such fact unless such notification has already been provided to the director pursuant to the provisions of former article four, chapter twenty-two-b of this code.

(b) When any person owning or operating a coal mine hereafter expects that within the ensuing nine-month period such coal mine will be extended to a point which will be within two thousand linear feet of any storage reservoir, such person shall notify the director and the storage operator in writing of such fact.

(c) Any person hereafter intending to establish or reestablish an operating coal mine which when established or reestablished will be over a storage reservoir or within two thousand linear feet of a storage reservoir, or which upon being established or reestablished may within nine months thereafter be expected to be within two thousand linear feet of a storage reservoir, shall notify the director and the storage operator in writing before doing so and such notice shall include the date on which it is intended the operating coal mine will be established or reestablished.

Any person who serves such notice of an intention to establish or reestablish an operating coal mine under this subsection, without intending in good faith to establish or reestablish such mine, shall be liable for continuing damages to any storage operator injured by the serving of such improper notice and shall be guilty of a misdemeanor under this article and subject to the same penalties as set forth in section twelve of this article.

§22-9-5. Obligations to be performed by persons operating storage reservoirs.

(a) Any person who, on or after June eighth, one thousand nine hundred fifty-five, is operating a storage reservoir which underlies or is within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the storage reservoir
or the reservoir protective area, shall:

(1) Use every known method which is reasonable under the circumstances for discovering and locating all wells which have or may have been drilled into or through the storage stratum in that acreage which is within the outside coal boundaries of such operating coal mine and which overlies the storage reservoir or the reservoir protective area;

(2) Plug or recondition, in the manner provided by sections twenty-three and twenty-four, article six of this chapter and subsection (e) of this section, all known wells (except to the extent otherwise provided in subsections (e), (f), (g) and (h) of this section) drilled into or through the storage stratum and which are located within that portion of the acreage of the operating coal mine overlying the storage reservoir or the reservoir protective area: Provided, That where objection is raised as to the use of any well as a storage well, and after a conference or hearing in accordance with section ten of this article it is determined, taking into account all the circumstances and conditions, that such well should not be used as a storage well, such well shall be plugged: Provided, however, That if, in the opinion of the storage operator, the well to which such objection has been raised may at some future time be used as a storage well, the storage operator may recondition and inactivate such well instead of plugging it, if such alternative is approved by the director after taking into account all of the circumstances and conditions.

The requirements of subdivision (2) of this subsection shall be deemed to have been fully complied with if, as the operating coal mine is extended, all wells which, from time to time, come within the acreage described in said subdivision (2) are reconditioned or plugged as provided in subsection (e) or (f) of this section and in section twenty-four, article six of this chapter so that by the time the coal mine has reached a point within two thousand linear feet of any such wells, they will have been reconditioned or plugged so as to meet the requirements of said subsection (e) or (f) and of said section twenty-four of article six.
(b) Any person operating a storage reservoir referred to in subsection (a) of this section who has not already done so pursuant to the provisions of former article four, chapter twenty-two-b of this code, shall within sixty days after the effective date of this article file with the director and furnish a copy to the person operating the affected operating coal mine, a verified statement setting forth:

(1) That the map and any supplemental maps required by subsection (a), section two of this article have been prepared and filed in accordance with section two;

(2) A detailed explanation of what the storage operator has done to comply with the requirements of subdivisions (1) and (2), subsection (a) of this section and the results thereof;

(3) Such additional efforts, if any, as the storage operator is making and intends to make to locate all oil and gas wells; and

(4) Any additional wells that are to be plugged or reconditioned to meet the requirements of subdivision (2), subsection (a) of this section.

If such statement is not filed by the storage reservoir operator within the time specified herein, the director shall summarily order such operator to file such statement.

(c) Within one hundred twenty days after the receipt of any such statement, the director may, and shall, if so requested by either the storage operator or the coal operator affected, direct that a conference be held in accordance with section ten of this article to determine whether the information as filed indicates that the requirements of section two of this article and of subsection (a) of this section have been fully complied with. At such conference, if any person shall be of the opinion that such requirements have not been fully complied with, the parties shall attempt to agree on what additional things are to be done and the time within which they are to be completed, subject to the approval of the director, to meet the said requirements.
If such agreement cannot be reached, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine whether the requirements of said section two of this article and of subsection (a) of this section have been met and shall issue an order setting forth such determination. If the director shall determine that any of the said requirements have not been met, the order shall specify, in detail, both the extent to which such requirements have not been met, and the things which the storage operator must do to meet such requirements. The order shall grant to the storage operator such time as is reasonably necessary to complete each of the things which such operator is directed to do. If, in carrying out said order, the storage operator encounters conditions which were not known to exist at the time of the hearing and which materially affect the validity of said order or the ability of the storage operator to comply with the order, the storage operator may apply for a rehearing or modification of said order.

(d) Whenever, in compliance with subsection (a) of this section, a storage operator, after the filing of the statement provided for in subsection (b) of this section, plugs or reconditions a well, such operator shall so notify the director and the coal operator affected in writing, setting forth such facts as will indicate the manner in which the plugging or reconditioning was done. Upon receipt thereof, the coal operator affected or the director may request a conference or hearing in accordance with section ten of this article.

(e) In order to meet the requirements of subsection (a) of this section, wells which are to be plugged shall be plugged in the manner specified in section twenty-four, article six of this chapter. When a well located within the storage reservoir or the reservoir protective area has been plugged prior to the tenth day of March, one thousand nine hundred fifty-five, and on the basis of the data, information and other evidence submitted to the director, it is determined that: (1) Such plugging was done in the manner required in section twenty-four,
article six of this chapter; and (2) said plugging is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) of this section as to plugging said well shall be considered fully satisfied.

(f) In order to meet the requirements of subsection (a) of this section, wells which are to be reconditioned shall be cleaned out from the surface through the storage horizon and the following casing strings shall be pulled and replaced with new casing, using the same procedure as is applicable to drilling a new well as provided for in sections eighteen, nineteen and twenty, article six of this chapter: (1) The producing casing; (2) the largest diameter casing passing through the lowest workable coal seam unless such casing extends at least twenty-five feet below the bottom of such coal seam and is determined to be in good physical condition: Provided, That the storage operator may, instead of replacing the largest diameter casing, replace the next largest casing string if such casing string extends at least twenty-five feet below the lowest workable coal seam; and (3) such other casing strings which are determined not to be in good physical condition. In the case of wells to be used for gas storage, the annular space between each string of casing, and the annular space behind the largest diameter casing to the extent possible, shall be filled to the surface with cement or aquagel or such equally nonporous material as is approved by the director pursuant to section eight of this article. At least fifteen days prior to the time when a well is to be reconditioned the storage operator shall give notice thereof to the coal operator or owner and to the director setting forth in such notice the manner in which it is planned to recondition such well and any pertinent data known to the storage operator which will indicate the then existing condition of such well. In addition the storage operator shall give the coal operator or owner and such representative of the director as the director shall have designated at least seventy-two hours notice of the time when such reconditioning is to begin. The coal operator or owner shall have the right to file, within ten days after the receipt of the first notice required herein,
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objections to the plan of reconditioning as submitted by
the storage operator. If no such objections are filed or
if none is raised by the director within such ten-day
period, the storage operator may proceed with the
reconditioning in accordance with the plan as submit-
ted. If any such objections are filed by the coal operator
or owner or are made by the director, the director shall
fix a time and place for a conference in accordance with
section ten of this article at which conference the well
operator and the person who has filed such objections
shall endeavor to agree upon a plan of reconditioning
which meets the requirements herein and which will
satisfy such objections. If no plan is approved at such
conference, the director shall direct that a hearing be
held in accordance with section ten of this article and,
after such hearing, shall by an appropriate order
determine whether the plan as submitted meets the
requirements set forth herein, or what changes, if any,
should be made to meet such requirements. If, in
reconditioning a well in accordance with said plan,
physical conditions are encountered which justify or
necessitate a change in said plan, the storage operator
or the coal operator may request that the plan be
changed. If the storage operator and the coal operator
cannot agree upon such change, the director shall
arrange for a conference or hearing in accordance with
section ten of this article to determine the matter in the
same manner as set forth herein in connection with
original objections to said plan. Application may be
made to the director in the manner prescribed in section
eight of this article for approval of an alternative
method of reconditioning a well. When a well located
within the storage reservoir or the reservoir protective
area has been reconditioned prior to the tenth day of
March, one thousand nine hundred fifty-five, or was so
drilled and equipped previously and on the basis of the
data, information and other evidence submitted to the
director, it is determined that: (1) Such reconditioning
or previous drilling and equipping was done in the
manner required in this subsection, or in a manner
approved as an alternative method in accordance with
section eight of this article and (2) such reconditioning
or previous drilling and equipping is still sufficiently effective to meet the requirements of this article, the obligations imposed by subsection (a) as to reconditioning said well shall be considered fully satisfied. Where a well requires emergency repairs this subsection shall not be construed to require the storage operator to give the notices specified herein before making such repairs.

(g) When a well located within the reservoir protective area is a producing well in a stratum below the storage stratum the obligations imposed by subsection (a) of this section shall not begin until such well ceases to be a producing well.

(h) When a well within a storage reservoir or the reservoir protective area penetrates the storage stratum but does not penetrate the coal seam being mined by an operating coal mine the director may, upon application of the operator of such storage reservoir, exempt such well from the requirements of this section. Either party affected may request a conference and hearing with respect to the exemption of any such well in accordance with section ten of this article.

(i) In fulfilling the requirements of subdivision (2), subsection (a) of this section with respect to a well within the reservoir protective area, the storage operator shall not be required to plug or recondition such well until he has received from the coal operator written notice that the mine workings will within the period stated in such notice, be within two thousand linear feet of such well. Upon the receipt of such notice the storage operator shall use due diligence to complete the plugging or reconditioning of such well in accordance with the requirements of this section and of section twenty-four, article six of this chapter. If the said mine workings do not, within a period of three years after said well has been plugged, come within two thousand linear feet of said well, the coal operator shall reimburse the storage operator for the cost of said plugging, provided such well is still within the reservoir protective area as of that time.

(j) When retreat mining approaches a point where
within ninety days it is expected that such retreat work will be at the location of the pillar surrounding an active storage well the coal operator shall give written notice of such approach to the storage operator and by agreement said parties shall determine whether it is necessary or advisable to inactivate effectively said well temporarily. The well shall not be reactivated until a reasonable period has elapsed, such reasonable period to be determined by the said parties. In the event that the said parties cannot agree upon either of the foregoing matters, such question shall be submitted to the director for decision in accordance with section ten of this article. The number of wells required to be temporarily inactivated during the retreat period shall not be such as to materially affect the efficient operation of such storage pool. This provision shall not preclude the temporary inactivation of a particular well where the practical effect of inactivating such well is to render the pool temporarily inoperative.

(k) The requirements of subsections (a), (l) and (m) of this section shall not apply to the injection of gas into any stratum when the sole purpose of such injection (such purpose being herein referred to as testing) is to determine whether the said stratum is suitable for storage purposes: Provided, That such testing shall be conducted only in compliance with the following requirements:

(1) The person testing or proposing to test shall comply with all the provisions and requirements of section two of this article and shall verify the statement required to be filed thereby;

(2) If any part of the proposed storage reservoir is under or within two thousand linear feet of an operating coal mine which is operating in a coal seam that extends over the proposed storage reservoir or the reservoir protective area, the storage operator shall give at least six months’ written notice to the director and to the coal operator of the fact that injection of gas for testing purposes is proposed;

(3) The coal operator affected may at any time file
objections with the director in accordance with subsection (d), section nine of this article. If any such objections are filed by the coal operator or if the director shall have any objections, the director shall fix a time and place for a conference in accordance with section ten of this article, not more than ten days from the date of the notice to the storage operator, at which conference the objections shall attempt to agree, subject to the approval of the director, on the questions involved. If such agreement cannot be reached at such conference, the director shall direct that a hearing be held in accordance with section ten of this article. At such hearing the director shall determine and set forth in an appropriate order the conditions and requirements which the director shall deem necessary or advisable in order to prevent gas from such storage reservoir from entering any operating coal mine. The storage operator shall comply with such conditions and requirements throughout the period of the testing operations. In determining such conditions and requirements the director shall take into account the extent to which the matters referred to in subsection (a) of this section have been performed. If, in carrying out said order, either the storage operator or the coal operator encounters or discovers conditions which were not known to exist at the time of the hearing and which materially affect said order or the ability of the storage operator to comply with the order, either operator may apply for a rehearing or modification of said order;

(4) Where, at any time, a proposed storage reservoir being tested comes under or within two thousand linear feet of an operating coal mine either because of the extension of the storage reservoir being tested or because of the extension or establishment or reestablishment of the operating coal mine, then and at the time of any such event the requirements of this subsection shall become applicable to such testing.

(l) Any person who proposes to establish a storage reservoir under, or within two thousand linear feet of an operating coal mine which is operating in a coal seam
that extends over the storage reservoir or the reservoir protective area, shall, prior to establishing such reservoir, in addition to complying with the requirements of section two of this article and subsection (a) of this section, file the verified statement required by subsection (b) of this section and fully comply with such order or orders, if any, as the director may issue in the manner provided for under subsection (b) or (c) of this section before beginning the operation of such storage reservoir. After the person proposing to operate such storage reservoir shall have complied with such requirements and shall have thereafter begun to operate such reservoir, such person shall continue to be subject to all of the provisions of this article.

(m) When a gas storage reservoir, (1) was in operation on the eighth day of June, one thousand nine hundred fifty-five, and at any time thereafter it is under or within two thousand linear feet of an operating coal mine, or (2) when a gas storage reservoir is put in operation after the eighth day of June, one thousand nine hundred fifty-five, and at any time after such storage operations begin it is under or within two thousand linear feet of an operating coal mine, then and in either such event, the storage operator shall comply with all of the provisions of this section except that the time for filing the verified statement under subsection (b) shall be sixty days after the date stated in the notice filed by the coal operator under subsection (b) or (c), section four of this article as to when the operating coal mine will be at a point within two thousand linear feet of such reservoir: Provided, That if the extending of the projected workings or the proposed establishment or reestablishment of the operating coal mine is delayed after the giving of the notice provided in subsections (b) and (c), section four of this article, the coal operator shall give notice of such delay to the director and the director shall, upon the request of the storage operator, extend the time for filing such statement by the additional time which will be required to extend or establish or reestablish such operating coal mine to a point within two thousand linear feet of such reservoir. Such verified statement shall also indicate that the map
referred to in subsection (a), section two of this article has been currently amended as of the time of the filing of such statement. The person operating any such storage reservoir shall continue to be subject to all of the provisions of this article.

(n) If, in any proceeding under this article, the director shall determine that any operator of a storage reservoir has failed to carry out any lawful order of the director issued under this article, the director shall have authority to require such storage operator to suspend the operation of such reservoir and to withdraw the gas therefrom until such violation is remedied. In such an event the gas shall be withdrawn under the following conditions. The storage operator shall remove the maximum amount of gas which is required by the director to be removed from the storage reservoir that can be withdrawn in accordance with recognized engineering and operating procedures and shall proceed with due diligence insofar as existing facilities used to remove gas from the reservoir will permit.

(o) In addition to initial compliance with the other provisions of this article and any lawful orders issued thereunder, it shall be the duty at all times of the person owning or operating any storage reservoir which is subject to the provisions of this article to keep all wells drilled into or through the storage stratum in such condition and to operate the same in such manner as to prevent the escape of gas into any coal mine therefrom, and to operate and maintain such storage reservoir and its facilities in such manner and at such pressures as will prevent gas from escaping from such reservoir or its facilities into any coal mine: Provided, That this duty shall not be construed to include the inability to prevent the escape of gas where such escape results from an act of God or an act of any person not under the control of the storage operator other than in connection with any well which the storage operator has failed to locate and to make known to the director: Provided, however, That if any escape of gas into a coal mine does result from an act of God or an act of any person not under the control of the storage operator, the storage operator
shall be under the duty of taking such action thereafter as is reasonably necessary to prevent further escape of gas into the coal mine.

§22-9-6. Inspection of facilities and records; reliance on maps; burden of proof.

(a) In determining whether a particular coal mine or operating coal mine is or will be within any distance material under this article from any storage reservoir, the owner or operator of such coal mine and the storage operator may rely on the most recent map of the storage reservoir or coal mine filed by the other with the director.

(b) In any proceeding under this article where the accuracy of any map or data filed by any person pursuant to the requirements of this article is in issue, the person filing the same shall at the request of any party to such proceeding be required to disclose the information and method used in compiling such map and data and such information as is available to such person that might affect the current validity of such map or data. If any material question is raised in such proceeding as to the accuracy of such map or data with respect to any particular matter or matters contained therein, the person filing such map or data shall then have the burden of proving the accuracy of the map or data with respect to such matter or matters.

(c) The person operating any storage reservoir affected by the terms of this article shall, at all reasonable times, be permitted to inspect the applicable records and facilities of any coal mine overlying such storage reservoir or the reservoir protective area, and the person operating any such coal mine affected by the terms of this article, shall similarly, at all reasonable times, be permitted to inspect the applicable records and facilities of any such storage reservoir underlying any such coal mine. In the event that either such storage operator or coal operator shall refuse to permit any such inspection of records or facilities, the director shall, on the director's own motion, or on application of the party seeking the inspection after reasonable written notice,
and a hearing thereon, if requested by either of the parties affected, make an order providing for such inspection.


(a) The provisions of this article shall not apply to strip mines and auger mines operating from the surface.

(b) Injection of gas for storage purposes in any workable coal seam, whether or not such seam is being or has been mined, shall be prohibited. Nothing in this article shall be construed to prohibit the original extraction of natural gas, crude oil or coal. No storage operator shall have authority to appropriate any coal or coal measure whether or not being mined, or any interest therein.


(a) Whenever provision is made in this article by reference to this section for using an alternative method or material in carrying out any obligation imposed by the article, the person seeking the authority to use such alternative method or material shall file an application with the director describing such proposed alternative method or material in reasonable detail. Notice of filing of any such application shall be given by registered mail to any coal operator or operators affected. Any such coal operator may within ten days following such notice, file objections to such proposed alternative method or material. If no objections are filed within said ten-day period or if none is raised by the director, the director shall forthwith issue a permit approving such proposed alternative method or material.

(b) If any such objections are filed by any coal operator or are raised by the director, the director shall direct that a conference be held in accordance with section ten of this article within the ten days following the filing of such objections. At such conferences the person seeking approval of the alternative method or material and the person who has filed such objections shall attempt to agree on such alternative method or material or any modification thereof, and if such
agreement is reached and approved by the director, the
director shall forthwith issue a permit approving the
alternative method or material. If no such agreement is
reached and approved, the director shall direct that a
hearing be held in accordance with section ten of this
article: Provided. That if the alternative method or
material involves a new development in technology or
technique the director may, before such a hearing is
held, grant such affected parties a period not to exceed
ninety days to study and evaluate said proposed
alternative method or material. Following such hearing,
if the director shall find that such proposed alternative
method or material will furnish adequate protection to
the workable coal seams, the director shall by order
approve such alternative method or material; otherwise
the director shall deny the said application.


(a) The director may review the maps and data filed
under sections two and three hereof for the purpose of
determining the accuracy thereof. Where any material
question is raised by any interested storage operator or
coal operator or owner as to the accuracy of any such
map or data, the director shall hold hearings thereon
and shall by an appropriate order require the person
filing such map or data to correct the same if they are
found to be erroneous.

(b) It shall be the duty of the director to receive and
keep in a safe place for public inspection any map, data,
report, well log, notice or other writing required to be
filed with it pursuant to the provisions of this article.
The director shall keep such indices of all such infor-
mation as will enable any person using the same to
readily locate such information either by the identity of
the person who filed the same or by the person or
persons affected by such filing or by the geographic
location of the subject matter by political subdivision.
The director shall also keep a docket for public
inspection of all proceedings, in which shall be entered
the dates of any notices, the names of all persons notified
and their addresses, the dates of hearings, conferences
and all orders, decrees, decisions, determinations,
rulings or other actions issued or taken by the director
and such docket shall constitute the record of each and
every proceeding before the director.

(c) The director shall have authority to make any
inspections and investigations of records and facilities
which are deemed necessary or desirable to perform the
director's functions under this article.

(d) Where in any section of this article provision is
made for the filing of objections, such objections shall
be filed in writing with the director, by the person
entitled to file the same or by the director, and shall
state as definitely as is reasonably possible the reasons
for such objections. The person filing such objections
shall send a copy thereof by registered mail to the
person or persons affected thereby.

§22-9-10. Conferences, hearings and appeals.

(a) The director or any person having a direct interest
in the subject matter of this article may at any time
request that a conference be held for the purpose of
discussing and endeavoring to resolve by mutual
agreement any matter arising under the provisions of
this article. Prompt notice of any such conference shall
be given by the director to all such interested parties.
At such conference a representative of the director shall
be in attendance, and the director may make such
recommendations as are deemed appropriate. Any
agreement reached at such conference shall be consist-
ent with the requirements of this article and, if
approved by such representative of the director, it shall
be reduced to writing and shall be effective unless
reviewed and rejected by the director within ten days
after the close of the conference. The record of any such
agreement approved by the director shall be kept on file
by the director with copies furnished to the parties. The
conference shall be deemed terminated as of the date
any party refuses to confer thereafter. Such a conference
shall be held in all cases prior to conducting any hearing
under this section.

(b) Within ten days after termination of the conference
provided for in this section at which no approved
agreement has been reached or within ten days after the rejection by the director of any agreement approved at any such conference, any person who has a direct interest in the subject matter of the conference may submit the matter or matters, or any part thereof, considered at the conference, to the director for determination at a public hearing. The hearing procedure shall be formally commenced by the filing of a petition with the director upon forms prescribed by the director or by specifying in writing the essential elements of the petition, including name and address of the petitioner and of all other persons affected thereby, a clear and concise statement of the facts involved, and a specific statement of the relief sought. The hearing shall thereafter be conducted in accordance with the provisions of article five, chapter twenty-nine-a of this code and with such rules and such provisions as to reasonable notice as the director may prescribe. Consistent with the requirements for reasonable notice all hearings under this article shall be held by the director promptly. All testimony taken at such hearings shall be under oath and shall be reduced to writing by a reporter appointed by the director, and the parties shall be entitled to appear and be heard in person or by attorney. The director may present at such hearing any evidence which is material to the matter under consideration and which has come to the director's attention in any investigation or inspection made pursuant to provisions of this article.

(c) After the conclusion of hearings, the director shall make and file the director's findings and order with the director's opinion, if any. A copy of such order shall be served by registered mail upon the person against whom it runs, or such person's attorney of record, and notice thereof shall be given to the other parties to the proceedings, or their attorney of record.

(d) The director may, at any time after notice and after opportunity to be heard as provided in this section, rescind or amend any approved agreement or order made by the director. Any order rescinding or amending a prior agreement or order shall, when served upon
the person affected, and after notice thereof is given to
the other parties to the proceedings, have the same
effect as is herein provided for original orders; but no
such order shall affect the legality or validity of any acts
done by such person in accordance with the prior
agreement or order before receipt by such person of the
notice of such change.

(e) The director shall have power, either personally or
by any of the director's authorized representatives, to
subpoena witnesses and take testimony, and administer
oaths to any witness in any hearing, proceeding or
examination instituted before the director or conducted
by the director with reference to any matter within the
jurisdiction of the director. In all hearings or proceed-
ings before the director the evidence of witnesses and
the production of documentary evidence may be re-
quired at any designated place of hearing; and in case
of disobedience to a subpoena or other process the
director or any party to the proceedings before the
director may invoke the aid of any circuit court in
requiring the evidence and testimony of witnesses and
the production of such books, records, maps, plats,
papers, documents and other writings as the director
may deem necessary or proper in and pertinent to any
hearing, proceeding or investigation held or had by the
director. Such court, in case of the refusal of any such
person to obey the subpoena, shall issue an order
requiring such person to appear before the director and
produce the required documentary evidence, if so
ordered, and give evidence touching the matter in
question. Any failure to obey such order of the court
may be punished by such court as contempt thereof. A
claim that any such testimony or evidence may tend to
incriminate the person giving the same shall not excuse
such witness from testifying, but such witness shall not
be prosecuted for any offense concerning which the
witness compelled hereunder to testify.

(f) With the consent of the director, the testimony of
any witness may be taken by deposition at the instance
of a party to any hearing before the director at any time
after hearing has been formally commenced. The
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director may, of the director's own motion, order

testimony to be taken by deposition at any stage in any

hearing, proceeding or investigation pending before the
director. Such deposition shall be taken in the manner

prescribed by the laws of West Virginia for taking
depositions in civil cases in courts of record.

(g) Whether or not it be so expressly stated, an appeal

from any final order, decision or action by the director

in administering the provisions of this article may be

taken by any aggrieved person within ten days of notice

of such order, decision or action, to the circuit court of

the county in which the subject matter of such order,

decision or action is located, and in all cases of appeals

to the circuit court, that court shall certify its decisions

to the director. The circuit court to which the appeal is

taken shall hear the appeal without a jury on the record

certified by the director. In any such appeal the findings

of the director shall, if supported by substantial

evidence, be conclusive. If the order of the director is

not affirmed, the court may set aside or modify it, in

whole or in part, or may remand the proceedings to the

director for further disposition in accordance with the

order of the court. From all final decisions of the circuit

court an appeal shall lie to the supreme court of appeals

as is now provided by law in cases in equity, by the

director as well as by any other party of record before

the circuit court.

Any party feeling aggrieved by the final order of the
circuit court affecting him, may present his petition in
writing to the supreme court of appeals, or to a judge
thereof in vacation, within twenty days after the entry
of such order, praying for the suspension or modification
of such final order. The applicant shall deliver a copy
of such petition to the director and to all other parties
of record before presenting the same to the court or
judge. The court or judge shall fix a time for the hearing
on the application, but such hearing shall not be held
sooner than seven days after its presentation unless by
agreement of the parties, and notice of the time and
place of such hearing shall be forthwith given to the
director and to all other parties of record. If the court
or judge, after such hearing, be of opinion that such
final order should be suspended or modified, the court
or the judge may require bond, upon such conditions and
in such penalty, and impose such terms and conditions
upon the petitioner as are just and reasonable. For such
hearing the entire record before the circuit court, or a
certified copy thereof, shall be filed in the supreme
court, and that court, upon such papers, shall promptly
decide the matter in controversy as may seem to it to
be just and right, and may award costs in each case as
to it may seem just and equitable.


(a) The director or any person having a direct interest
in the subject matter of this article may complain in
writing setting forth that any person is violating or is
about to violate, any provisions of this article, or has
done, or is about to do, any act, matter or thing therein
prohibited or declared to be unlawful, or has failed,
omitted, neglected or refused, or is about to fail, omit,
neglect or refuse, to perform any duty enjoined upon
him by this article. Upon the filing of a complaint
against any person, the director shall cause a copy
thereof to be served upon such person by registered mail
accompanied by a notice from the director setting such
complaint for hearing at a time and place specified in
such notice. At least five days' notice of such hearing
shall be given to the parties affected and such hearing
shall be held in accordance with the provisions of section
ten of this article. Following such hearing, the director
shall, if the director finds that the matter alleged in the
complaint is not in violation of this article, dismiss the
complaint, but if the director shall find that the
complaint is justified, the director shall by appropriate
order compel compliance with this article.

(b) Whenever the director shall be of the opinion that
any person is violating, or is about to violate, any
provisions of this article, or has done, or is about to do,
any act, matter or thing therein prohibited or declared
to be unlawful, or has failed, omitted, neglected or
refused, or is about to fail, omit, neglect or refuse, to
perform any duty enjoined upon the director by this
article, or has failed, omitted, neglected or refused, or is about to fail, omit, neglect or refuse to obey any lawful requirement or order made by the director, or any final judgment, order or decree made by any court pursuant to this article, then and in every such case the director may institute in the circuit court of the county or counties wherein the operation is situated, injunction, mandamus or other appropriate legal proceedings to restrain such violations of the provisions of this article or of orders of the director to enforce obedience therewith. No injunction bond shall be required to be filed in any such proceeding. Such persons or corporations as the court may deem necessary or proper to be joined as parties in order to make its judgment, order or writ effective may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction or other order, issue or be made permanent as prayed for in the petition or in such modified or other form as will afford appropriate relief. An appeal may be taken as in other civil actions.

(c) In addition to the other remedies herein provided, any storage operator or coal operator affected by the provisions of this article may proceed by injunction or other appropriate remedy to restrain violations or threatened violations of the provisions of this article or of orders of the director or the judgments, orders or decrees of any court or to enforce obedience therewith.

(d) Each remedy prescribed in this section shall be deemed concurrent or contemporaneous with any other remedy prescribed herein and the existence or exercise of any one such remedy shall not prevent the exercise of any other such remedy.


Any person who shall willfully violate any order of the director issued pursuant to the provisions of this article shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding two thousand dollars, or imprisoned in jail for not exceeding twelve months, or both, in the discretion of the court,
and prosecutions under this section may be brought in the name of the state of West Virginia in the court exercising criminal jurisdiction in the county in which the violation of such provisions of the article or terms of such order was committed, and at the instance and upon the relation of any citizen of this state.


All orders in effect upon the effective date of this article pursuant to the provisions of former article four, chapter twenty-two-b of this code, shall remain in full force and effect as if such orders were adopted by the division established in this chapter but all such orders shall be subject to review by the director to ensure they are consistent with the purposes and policies set forth in this chapter.

ARTICLE 10. ABANDONED WELL ACT.

§22-10-1. Short title.

This article may be cited as “Abandoned Well Act.”

§22-10-2. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds and declares that:

(1) Oil and gas have been continuously produced in West Virginia for over one hundred years, during which time operators of wells have been required by the laws of this state to plug wells upon cessation of use;

(2) The plugging requirements for certain older oil and gas and other wells may not have been sufficient to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine through such wells safely, nor to allow for enhanced recovery of oil, gas or other mineral resources of this state;

(3) Many wells may exist in West Virginia which are abandoned and either not plugged or not properly plugged in a manner to protect underground water supplies, to prevent the movement of fluids between geologic horizons, to allow coal operators to mine...
through such wells safely, to allow for enhanced
recovery of oil, gas and other mineral resources, and
generally to protect the environment and mineral
resources of this state, as aforesaid;

(4) Requirements for financial responsibility to assure
plugging of abandoned wells have not been required in
this state for older wells, and adequate financial
responsibility should be established with respect to all
wells;

(5) Programs and policies should be implemented to
foster, encourage and promote through the fullest
practical means the proper plugging of abandoned wells
to protect the environment and mineral resources of this
state;

(6) Criteria should be established with respect to
priorities for the expenditure of moneys available for
plugging abandoned wells and identifying those aban-
donned wells which, as a matter of public policy, should
be plugged first; and

(7) The plugging of many abandoned wells may be
accomplished through the establishment of rights and
procedures allowing interested persons to apply for a
permit to plug an abandoned well.

(b) The Legislature hereby declares that it is in the
public interest and it is the public policy of this state,
to foster, encourage and promote the proper plugging
of all wells at the time of their abandonment to protect
the environment and mineral resources of this state.

§22-10-3. Definitions.

Unless the context in which it is used clearly requires
a different meaning, as used in this article:

(a) "Abandoned well" means any well which is
required to be plugged under the provisions of section
nineteen, article six of this chapter and rules promul-
gated pursuant thereto.

(b) "Director" means for the purpose of this article, the
director of the division of environmental protection as
established in article one of this chapter or such other
person to whom the director may delegate authority or
duties pursuant to sections six or eight, article one of
this chapter.

(c) "Interested party" means, for the purpose of this
article, any owner, operator or lessee of the surface, oil,
gas, water, coal or other mineral resource under, on,
adjacent or in close proximity to any lands upon which
an abandoned well exists, and whose lands, rights or
interests are or might be affected by such abandoned
well.


(a) Operators of all wells, not otherwise required to
demonstrate financial responsibility through bonding or
otherwise in accordance with the provisions of article six
of this chapter, shall, no later than the first day of July,
one thousand nine hundred ninety-three, demonstrate
financial responsibility in accordance with the methods
and in the amounts prescribed by this article.

(b) If the operator demonstrates to the satisfaction of
the director that an unjust hardship to an operator will
occur as a result of the financial responsibility require-
ments of this article:

(1) The director may suspend such financial respon-
sibility requirements to a date no later than the first day
of July, one thousand nine hundred ninety-five; or

(2) The director may authorize an operator to demon-
strate such financial responsibility by supplying twenty
percent of any required amount by no later than the
first day of July, one thousand nine hundred ninety-four;
fifty percent no later than the first day of July, one
thousand nine hundred ninety-five; sixty percent no
later than the first day of July, one thousand nine
hundred ninety-six; eighty percent by the first day of
July, one thousand nine hundred ninety-seven; and one
hundred percent by the first day of July, one thousand
nine hundred ninety-eight.

(c) The operator making a demonstration of financial
responsibility pursuant to this section shall provide the
director with information sufficient to establish the
location and identification of the well, any well comple-
tion, recompletion and reworking records which may
exist and such other information as the director may
reasonably require.

§22-10-5. Financial responsibility — Amount.
1 The financial responsibility requirements applicable
to all wells shall be as set forth in section twenty-six,
article six of this chapter, except that the amount of
financial responsibility through bonding or otherwise, as
provided for in said section, for an individual well shall
be in the amount of five thousand dollars. In lieu of
separate, single well bonds, an operator may either
furnish a blanket bond in the sum of fifty thousand
dollars in accordance with the provisions of subsection
(c) of section twenty-six, article six of this chapter, or
if the operator has previously provided a blanket bond
in the sum of fifty thousand dollars which remains in
effect, the operator may cover wells subject to this
article by such existing blanket bond.

§22-10-6. Establishment of priorities for plugging
expenditures.
1 (a) Within one year of the effective date of this article,
the director shall promulgate legislative rules establish-
ing a priority system by which available funds from the
oil and gas reclamation fund, established pursuant to
section twenty-nine, article six of this chapter, will be
expended to plug abandoned wells. The rules shall, at
a minimum, establish three primary classifications to be
as follows:
9 (1) Wells which are an immediate threat to the
environment or which may hinder or impede the
development of mineral resources of this state so as to
require immediate plugging;
13 (2) Wells which are not an immediate threat to the
environment or which do not hinder or impede the
development of mineral resources of this state but which
should be plugged consistent with available resources;
and
18 (3) Wells which are not a threat to the environment
and which do not hinder or impede the development of
mineral resources of this state and for which plugging
may be deferred for an indefinite period.

(b) Such classifications shall, among other things, take
into consideration the following factors, as appropriate:

(1) The age of the well;
(2) The length of time the well has been abandoned;
(3) The casing remaining in the well;
(4) The presence of any leaks either at the surface or
underground;
(5) The possibility or existence of groundwater
contamination;
(6) Whether the well is located in an area to be
developed for enhanced recovery;
(7) Whether the well hinders or impedes mineral
development; and
(8) Whether the well is located in close proximity to
population.

§22-10-7. Right of interested person to plug, replug and
reclaim abandoned wells.

(a) Upon twenty days' advance written notice, it shall
be lawful for any interested person, the operator or the
director to enter upon the premises where any aban-
doned well is situated and properly plug or replug such
abandoned well, and to reclaim any area disturbed by
such plugging or replugging in the manner required by
article six of this chapter. Such notice shall be served
by certified mail, returned receipt requested, or such
other manner as is sufficient for service of process in
a civil action, upon any owner of the surface of the land
upon which such abandoned well exists, upon any oil
and gas lessee of record with the director and upon any
owner or operator of such abandoned well of record with
the director, or in the event there is no such lessee,
owner or operator of record with the director, by posting
such notice in a conspicuous place at or near such
abandoned well. The notice given the surface owner
shall include a statement advising the surface owner of the right to repairs or damages as provided in this section and the potential right to take any casing, equipment or other salvage. Such notice shall be on forms approved by the director.

(b) Any interested person who plugs a well pursuant to the provisions of this section shall, to the extent damage or disturbance results from such plugging, either repair the damage or disturbance or compensate the surface owner for (i) the reasonable cost of repairing or replacing any water well, (ii) the reasonable value of any crops destroyed, damaged or prevented from reaching market, (iii) the reasonable cost of repair to personal property up to the value of the replacement value of personal property of like age, wear and quality, (iv) lost income or expense incurred, and (v) reasonable costs to reclaim or repair real property including roads.

(c) The interested person who is plugging the well pursuant to the provisions of this section, may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by including notice of such election in the written notice mandated by subsection (a) of this section. Should such interested person who is plugging the well not give such notice of election, the surface owner may elect to take any casing, equipment or other salvage which may result from the plugging of such abandoned well by giving written notice of such election to the interested person who is plugging the well at least ten days in advance of such plugging. In the event such notice is given, such interested person who is plugging the well may leave such casing, equipment or salvage at a location which will not adversely affect any reclamation of a disturbed area. In the event the surface owner does not give notice of an election to take such casing, equipment or salvage as provided herein, such interested person who plugs the well shall properly dispose thereof. Nothing in this subsection shall be construed to require or create a duty upon such interested person who plugs the well to protect or pull casing or otherwise take any action or incur any expense to retrieve or
59 protect any casing, equipment or salvageable material:  
60 Provided, That nothing contained in this section may be  
61 construed to relieve the interested person from the  
62 responsibility to perform in accordance with the  
63 requirements of this article, article six of this chapter,  
64 or any condition of the permit.  
65  
66 (d) Prior to releasing any bond which is obtained in  
67 connection with plugging or replugging an abandoned  
68 well under the provisions of this section, the director  
69 shall obtain from the interested person who has obtained  
70 the bond a copy of a letter that such interested person  
71 has sent to the surface owner advising that reclamation  
72 has been completed.  
73  
74 (e) Where an interested person who intends to plug an  
75 abandoned well pursuant to this section is unable to  
76 obtain a bond in the full amount required by section  
77 twenty-six, article six of this chapter, the director may  
78 authorize a bond in a lesser amount; which lesser  
79 amount shall be equal or greater than the estimated cost  
80 of reclaiming the surface areas disturbed by the  
81 plugging operation: Provided, That an owner or opera-  
82 tor of a well shall comply with the financial responsi-  
83 bility provisions of section five of this article and section  
84 twenty-six, article six of this chapter.  
85  
86 (f) In the event the owner or operator of a well fails  
87 or has failed to plug a well in accordance with laws and  
88 rules in effect at the time the well is or was first subject  
89 to plugging requirements, any interested person who  
90 plugs or replugs such well pursuant to the provisions of  
91 this section may recover from the owner or operator of  
92 such well all reasonable costs incidental to such  
93 plugging or replugging, including any compensation  
94 provided for in this section. In the event funds from the  
95 oil and gas reclamation fund established pursuant to  
96 section twenty-nine, article six of this chapter are used  
97 to plug or replug such well, the director shall be entitled  
98 to recover from the owner or operator of such well any  
99 amounts so expended from the fund. Any amounts so  
100 recovered by the director shall be deposited in said fund.  
101
§22-10-8. Arbitration; fees and costs.
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(a) If the interested person who plugs a well and the surface owner are unable to agree as to the adequacy of the repairs performed or the amount of compensation to which the surface owner may be entitled, either party upon written notice to the other may elect to have such issue finally determined by binding arbitration pursuant to article ten, chapter fifty-five of this code.

(b) The adequacy of the repairs or compensation to which the surface owner may be entitled shall, if such election is made, be determined by a panel of three disinterested arbitrators. The first arbitrator shall be chosen by the party electing to arbitrate in such person's notice of election; the second arbitrator shall be chosen by the other party within ten days after receipt of the notice of election; and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two arbitrators are hereby empowered to and shall forthwith submit the matter to the court under the provisions of section one, article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be chosen by the judge of the circuit court of the county wherein the surface estate lies.

(c) The following persons shall be deemed interested and not be appointed as arbitrators: Any person who is personally interested in the land on which the plugging is being performed or has been performed, or in any interest or right therein, or in the compensation and any damages to be awarded therefor, or who is related by blood or marriage to any person having such personal interest, or who stands in the relation of guardian and ward, master and servant, principal and agent, or partner, real estate broker, or surety to any person having such personal interest, or who has enmity against or bias in favor of any person who has such personal interest or who is the owner of, or interested in, such land or the oil and gas development thereof. No person shall be deemed interested or incompetent to act as arbitrator by reason of being an inhabitant of the county, district or municipal corporation wherein the
land is located, or holding an interest in any other land therein.

(d) The panel of arbitrators shall hold hearings and take such testimony and receive such exhibits as shall be necessary to determine the required repairs or the amount of compensation to be paid to the surface owner. However, no award requiring repairs or compensation shall be made to the surface owner unless the panel of arbitrators has first viewed the surface estate in question. A transcript of the evidence may be made but shall not be required.

(e) Each party shall pay the compensation of such party's own arbitrator and one half of the compensation of the third arbitrator, and such party's own costs.

§22-10-9. Civil penalties.

(a) Any person who fails to plug an abandoned well within thirty days, or upon a showing of good cause, within a longer period as determined by the director not to exceed one hundred eighty days, from the date such plugging is ordered by the director, shall be liable for a civil penalty of twenty-five thousand dollars which penalty shall be recovered in a civil action in the circuit court wherein the abandoned well is located.

(b) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section shall be deposited into the oil and gas reclamation fund established pursuant to section twenty-nine, article six of this chapter.

§22-10-10. Rule making; procedure; judicial review.

(a) The director shall have the power and authority to promulgate legislative rules, procedural rules and interpretive rules in accordance with the provisions of chapter twenty-nine-a of this code in order to carry out and implement the provisions of this article.

(b) Any hearings or proceedings before the director on any matter other than rule making shall be conducted and heard by the director or a representative designated by the director and shall be in accordance with the
provisions of article five, chapter twenty-nine-a of this code.

(c) Any person having an interest which is or may be adversely affected, who is aggrieved by an order of the director issued pursuant to this article, or by the issuance or denial of a permit pursuant to this article or by the permit's terms or conditions, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in extenso in this section. (d) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

§22-10-11. Existing rights and remedies preserved.

(a) It is the purpose of this article to provide additional and cumulative remedies to address abandoned wells in this state and nothing herein contained shall abridge or alter rights of action or remedies now or hereafter existing, nor shall any provisions in this article, or any act done by virtue of this article, be construed as estopping the state, municipalities, public health officers or persons in the exercise of their rights to suppress nuisance or to abate any pollution now or hereafter existing, or to recover damages.

(b) An order of the director, the effect of which is to find that an abandoned well exists, or in ordering an abandoned well to be plugged, or any other order, or any violation of any of the provisions of this article shall give rise to no presumptions of law or findings of fact inuring to or for the benefit of persons other than the state of West Virginia.

(c) Nothing contained in this article shall be construed to place any duty or responsibility on the landowner, well owner or operator or lessee to plug a well in addition to those set forth in article six of this chapter.

The provisions of this article shall be in addition to and supplement all other provisions of article eight of this chapter and rights with respect to plugging or replugging wells. Nothing in this article shall be construed to eliminate the permit requirement for plugging and replugging wells.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-1. Short title.

This article may be known and cited as the "Water Pollution Control Act."

§22-11-2. Declaration of policy.

(a) It is declared to be the public policy of the state of West Virginia to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment thereof; (2) the propagation and protection of animal, bird, fish, aquatic and plant life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture and the provision of a permanent foundation for healthy industrial development.

(b) It is also the public policy of the state of West Virginia that the water resources of this state with respect to the quantity thereof be available for reasonable use by all of the citizens of this state.

§22-11-3. Definitions.

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

(1) "Activity" or "activities" means any activity or activities for which a permit is required by the provisions of section seven of this article;

(2) "Board" means the environmental quality board, provided for in article three, chapter twenty-two-b of this code;

(3) "Chief" means the chief of the office of water resources of the division of environmental protection;

(4) "Code" means the code of West Virginia, one
thousand nine hundred thirty-one, as amended;

(5) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(6) "Disposal system" means a system for treating or disposing of sewage, industrial wastes or other wastes, or the effluent therefrom, either by surface or underground methods, and includes sewer systems, the use of subterranean spaces, treatment works, disposal wells and other systems;

(7) "Disposal well" means any well drilled or used for the injection or disposal of treated or untreated sewage, industrial wastes or other wastes into underground strata;

(8) "Division" means the division of environmental protection;

(9) "Effluent limitation" means any restriction established on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into the waters of this state;

(10) "Establishment" means an industrial establish-ment, mill, factory, tannery, paper or pulp mill, mine, colliery, breaker or mineral processing operation, quarry, refinery, well and each and every industry or plant or works in the operation or process of which industrial wastes, sewage or other wastes are produced;

(11) "Industrial user" means those industries identified in the standard industrial classification manual, United States Bureau of the Budget, 1967, as amended and supplemented, under the category "division d—manufacturing" and other classes of significant waste producers identified under regulations issued by the director or the administrator of the United States environmental protection agency;

(12) "Industrial wastes" means any liquid, gaseous, solid or other waste substance, or a combination thereof, resulting from or incidental to any process of industry,
manufacturing, trade or business, or from or incidental
to the development, processing or recovery of any
natural resources; and the admixture with such indus-
trial wastes of sewage or other wastes, as hereinafter
defined, is also "industrial waste" within the meaning
of this article;

(13) "Other wastes" means garbage, refuse, decayed
wood, sawdust, shavings, bark and other wood debris
and residues resulting from secondary processing; sand,
lime, cinders, ashes, offal, night soil, silt, oil, tar,
dyestuffs, acids, chemicals, heat or all other materials
and substances not sewage or industrial wastes which
may cause or might reasonably be expected to cause or
to contribute to the pollution of any of the waters of the
state;

(14) "Outlet" means the terminus of a sewer system
or the point of emergence of any water-carried sewage,
industrial wastes or other wastes, or the effluent
therefrom, into any of the waters of this state, and
includes a point source;

(15) "Person", "persons" or "applicant" means any
industrial user, public or private corporation, institu-
tion, association, firm or company organized or existing
under the laws of this or any other state or country; state
of West Virginia; governmental agency, including
federal facilities; political subdivision; county comis-
sion; municipal corporation; industry; sanitary district;
public service district; drainage district; soil conserva-
tion district; watershed improvement district; partner-
ship; trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
legal entity whatever;

(16) "Point source" means any discernible, confined
and discrete conveyance, including, but not limited to,
any pipe, ditch, channel, tunnel, conduit, well, discrete
fissure, container, rolling stock or vessel or other
floating craft, from which pollutants are or may be
discharged;

(17) "Pollutant" means industrial wastes, sewage or
other wastes as defined in this section.
(18) "Pollution" means the man-made or man-induced alteration of the chemical, physical, biological and radiological integrity of the waters of the state;

(19) "Publicly owned treatment works" means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity, for the treatment of pollutants;

(20) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present;

(21) "Sewer system" means pipelines or conduits, pumping stations, force mains and all other constructions, facilities, devices and appliances appurtenant thereto, used for collecting or conducting sewage, industrial wastes or other wastes to a point of disposal or treatment;

(22) "Treatment works" means any plant, facility, means, system, disposal field, lagoon, pumping station, constructed drainage ditch or surface water intercepting ditch, diversion ditch above or below the surface of the ground, settling tank or pond, earthen pit, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing, holding or disposing of sewage, industrial wastes or other wastes or for the purpose of regulating or controlling the quality and rate of flow thereof;

(23) "Water resources", "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells, watercourses and wetlands; and
(24) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction or injection or placement of any liquid or gas, or any shaft or hole sunk or used in conjunction with such extraction or injection or placement. The term "well" does not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of core drilling or pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

§22-11-4. General powers and duties of director with respect to pollution.

(a) In addition to all other powers and duties the director has and may exercise, subject to specific grants of authority to the chief or the board in this article or elsewhere in this code, the following powers and authority and shall perform the following duties:

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System" established under that act;

(2) To encourage voluntary cooperation by all persons in the conservation, improvement and development of water resources and in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the division may receive moneys from such agencies, officers and persons on behalf of the state. The division shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the director solely for the purpose or purposes for which the grant, gift or contribution was made;
(3) To encourage the formulation and execution of plans by cooperative groups or associations of municipal corporations, industries, industrial users, and other users of waters of the state, who, jointly or severally, are or may be the source of pollution of such waters, for the control and reduction of pollution;

(4) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relating to the water resources of the state and water pollution and its causes, control and reduction, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article;

(5) To study and investigate all problems concerning water flow, water pollution and the control and reduction of pollution of the waters of the state, and to make reports and recommendations with respect thereto;

(6) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(7) To develop a public education and promotion program to aid and assist in publicizing the need for, and securing support for, pollution control and abatement;

(8) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(9) To develop programs for the control and reduction of the pollution of the waters of the state;

(10) To exercise general supervision over the administration and enforcement of the provisions of this article, and all rules, permits and orders issued pursuant to the provisions of this article and articles one and three, chapter twenty-two-b of this code;

(11) In cooperation with the college of engineering at West Virginia University and the schools and departments of engineering at other institutions of higher education operated by this state, to conduct studies,
scientific or other investigations, research, experiments
and demonstrations in an effort to discover economical
and practical methods for the elimination, disposal,
control and treatment of sewage, industrial wastes, and
other wastes, and the control and reduction of water
pollution, and to this end, the director may cooperate
with any public or private agency and receive there-
from, on behalf of the state, and for deposit in the state
treasury, any moneys which such agency may contribute
as its part of the expenses thereof, and all gifts,
donations or contributions received as aforesaid shall be
expended by the director according to the requirements
or directions of the donor or contributor without the
necessity of an appropriation therefor, except that an
accounting thereof shall be made in the fiscal reports
of the division;

(12) To require the prior submission of plans, speci-
fications, and other data relative to, and to inspect the
construction and operation of, any activity or activities
in connection with the issuance and revocation of such
permits as are required by this article or the rules
promulgated hereunder or pursuant to article three,
chapter twenty-two-b of this code;

(13) To require any and all persons directly or
indirectly discharging, depositing or disposing of
treated or untreated sewage, industrial wastes or other
wastes, or the effluent therefrom, into or near any
waters of the state or into any underground strata, and
any and all persons operating an establishment which
produces or which may produce or from which escapes,
releases or emanates or may escape, release or emanate
treated or untreated sewage, industrial wastes or other
wastes, or the effluent therefrom, into or near any
waters of the state or into any underground strata, to
file with the division such information as the director
may require in a form or manner prescribed for such
purpose, including, but not limited to, data as to the
kind, characteristics, amount and rate of flow of any
such discharge, deposit, escape, release or disposition;

(14) To adopt, modify, or repeal procedural rules and
interpretive rules in accordance with the provisions of
chapter twenty-nine-a of this code administering and implementing the powers, duties and responsibilities vested in the director by the provisions of this article;

(15) To cooperate with interstate agencies for the purpose of formulating, for submission to the Legislature, interstate compacts and agreements relating to: (A) the control and reduction of water pollution, and (B) the state's share of waters in watercourses bordering the state;

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code, (A) implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant; and

(17) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation;

(b) Whenever required to carry out the objectives of this article the director shall require the owner or operator of any point source or establishment to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods, (iv) sample such effluents in accordance with such methods, at such locations, at such intervals and in such manner as the director shall prescribe, and (v) provide such other information as the director may reasonably require.

(c) The director upon presentation of credentials (i) has a right of entry to, upon or through any premises
in which an effluent source is located or in which any records required to be maintained under subsection (b) of this section are located, and (ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subsection (b) of this section and sample any streams in the area as well as sample any effluents which the owner or operator of such source is required to sample under subsection (b) of this section. Nothing in this subsection eliminates any obligation to follow any process that may be required by law.

(d) The director is hereby authorized and empowered to investigate and ascertain the need and factual basis for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, investigate and ascertain, with the assistance of the public service commission, the financial feasibility and projected financial capability of the future operation of any such public service district or districts, and to present reports and recommendations thereon to the county commissions of the areas concerned, together with a request that such county commissions create a public service district or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code. In the event a county commission fails to act to establish a county-wide public service district or districts, the director shall act jointly with the commissioner of the bureau of public health to further investigate and ascertain the financial feasibility and projected financial capability and, subject to the approval of the public service commission, order the county commission to take action to establish such public service district or districts as may be necessary to control, reduce or abate the pollution, and when so ordered the county commission members must act to establish such a county-wide public service district or districts.

(e) The director has the authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investiga-
tions and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations and studies, the director may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, however, That nothing in this subsection eliminates any obligation to follow any process that may be required by law.

§22-11-5. Water areas beautification; investigations; law enforcement.

The division shall maintain a program and practices in the husbandry of waters of the state and the lands immediately adjacent thereto. The director shall make such investigations and surveys, conduct such schools and public meetings and take such other steps as may be expedient in the conservation, beautification, improvement and use of all such water areas of the state. The director shall cooperate with the division of natural resources' chief law enforcement officer in enforcing the provisions of law prohibiting the disposal of litter in, along and near such water areas.
§22-11-6. Requirement to comply with standards of water quality and effluent limitations.

All persons affected by rules establishing water quality standards and effluent limitations shall promptly comply therewith: Provided, That where necessary and proper, the chief may specify a reasonable time for persons not complying with such standards and limitations to comply therewith, and upon the expiration of any such period of time, the chief shall revoke or modify any permit previously issued which authorized the discharge of treated or untreated sewage, industrial wastes or other wastes into the waters of this state which result in reduction of the quality of such waters below the standards and limitations established therefor by rules of the board or director.

§22-11-7. Cooperation with other governments and agencies.

The office of water resources is hereby designated as the water pollution control agency for this state for all purposes of federal legislation and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this section, the chief is hereby authorized to cooperate with the United States environmental protection agency and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for controlling and reducing water pollution and improving the sanitary conditions of the waters of the state; to apply for and receive, on behalf of this state, funds made available under the aforesaid federal legislation on condition that all moneys received from any federal agency as herein provided shall be paid into the state treasury and shall be expended, under the direction of the director, solely for purposes for which the grants are made; to approve projects for which applications for loans or grants under the federal legislation are made by any municipality (including any city, town, district or other public body created by or pursuant to the laws of this state and having jurisdiction over the disposal of
sewage, industrial wastes or other wastes) or agency of
this state or by any interstate agency; and to participate
through authorized representatives in proceedings
under the federal legislation to recommend measures for
the abatement of water pollution originating in this
state. The governor may give consent on behalf of this
state to requests by the administrator of the United
States environmental protection agency to the attorney
general of the United States for the bringing of actions
for the abatement of such pollution. Whenever a federal
law requires the approval or recommendation of a state
agency or any political subdivision of the state in any
matter relating to the water resources of the state, the
director, subject to approval of the Legislature, is
hereby designated as the sole person to give the approval
or recommendation required by the federal law, unless
the federal law specifically requires the approval or
recommendation of some other state agency or political
subdivision of the state.

§22-11-8. Prohibitions; permits required.

(a) The chief may, after public notice and opportunity
for public hearing, issue a permit for the discharge or
disposition of any pollutant or combination of pollutants
into waters of this state upon condition that such
discharge or disposition meets or will meet all applica-
ble state and federal water quality standards and
effluent limitations and all other requirements of this
article and article three, chapter twenty-two-b of this
code.

(b) It is unlawful for any person, unless the person
holds a permit therefor from the division, which is in
full force and effect, to:

(1) Allow sewage, industrial wastes or other wastes,
or the effluent therefrom, produced by or emanating
from any point source, to flow into the waters of this
state;

(2) Make, cause or permit to be made any outlet, or
substantially enlarge or add to the load of any existing
outlet, for the discharge of sewage, industrial wastes or
other wastes, or the effluent therefrom, into the waters
(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to such disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant: Provided, That the division's permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: Provided, however, That unless waived in writing by the chief, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from any such mine or quarry or preparation plant shall contain a plan for abandonment of such facility or operation, which plan shall comply in all respects to the requirements of this article. Such plan of abandonment is subject to modification or amendment upon application by the permit holder to the chief and approval of such modification or amendment by the chief;

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert
any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, such outlets may be treated as a unit for the purposes of this section, and only one permit issued for all such outlets.

(d) For water pollution control and national pollutant discharge elimination system permits issued for activities regulated by the office of mining and reclamation and the office of oil and gas, the chief of the office of water resources may delegate functions, procedures and activities to the respective chiefs of those offices. Permits for such activities shall be issued under the supervision of and with the signature and approval of the chief of the office of water resources who shall review and approve all procedures, effluent limits and other conditions of such permits.

§22-11-9. Form of application for permit; information required.

The chief shall prescribe a form of application for all permits for any activity specified in section eight of this article and, notwithstanding any other provision of law to the contrary, no other discharge permit or discharge authorization from any other state department, agency, commission, board or officer is required for such activity except that which is required from the office of miners' health, safety and training pursuant to section seventy-six, article two, chapter twenty-two-a of this code. All applications must be submitted on a form as prescribed above. An applicant shall furnish all information reasonably required by any such form, including without limiting the generality of the foregoing, a plan of maintenance and proposed method of operation of the activity or activities. Until all such required information is furnished, an application is not a complete application. The division shall protect any information (other than effluent data) contained in such permit application form, or other records, reports or plans as confidential upon a showing by any person that such information, if
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made public, would divulge methods or processes
entitled to protection as trade secrets of such person. If,
however, the information being considered for confiden-
tial treatment is contained in a national pollutant
discharge elimination form, the chief or board shall
forward such information to the regional administrator
of the United States environmental protection agency
for concurrence in any determination of confidentiality.

§22-11-10. Water quality management fund established;
permit application fees; annual permit
fees; dedication of proceeds; rules.

(a) A special revenue fund designated the "Water
Quality Management Fund" shall be established in the
state treasury on the first day of July, one thousand nine
hundred eighty-nine.

(b) The permit application fees and annual permit fees
established and collected pursuant to this section shall
be deposited into the water quality management fund.
The director shall expend the proceeds of the water
quality management fund for the review of initial
permit applications, renewal permit applications and
permit issuance activities.

(c) The director shall promulgate rules in accordance
with the provisions of chapter twenty-nine-a of this code,
to establish a schedule of application fees for which the
appropriate fee shall be submitted by the applicant to
the division with the application filed pursuant to this
article for any state water pollution control permit or
national pollutant discharge elimination system permit.
Such schedule of application fees shall be designed to
establish reasonable categories of permit application
fees based upon the complexity of the permit application
review process required by the division pursuant to the
provisions of this article and the rules promulgated
thereunder: Provided, That no initial application fee
shall exceed seven thousand five hundred dollars for any
facility nor shall any permit renewal application fee
exceed two thousand five hundred dollars. The division
shall not process any permit application pursuant to this
article until said permit application fee has been
(d) The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees which shall be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article. Each person holding such a permit shall pay the prescribed annual permit fee to the division pursuant to the rules promulgated hereunder. Such schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of such categories or permits to degrade the waters of the state: Provided, that no annual permit fee may exceed two thousand five hundred dollars. Any such permit issued pursuant to this article is void when the annual permit fee is more than one hundred eighty days past due pursuant to the rules promulgated hereunder.

(e) The provisions of this section are not applicable to fees required for permits issued under article three of this chapter.

§22-11-11. Procedure concerning permits required under article; transfer of permits; prior permits.

(a) The chief or his or her duly authorized representatives shall conduct such investigation as is deemed necessary and proper in order to determine whether any such application should be granted or denied. In making such investigation and determination as to any application pertaining solely to sewage, the chief shall consult with the director of the office of environmental health services of the state bureau of public health, and in making such investigation and determination as to any application pertaining to any activity specified in subdivision (7), subsection (b), section eight of this article, the chief shall consult with the director of the state geological and economic survey and the chief of the office of oil and gas of the division, and all such persons shall cooperate with the chief and assist him or her in
carrying out the duties and responsibilities imposed upon him or her under the provisions of this article and the rules of the director and board; such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation, which recommendation and the reason or reasons therefor shall be submitted to the chief within the specified time period prescribed by rules of the director.

(b) The division's permit shall be issued upon such reasonable terms and conditions as the chief may direct if (1) the application, together with all supporting information and data and other evidence, establishes that any and all discharges or releases, escapes, deposits and disposition of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, resulting from the activity or activities for which the application for a permit was made will not cause pollution of the waters of this state or violate any effluent limitations or any rules of the board or director: Provided, That the chief may issue a permit whenever in his or her judgment the water quality standards of the state may be best protected by the institution of a program of phased pollution abatement which under the terms of the permit may temporarily allow a limited degree of pollution of the waters of the state; and (2) in cases wherein it is required, such applicant shall include the name and address of the responsible agent as set forth in subsection (e), section six, article six of this chapter.

(c) Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That when the applicant, in accordance with agency rules, has made a timely and complete application for permit reissuance, the permit term may be extended by the chief, at his or her discretion. An extension may be granted for a period not to exceed twelve months beyond its expiration date. Successive extensions may be granted for periods not to exceed twelve months if the chief determines additional time is necessary in order
to process the application for permit reissuance. Upon
expiration of a permit, a new permit may be issued by
the chief upon condition that the discharges or releases,
escapes, deposits and disposition thereunder meet or will
meet all applicable state and federal water quality
standards, effluent limitations and all other require-
ments of this article.

(d) An application for a permit incident to remedial
action in accordance with the provisions of section
sixteen of this article shall be processed and decided as
any other application for a permit required under the
provisions of section eight of this article.

(e) A complete application for any permit shall be
acted upon by the chief, and the division's permit
delivered or mailed, or a copy of any order of the chief
denyng any such application delivered or mailed to the
applicant by the chief, within a reasonable time period
as prescribed by rules of the director.

(f) When it is established that an application for a
permit should be denied, the chief shall make and enter
an order to that effect, which order shall specify the
reasons for such denial, and shall cause a copy of such
order to be served on the applicant by registered or
certified mail. The chief shall also cause a notice to be
served with a copy of such order, which notice shall
advise the applicant of the right to appeal to the board
by filing a notice of appeal on the form prescribed by
the board for such purpose, with the board, in accor-
dance with the provisions of, and within the time
specified in, section seven, article one, chapter twenty-
two-b of this code. However, an applicant may alter the
plans and specifications for the proposed activity and
submit a new application for any such permit, in which
event the procedure hereinbefore outlined with respect
to an original application shall apply.

(g) A permit is transferable to another person upon
proper notification to the chief and in accordance with
applicable rules. Such transfer does not become effective
until it is reflected in the records of the office of water
resources.
(h) All permits for the discharge of sewage, industrial wastes or other wastes into any waters of the state issued by the water resources board prior to July one, one thousand nine hundred sixty-four, and all permits heretofore issued under the provisions of former article five-a, chapter twenty of this code, and which have not been heretofore revoked, are subject to review, revocation, suspension, modification and reissuance in accordance with the terms and conditions of this article and the rules promulgated thereunder. Any order of revocation, suspension or modification made and entered pursuant to this subsection shall be upon at least twenty days' notice and shall specify the reasons for such revocation, suspension or modification and the chief shall cause a copy of such order, together with a copy of a notice of the right to appeal to the board as provided for in section twelve of this article, to be served upon the permit holder as specified in said section twelve.

§22-11-12. Inspections; orders to compel compliance with permits; service of orders.

After issuance of the division's permit for any activity the director may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the division's permit for any activity, the director is hereby authorized, after at least twenty days' notice, to make and enter an order revoking, suspending or modifying, in whole or in part, such permit for cause including, but not limited to, the following:

(1) Violation of any term or condition of the permit;

(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

The director shall cause a copy of any such order to
be served by registered or certified mail or by a law-
forcement officer upon the person to whom any such
permit was issued. The director shall also cause a notice
to be served with a copy of such order, which notice shall
advise such person of the right to appeal to the board
by filing a notice of appeal on the form prescribed by
the board for such purpose, with the board, in accor-
dance with the provisions of, and within the time
specified in, section seven, article one, chapter twenty-
two-b of this code.

§22-11-13. Voluntary water quality monitors; appoint-
ment; duties; compensation.

The director is hereby authorized to appoint voluntary
water quality monitors to serve at the will and pleasure
of the director. All such monitors appointed pursuant
hereto shall be eighteen years of age or over and shall
be bona fide residents of this state.

Such monitors are authorized to take water samples
of the waters of this state at such times and at such
places as the director shall direct and to forward such
water samples to the director for analysis.

The director is authorized to provide such monitors
with such sampling materials and equipment as he or
she deems necessary: Provided, That such equipment
and materials shall at all times remain the property of
the state and shall be immediately returned to the
director upon his or her direction.

Such monitors shall not be construed to be employees
of this state for any purpose except that the director is
hereby authorized to pay such monitors a fee not to
exceed fifty cents for each sample properly taken and
forwarded to the director as hereinabove provided.

The director shall conduct schools to instruct said
monitors in the methods and techniques of water sample
taking and issue to said monitors an identification card
or certificate showing their appointment and training.

Upon a showing that any water sample as herein
provided was taken and analyzed in conformity with
standard and recognized procedures, such sample and
analysis is admissible in any court of this state for the purpose of enforcing the provisions of this article.

§22-11-14. Information to be filed by certain persons with division; tests.

Any and all persons directly or indirectly discharging or depositing treated or untreated sewage, industrial wastes, or other wastes, or the effluent therefrom, into or near any waters of the state shall file with the director such information as the director may reasonably require on forms prescribed for such purpose, including, but not limited to, data as to the kind, characteristics, amount and rate of flow of such discharge or deposit. If the director has reasonable cause to believe that any establishment is, or may be, polluting the waters of the state, the director may require any person owning, operating or maintaining such establishment to furnish such information as may reasonably be required to ascertain whether such establishment is, or may be causing such pollution, and the director may conduct any test or tests that he or she may deem necessary or useful in making his or her investigation and determination.

§22-11-15. Orders of director to stop or prevent discharges or deposits or take remedial action; service of orders.

If the director, on the basis of investigations, inspections and inquiries, determines that any person who does not have a valid permit issued pursuant to the provisions of this article is causing the pollution of any of the waters of the state, or does on occasions cause pollution or is violating any rule or effluent limitation of the board or the director, he or she shall either make and enter an order directing such person to stop such pollution or the violation of the rule or effluent limitation of the board or director, or make and enter an order directing such person to take corrective or remedial action. Such order shall contain findings of fact upon which the director based the determination to make and enter such order. Such order shall also direct such person to apply forthwith for a permit in accor-
dance with the provisions of sections eight, nine and
eleven of this article. The director shall fix a time limit
for the completion of such action. Whether the director
shall make and enter an order to stop such pollution or
shall make and enter an order to take remedial action,
in either case the person so ordered may elect to cease
operations of the establishment deemed to be the source
of such discharge or deposits causing pollution, if the
pollution referred to in the director's order shall be
stopped thereby.

The director shall cause a copy of any such order to
be served by registered or certified mail or by a law-
enforcement officer upon such person. The director shall
also cause a notice to be served with the copy of such
order, which notice shall advise such person of the right
to appeal to the board by filing a notice of appeal, on
the form prescribed by the board for such purpose, with
the board, in accordance with the provisions of article
one, chapter twenty-two-b of this code.

§22-11-16. Compliance with orders of director.

Any person upon whom any order of the director or
any order of the board in accordance with the provisions
of section fifteen of this article, or article one, chapter
twenty-two-b of this code has been served shall fully
comply therewith.

When such person is ordered to take remedial action
and does not elect to cease operation of the establishment
deemed to be the source of such pollution, or when such
ceasing does not stop the pollution, he or she shall
forthwith apply for a permit under and in accordance
with the provisions of sections eight, nine and eleven of
this article. No such remedial action shall be taken until
a permit therefor has been issued; however, receipt of
a permit does not in and of itself constitute remedial
action.

§22-11-17. Power of eminent domain; procedures; legisla-
tive finding.

(a) When any person who is owner of an establishment
is ordered by the director to stop or prevent pollution
or the violation of the rules of the board or director or
to take corrective or remedial action, compliance with
which order will require the acquisition, construction or
installation of a new treatment works or the extension
or modification of or an addition to an existing treat-
ment works, (which acquisition, construction, installa-
tion, extension, modification or addition of or to a
treatment works pursuant to such order is referred to
in this section as "such compliance") such person may
exercise the power of eminent domain in the manner
provided in chapter fifty-four of this code, to acquire
such real property or interests in real property as may
be determined by the director to be reasonably neces-
sary for such compliance.

(b) Upon application by such person and after twenty
days' written notice to all persons whose property may
be affected, the director shall make and enter an order
determining the specific real property or interests in
real property, if any, which are reasonably necessary for
such compliance. In any proceeding under this section,
the person seeking to exercise the right of eminent
domain herein conferred shall establish the need for the
amount of land sought to be condemned and that such
land is reasonably necessary for the most practical
method for such compliance.

(c) The right of eminent domain herein conferred does
not apply to the taking of any dwelling house or for the
taking of any land within five hundred feet of any such
dwelling house.

(d) The Legislature hereby declares and finds that the
taking and use of real property and interests in real
property determined to be reasonably necessary for such
compliance promotes the health, safety and general
welfare of the citizens of this state by reducing and
abating pollution in the waters of this state in which the
public at large has an interest and otherwise; that such
taking and use are necessary to provide and protect a
safe, pure and adequate water supply to the municipal-
ities and citizens of the state; that because of topo-
graphy, patterns of land development and ownership
and other factors it is impossible in many cases to effect
such compliance without the exercise of the power of
eminent domain and that the use of real property or
interests in real property to effect such compliance is a
public use for which private property may be taken or
destroyed.

§22-11-18. Duty to proceed with remedial action
promptly upon receipt of permit; progress
reports required; finances and funds.

When any person is ordered to take remedial action
and does not elect to cease operation of the establishment
deemed to be the source of such pollution or when
ceasing does not stop the pollution, such person shall
immediately upon issuance of the permit required under
section sixteen of this article take or begin appropriate
steps or proceedings to carry out such remedial action.
In any such case it is the duty of each individual
offender, each member of a partnership, each member
of the governing body of a municipal corporation and
each member of the board of directors or other govern-
ing body of a private corporation, association or other
legal entity whatever, to see that appropriate steps or
proceedings to comply with such order are taken or
begun immediately. The director may require progress
reports, at such time intervals as he or she deems
necessary, setting forth the steps taken, the proceedings
started and the progress made toward completion of
such remedial action. All such remedial action shall be
diligently prosecuted to completion.

Failure of the governing body of a municipal corpo-
ration, or the board of directors or other governing body
of any private corporation, association or other legal
entity whatever, to provide immediately for the financ-
ing and carrying out of such remedial action, as may
be necessary to comply with said order, constitutes
failure to take or begin appropriate steps or proceedings
to comply with such order. If such person is a municipal
corporation, the cost of all such remedial action as is
necessary to comply with said order shall be paid out
of funds on hand available for such purpose, or out of
the general funds of such municipal corporation, not
otherwise appropriated, and if there is not sufficient
funds on hand or unappropriated, then the necessary funds shall be raised by the issuance of bonds. Any direct general obligation bond issue is subject to the approval of the municipal bond commission and the attorney general of the state of West Virginia.

If the estimated cost of the remedial action to be taken by a municipal corporation to comply with such order is such that any bond issue necessary to finance such action would not raise the total outstanding bonded indebtedness of such municipal corporation in excess of the constitutional limit imposed upon such indebtedness by the constitution of this state, then and in that event the necessary bonds may be issued as a direct obligation of such municipal corporation, and retired by a general tax levy to be levied against all property within the limit of such municipal corporation listed and assessed for taxation. If the amount of such bonds necessary to be issued would raise the total outstanding bonded indebtedness of such municipal corporation above said constitutional limitation on such indebtedness, or if such municipal corporation by its governing body shall decide against the issuance of direct obligation bonds, then such municipal corporation shall issue revenue bonds and provide for the retirement thereof in the same manner and subject to the same conditions as provided for the issuance and retirement of bonds in article thirteen, chapter sixteen of this code: Provided, That the provisions of section six of said article, allowing objections to be filed with the governing body, and providing that a written protest of thirty percent or more of the owners of real estate requires a four-fifths vote of the governing body for the issuance of said revenue bonds, does not apply to bond issues proposed by any municipal corporation to comply with an order made and entered under the authority of this article, and such objections and submission of written protest is not authorized, nor does the same, if made or had, operate to justify or excuse failure to comply with such order.

The funds made available by the issuance of either direct obligation bonds or revenue bonds, as herein
provided, does constitute a "sanitary fund," and shall be used for no other purpose than for carrying out such order; no public money so raised shall be expended by any municipal corporation for any purpose enumerated in this article, unless such expenditure and the amount thereof have been approved by the director. The acquisition, construction or installation, use and operation, repair, modification, alteration, extension, equipment, custody and maintenance of any disposal system by any municipal corporation, as herein provided, and the rights, powers and duties with respect thereto, of such municipal corporation and the respective officers and departments thereof, whether the same is financed by the issuance of revenue or direct obligation bonds, shall be governed by the provisions of article thirteen, chapter sixteen of this code.


Whenever the director finds that any discharge, release, escape, deposit or disposition of treated or untreated sewage, industrial wastes or other wastes into any waters within this state, when considered alone or in conjunction with other discharges, releases, escapes, deposits or dispositions, constitutes a clear, present and immediate danger to the health of the public, or to the fitness of a private or public water supply for drinking purposes, the director may, with the concurrence in writing of the commissioner of the bureau of public health, without notice or hearing, issue an order or orders requiring the immediate cessation or abatement of any such discharge, release, escape, deposit or disposition, and the cessation of any drilling, redrilling, deepening, casing, fracturing, pressuring, operating, plugging, abandoning, converting or combining of any well, or requiring such other action to be taken as the director, with the concurrence aforesaid, deems necessary to abate such danger.

Notwithstanding the provisions of any other section of this article, any order issued under the provisions of this section is effective immediately and may be served in the same manner as a notice may be served under the provisions of section two, article seven, chapter twenty-
Any person to whom such order is directed shall comply therewith immediately, but on notice of appeal to the board shall be afforded a hearing as promptly as possible, and not later than ten days after the board receives such notice of appeal. On the basis of such hearing, and within five days thereafter, the board shall make and enter an order continuing the order of the director in effect, revoking it, or modifying it. For the purpose of such appeal and judicial review of the order entered following an appeal hearing, all pertinent provisions of article one, chapter twenty-two-b of this code shall govern.

§22-11-20. Control by state as to pollution; continuing jurisdiction.

No right to violate the rules of the board or director or to continue existing pollution of any of the waters of the state exists nor may such right be acquired by virtue of past or future pollution by any person. The right and control of the state in and over the quality of all waters of the state are hereby expressly reserved and reaffirmed. It is recognized that with the passage of time, additional efforts may have to be made by all persons toward control and reduction of the pollution of the waters of the state, irrespective of the fact that such persons may have previously complied with all orders of the director or board. It is also recognized that there should be continuity and stability respecting pollution control measures taken in cooperation with, and with the approval of, the director, or pursuant to orders of the director or board. When a person is complying with the terms and conditions of a permit granted pursuant to the provisions of section eleven of this article or when a person has completed remedial action pursuant to an order of the director or board, additional efforts may be required wherever and whenever the rules of the board or director or effluent limitations are violated or the waters of the state are polluted by such person.

§22-11-21. Appeal to environmental quality board.

Any person adversely affected by an order made and entered by the director in accordance with the provi-
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3 sessions of this article, or aggrieved by failure or refusal of the chief to act within the specified time as provided in subsection (e) of section eleven of this article on an application for a permit or aggrieved by the terms and conditions of a permit granted under the provisions of this article, may appeal to the environmental quality board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-11-22. Civil penalties and injunctive relief.

1 Any person who violates any provision of any permit issued under or subject to the provisions of this article is subject to a civil penalty not to exceed ten thousand dollars per day of such violation, and any person who violates any provision of this article or of any rule or who violates any standard or order promulgated or made and entered under the provisions of this article or articles one or three, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars per day of such violation. Any such civil penalty may be imposed and collected only by a civil action instituted by the director in the circuit court of the county in which the violation occurred or is occurring or of the county in which the waters thereof are polluted as the result of such violation.

16 Upon application by the director, the circuit courts of this state or the judges thereof in vacation may by injunction compel compliance with and enjoin violations of the provisions of this article, the rules of the board or director, effluent limitations, the terms and conditions of any permit granted under the provisions of this article, or any order of the director or board, and the venue of any such action shall be the county in which the violation or noncompliance exists or is taking place or in any county in which the waters thereof are polluted as the result of such violation or noncompliance. The court or the judge thereof in vacation may issue a temporary or preliminary injunction in any case pending a decision on the merits of any injunctive application filed. Any other section of this code to the contrary notwithstanding, the state is not required to furnish bond as a prerequisite to obtaining injunctive
relief under this article. An application for an injunction
under the provisions of this section may be filed and
injunctive relief granted notwithstanding that all of the
administrative remedies provided for in this article have
not been pursued or invoked against the person or
persons against whom such relief is sought and notwith-
standing that the person or persons against whom such
relief is sought have not been prosecuted or convicted
under the provisions of this article.

The judgment of the circuit court upon any applica-
tion filed or in any civil action instituted under the
provisions of this section is final unless reversed, vacated
or modified on appeal to the supreme court of appeals.
Any such appeal shall be sought in the manner provided
by law for appeals from circuit courts in other civil
cases, except that the petition seeking review in any
injunctive proceeding must be filed with said supreme
court of appeals within ninety days from the date of
entry of the judgment of the circuit court.

Legal counsel and services for the chief, director or
the board in all civil penalty and injunction proceedings
in the circuit court and in the supreme court of appeals
of this state shall be provided by the attorney general
or his or her assistants and by the prosecuting attorneys
of the several counties as well, all without additional
compensation, or the chief, director or the board, with
the written approval of the attorney general, may
employ counsel to represent him or her or it in a
particular proceeding.

§22-11-23. Priority of actions.

All applications under section twenty-two of this
article and all proceedings for judicial review under
article one, chapter twenty-two-b of this code shall take
priority on the docket of the circuit court in which
pending, and shall take precedence over all other civil
cases. Where such applications and proceedings for
judicial review are pending in the same court at the
same time, such applications shall take priority on the
docket and shall take precedence over proceedings for
judicial review.
§22-11-24. Violations; criminal penalties.

1 Any person who causes pollution or who fails or refuses to discharge any duty imposed upon such person by this article or by any rule of the board or director, promulgated pursuant to the provisions and intent of this article or article three, chapter twenty-two-b of this code, or by an order of the director or board, or who fails or refuses to apply for and obtain a permit as required by the provisions of this article, or who fails or refuses to comply with any term or condition of such permit, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

2 Any person who intentionally misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated by the director thereunder is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than ten thousand dollars or by imprisonment in the county jail not exceeding six months or by both such fine and imprisonment.

3 Any person who willfully or negligently violates any provision of any permit issued under or subject to the provisions of this article or who willfully or negligently violates any provision of this article or any rule of the board or director or any effluent limitation or any order of the director or board is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars per day of violation or by imprisonment in the county jail not exceeding one year or by both such fine and imprisonment.

4 Any such person may be prosecuted and convicted under the provisions of this section notwithstanding that
none of the administrative remedies provided for in this
article have been pursued or invoked against said person
and notwithstanding that a civil action for the imposi-
tion and collection of a civil penalty or an application
for an injunction under the provisions of this article has
not been filed against such person.

Where a person holding a permit is carrying out a
program of pollution abatement or remedial action in
compliance with the conditions and terms of such
permit, the person is not subject to criminal prosecution
for pollution recognized and authorized by such permit.

§22-11-25. Civil liability; natural resources game fish and
aquatic life fund; use of funds.

If any loss of game fish or aquatic life results from
a person's or persons' failure or refusal to discharge any
duty imposed upon such person by this article or section
seven, article six of this chapter, either the West
Virginia division of natural resources or the division of
environmental protection, or both jointly may initiate a
civil action on behalf of the state of West Virginia to
recover from such person or persons causing such loss
a sum equal to the cost of replacing such game fish or
aquatic life. Any moneys so collected shall be deposited
in a special revenue fund entitled “natural resources
game fish and aquatic life fund” and shall be expended
as hereinafter provided. The fund shall be expended to
stock waters of this state with game fish and aquatic
life. Where feasible, the director of the division of
natural resources shall use any sum collected in
accordance with the provisions of this section to stock
waters in the area in which the loss resulting in the
collection of such sum occurred. Any balance of such
sum shall remain in said fund and be expended to stock
state-owned and operated fishing lakes and ponds,
wherever located in this state, with game fish and
aquatic life.

§22-11-26. Exceptions as to criminal liabilities.

The criminal liabilities may not be imposed pursuant
to section twenty-four of this article for violations
resulting from accident or caused by an act of God, war,
strike, riot or other catastrophe as to which negligence
or wilful misconduct on the part of such person was not
the proximate cause.

§22-11-27. Existing rights and remedies preserved;
article for benefit of state only.

It is the purpose of this article to provide additional
and cumulative remedies to abate the pollution of the
waters of the state and nothing herein contained shall
abridge or alter rights of action or remedies now or
hereafter existing, nor shall any provisions in this
article, or any act done by virtue of this article, be
construed as estopping the state, municipalities, public
health officers, or persons as riparian owners or
otherwise, in the exercise of their rights to suppress
nuisances or to abate any pollution now or hereafter
existing, or to recover damages.

The provisions of this article inure solely to and are
for the benefit of the people generally of the state of
West Virginia, and this article is not intended to in any
way create new, or enlarge existing rights of riparian
owners or others. An order of the director or of the
board, the effect of which is to find that pollution exists,
or that any person is causing pollution, or any other
order, or any violation of any of the provisions of this
article shall give rise to no presumptions of law or
findings of fact inuring to or for the benefit of persons
other than the state of West Virginia.

§22-11-28. Functions, services and reports of director of
the division; obtaining information from
others.

The director shall make surveys and investigations of
the water resources of the state and shall maintain an
inventory of the water resources of the state and to the
extent practicable shall divide the state into watershed
drainage areas in making this inventory. The director
shall investigate and study the problems of agriculture,
industry, conservation, health, water pollution, domestic
and commercial uses and allied matters as they relate
to the water resources of the state, and shall make and
formulate comprehensive plans and recommendations
for the further development, improvement, protection, preservation, regulation and use of such water resources, giving proper consideration to the hydrologic cycle in which water moves. The director shall provide to the Legislature a biennial report on the quality of the state's waters, including an evaluation of the information which has been obtained in accordance with the requirements of this section and shall include in this report the plans and recommendations which have been formulated pursuant to the requirements of this section. Where possible the timing and content of this report shall be structured so that it may also be used to fulfill any federal program reporting requirements. The report shall include reasons for such plans and recommendations, as well as any changes in the law which are deemed desirable to effectuate such plans and recommendations. Such report shall be made available to the public at a reasonable price to be determined by the director.

The director may request, and, upon request, is entitled to receive from any agency of the state or any political subdivision thereof, or from any other person who engages in a commercial use or controls any of the water resources of the state, such necessary information and data as will assist in obtaining a complete picture of the water resources of the state and the existing control and commercial use thereof. The director shall reimburse such agencies, political subdivisions and other persons for any expenses, which would not otherwise have been incurred, in making such information and data available.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

§22-12-1. Short title.

This article may be known and cited as the "Groundwater Protection Act."

§22-12-2. Legislative findings, public policy and purposes.

(a) The Legislature finds that:

(1) West Virginia has relatively pure groundwater
resources which are abundant and readily available;

(2) Over fifty percent of West Virginia’s overall population, and over ninety percent of the state’s rural population, depend on groundwater for drinking water;

(3) A rural lifestyle has created a quality of life in many parts of West Virginia which is highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased expenses associated with providing treated drinking water supplies to rural households;

(4) West Virginia’s groundwater resources are geologically complex, with the nature and vulnerability of groundwater aquifers and recharge areas not fully known;

(5) Contamination of groundwater is generally much more difficult and expensive to clean up than is the case with surface water;

(6) Groundwaters and surface waters can be highly interconnected. The quality of any given groundwater can have a significant impact on the quality of groundwaters and surface waters to which it is hydrologically connected;

(7) A diverse array of human activities can adversely impact groundwater, making it necessary to develop regulatory programs that utilize a variety of approaches;

(8) Various agencies of state government currently exercise regulatory control over activities which may impact on groundwater. Coordination and streamlining of the regulatory activities of these agencies is necessary to assure that the state’s groundwater is maintained and protected through an appropriate groundwater protection program;

(9) Disruption of existing state regulatory programs should be avoided to the maximum extent practical;

(10) The maintenance and protection of the state’s groundwater resources can be achieved consistent with the maintenance and expansion of employment oppor-
A state groundwater management program will provide economic, social, and environmental benefits for the citizens of West Virginia now and in the future.

(b) Therefore, the Legislature establishes that it is the public policy of the state of West Virginia to maintain and protect the state's groundwater so as to support the present and future beneficial uses and further to maintain and protect groundwater at existing quality where the existing quality is better than that required to maintain and protect the present and future beneficial uses. Such existing quality shall be maintained and protected unless it is established that (1) the measures necessary to preserve existing quality are not technically feasible or economically practical and (2) a change in groundwater quality is justified based upon economic or societal objectives. Such a change shall maintain and protect groundwater quality so as to support the present and future beneficial uses of such groundwater.

(c) The purposes of this article are to:

(1) Maintain and protect the state's groundwater resources consistent with this article to protect the present and future beneficial uses of the groundwater;

(2) Provide for the establishment of a state groundwater management program which will:

(i) Define the roles of agencies of the state and political subdivisions with respect to the maintenance and protection of groundwater, and designate a lead agency for groundwater management;

(ii) Designate a state agency responsible for establishment of groundwater quality standards;

(iii) Provide for the establishment of standards of purity and quality for all groundwater;

(iv) Provide for the establishment of groundwater protection programs consistent with this article;

(v) Establish groundwater protection and groundwater remediation funds;
(vi) Provide for the mapping and analysis of the state's groundwater resources and coordination of the agencies involved; and
(vii) Provide for public education on groundwater resources and methods for preventing contamination;
(3) Provide such enforcement and compliance mechanisms as will assure the implementation of the state's groundwater management program; and
(4) Assure that actions taken to implement this article are consistent with the policies set forth in section two, article eleven of this chapter.

§22-12-3. Definitions.

1 Unless the context in which used clearly requires a different meaning, as used in this article:
(a) "Agency action" means the issuance, renewal or denial of any permit, license or other required agency approval, or any terms or conditions thereof, or any order or other directive issued by the division of environmental protection, bureau of public health, department of agriculture or any other agency of the state or a political subdivision to the extent that such action relates directly to the implementation, administration or enforcement of this article.
(b) "Beneficial uses" means those uses which are protective of human health and welfare and the environment. Pollution of groundwater is not considered a beneficial use.
(c) "Board" means the state water resources environmental quality board.
(d) "Constituent" means any chemical or biological substance found in groundwater due to either natural or man-made conditions.
(e) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.
(f) "Groundwater" means the water occurring in the
zone of saturation beneath the seasonal high water table,
or any perched water zones.

(g) "Groundwater certification" means an assurance
issued by the director of the division of environmental
protection that a permit or other approval issued by a
state, county or local government body regarding an
activity that affects or is reasonably anticipated to affect
groundwater complies with all requirements of this
chapter, the legislative rules promulgated pursuant to
this chapter in accordance with chapter twenty-nine-a
of this code and any other requirements of state law,
rules or agreements regarding groundwater.

(h) "Person" means any industrial user, public or
private corporation, institution, association, firm or
company organized or existing under the laws of this or
any other state or country; state of West Virginia;
governmental agency, including federal facilities;
political subdivision; county commission; municipal
corporation; industry; sanitary district; public service
district; soil conservation district; watershed improve-
dment district; partnership; trust; estate; person or
individual; group of persons or individuals acting
individually or as a group; or any legal entity whatever.

(i) "Pollution" means the man-made or man-induced
alteration of the chemical, physical, biological or
radiological integrity of the groundwater.

(j) "Preventative action limit" means a numerical
value expressing the concentration of a substance in
groundwater that, if exceeded, causes action to be taken
to assure that standards of purity and quality of
groundwater are not violated.

(k) "Water" means any and all water on or beneath
the surface of the ground, whether percolating, stand-
ing, diffused or flowing, wholly or partially within this
state, or bordering this state and within its jurisdiction,
and includes without limiting the generality of the
foregoing, natural or artificial lakes, rivers, streams,
creeks, branches, brooks, ponds (except farm ponds,
industrial settling basins and ponds and water treat-
ment facilities), impounding reservoirs, springs, wells,
watercourses and wetlands.

§22-12-4. Authority of environmental quality board to promulgate standards of purity and quality.

(a) The environmental quality board has the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state and shall promulgate such standards following a public hearing within one year from the effective date of this article, by legislative rules in accordance with the provisions of chapter twenty-nine-a of this code.

(b) Such standards shall establish the maximum contaminant levels permitted for groundwater, but in no event shall such standards allow contaminant levels in groundwater to exceed the maximum contaminant levels adopted by the United States Environmental Protection Agency pursuant to the federal Safe Drinking Water Act. The board may set standards more restrictive than the maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the board to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration is the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent is allowed, and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination, and to strive where practical to reduce the level of contamination over time to support drinking water use.

(c) The standards of purity and quality for groundwater promulgated by the board shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.
(d) In the promulgation of such standards the board shall consult with the division of environmental protection, department of agriculture and the bureau of public health, as appropriate.

(e) Any groundwater standard of the board that is in effect on the effective date of this article shall remain in effect until modified by the board. Notwithstanding any other provisions of this code to the contrary, the authority of the board to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency or entity other than the board, those other provisions are void.

§22-12-5. Authority of other agencies; applicability.

(a) Notwithstanding any other provision of this code to the contrary, no agency of state government or any political subdivision may regulate any facility or activities for the purpose of maintaining and protecting the groundwater except as expressly authorized pursuant to this article.

(b) To the extent that such agencies have the authority pursuant to any provision of this code, other than this article, to regulate facilities or activities, the division of environmental protection, the department of agriculture, the bureau of public health, and such agencies of the state or any political subdivision as may be specifically designated by the director with the concurrence of such designated agencies or political subdivisions, as appropriate, are hereby authorized to be groundwater regulatory agencies for purposes of regulating such facilities or activities to satisfy the requirements of this article. In addition, the department of agriculture is hereby authorized to be the groundwater regulatory agency for purposes of regulating the use or application of pesticides and fertilizers. Where the authority to regulate facilities or activities which may adversely impact groundwater is not otherwise assigned to the division of environmental protection, the department of agriculture, the bureau of public health or such other
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specifically designated agency pursuant to any other
provision of this code, the division of environmental
protection is hereby authorized to be the groundwater
regulatory agency with respect to such unassigned
facilities or activities. The division of environmental
protection shall cooperate with the department of
agriculture and the bureau of public health, as approp-
riate, in the regulation of such unassigned facilities or
activities.

(c) Within one year of the effective date of this article,
the department of agriculture, bureau of public health
and division of environmental protection shall promul-
gate in accordance with the provisions of chapter
twenty-nine-a of this code such legislative rules as may
be necessary to implement the authority granted them
by this article.

(d) Groundwater regulatory agencies shall develop
groundwater protection practices to prevent ground-
water contamination from facilities and activities within
their respective jurisdictions consistent with this article.
Such practices shall include, but not be limited to,
criteria related to facility design, operational manage-
ment, closure, remediation and monitoring. Such
agencies shall issue such rules, permits, policies,
directives or any other appropriate regulatory devices,
as necessary, to implement the requirements of this
article.

(e) Groundwater regulatory agencies shall take such
action as may be necessary to assure that facilities or
activities within their respective jurisdictions maintain
and protect groundwater at existing quality, where the
existing quality is better than that required to maintain
and protect the standards of purity and quality promul-
gated by the board to support the present and future
beneficial uses of the state's groundwater.

(f) Where a person establishes to the director that (1)
the measures necessary to preserve existing quality are
not technically feasible or economically practical and (2)
a change in groundwater quality is justified based upon
economic or societal objectives, the director may allow
for a deviation from such existing quality. Upon the
director's finding of (1) and (2) above, the director may
grant or deny such a deviation for a specific site, activity
or facility or for a class of activities or facilities which
have impacts which are substantially similar and exist
in a defined geographic area. The director's reasons for
granting or denying such a deviation shall be set forth
in writing and the director has the exclusive authority
to determine the terms and conditions of such a
development. To insure that groundwater standards
promulgated by the board are not violated and that the
present and future beneficial uses of groundwater are
maintained and protected, the director shall evaluate
the cumulative impacts of all facilities and activities on
the groundwater resources in question prior to any
granting of such deviation from existing quality. The
director shall consult with the department of agricul-
ture and the bureau of public health as appropriate in
the implementation of this subsection. The director
shall, upon a written request for such information,
provide notice of any deviations from existing quality
granted pursuant to this subsection.

(g) Should the approval required in subsection (f) of
this section be granted allowing for a deviation from
existing quality, the groundwater regulatory agencies
shall take such alternative action as may be necessary
to assure that facilities and activities within their
respective jurisdictions maintain and protect the
standards of purity and quality promulgated by the
board to support the present and future beneficial uses
for that groundwater. In maintaining and protecting
such standards of the board, such agencies shall
establish preventative action limits which, once reached,
shall require action to control a source of contamination
to assure that such standards are not violated. The
director shall provide guidelines to the groundwater
regulatory agencies with respect to the establishment of
such preventative action limits.

(h) Subsections (e), (f) and (g) of this section do not
apply to coal extraction and earth disturbing activities
directly involved in coal extraction that are subject to
either or both article three or eleven of this chapter. Such activities are subject to all other provisions of this article.

(i) This article is not applicable to groundwater within areas of geologic formations which are site specific to:

(1) The production or storage zones of crude oil or natural gas and which are utilized for the exploration, development or production of crude oil or natural gas permitted pursuant to articles six, seven, eight, nine or ten of this chapter; and

(2) The injection zones of Class II or III wells permitted pursuant to the statutes and rules governing the underground injection control program.

All groundwater outside such areas remain subject to the provisions of this article. Groundwater regulatory agencies have the right to require the submission of data with respect to the nature of the activities subject to this subsection.

(j) Those agencies regulating the activities specified in subsections (h) and (i), of this section retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities, other than this article.

(k) The director has authority to modify the requirements of subsection (g) of this section with respect to noncoal mining activities subject to article four of this chapter. Such modification shall assure protection of human health and the environment. Those agencies regulating such noncoal mining activities shall retain their groundwater regulatory authority as provided for in the relevant statutes and rules governing such activities other than this article.

(l) If the director proposes a need for a variance for classes of activities which by their nature cannot be conducted in compliance with the requirements of subsection (g) of this section, then the director shall promulgate legislative rules in accordance with chapter twenty-nine-a of this code, following public hearing on the record. The rules so promulgated shall set forth the
director's findings to substantiate such need and the
criteria by which such variances shall be granted or
denied. Should any person petition or request the
director to undertake such a determination, that person
will give contemporaneous notice of such petition or
request by Class I advertisement in a newspaper of
general circulation in the area to be affected by the
request.

(m) All rules, permits, policies, directives and orders
of the department of agriculture, the bureau of public
health and division of environmental protection, in effect
on the effective date of this article and which are
consistent with this article shall remain in full force and
effect as if they were issued pursuant to this article
unless and until modified pursuant to this article.

§22-12-6. Lead agency designation; additional powers
and duties.

(a) The division of environmental protection is hereby
designated to be the lead agency for groundwater and
is authorized and shall perform the following additional
powers and duties:

(1) To maintain the state groundwater management
strategy;

(2) To develop, as soon as practical, a central ground-
water data management system for the purpose of
providing information needed to manage the state's
groundwater program;

(3) To provide a biennial report to the Legislature on
the status of the state's groundwater and groundwater
management program, including detailed reports from
each groundwater regulatory agency;

(4) To coordinate with other agencies to develop a
uniform groundwater program;

(5) To perform any and all acts necessary to obtain the
benefits to the state of any federal program related to
groundwater;

(6) To receive grants, gifts or contributions for
purposes of implementing this article from federal
(7) To promulgate legislative rules implementing this subsection in accordance with the provisions of chapter twenty-nine-a of this code, including rules relating to monitoring and analysis of groundwater.

(b) The division of environmental protection, bureau of public health, and department of agriculture shall participate in the data management system developed by the division of environmental protection pursuant to subsection (a) of this section and shall provide the director with such information as the director shall reasonably request in support of his or her promulgation of rules pursuant to this article.

(c) The division of environmental protection, bureau of public health, and department of agriculture are hereby authorized:

(1) To engage the voluntary cooperation of all persons in the maintenance and protection of groundwater, and to advise, consult and cooperate with all persons, all agencies of this state, universities and colleges, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purposes of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, receive and spend funds as appropriated by the Legislature, and from such agencies and other officers and persons on behalf of the state;

(2) To encourage the formulation and execution of plans to maintain and protect groundwater by cooperative groups or associations of municipal corporations, industries, industrial users and other users of groundwaters of the state, who, jointly or severally, are or may be impacting on the maintenance and protection of groundwater;

(3) To encourage, participate in, or conduct or cause to be conducted studies, scientific or other investigations, research, experiments and demonstrations relat-
ing to the maintenance and protection of groundwater, and to collect data with respect thereto, all as may be deemed advisable and necessary to carry out the purposes of this article, and to make reports and recommendations with respect thereto;

(4) To conduct groundwater sampling, data collection, analyses and evaluation with sufficient frequency so as to ascertain the characteristics and quality of groundwater, and the sufficiency of the groundwater protection programs established pursuant to this article;

(5) To develop a public education and promotion program to aid and assist in publicizing the need of and securing support for the maintenance and protection of groundwater.

§22-12-7. Groundwater coordinating committee; creation.

(a) The state groundwater coordinating committee is continued. It consists of the commissioner of the bureau of public health, the commissioner of agriculture, the chair of the environmental quality board, the chief of the office of water resources of the division of environmental protection and the director of the division of environmental protection who shall serve as its chair.

(b) The groundwater coordinating committee shall consult, review and make recommendations on the implementation of this article by each of the groundwater regulatory agencies. Such committee shall require the periodic submittal to it of the groundwater protection programs of each groundwater regulatory agency including all rules, permits, policies, directives and any other regulatory devices employed to implement this article.

(c) Upon a review of such programs, the groundwater coordinating committee shall recommend to the director approval of such programs, in whole or in part, and identify in writing any aspect of such programs that are not sufficient to satisfy the requirements of this article and specify a reasonable time period for correcting those portions of the program that are found not to be sufficient.
(d) The director may accept the recommendation of the committee, in whole or in part and identify in writing any additional aspects of such programs that are not sufficient to satisfy the requirements of this article and specify a time period for correcting those portions of the program that are found not to be sufficient.

(e) In the biennial report to the Legislature required by this article, the director shall identify all portions of groundwater protection programs which have been determined not to be sufficient to satisfy the requirements of this article and which have not been adequately addressed within the time period specified by the director.

(f) No agency shall modify any aspect of its groundwater protection program as approved by the director without the prior written approval of the director of such modification. This requirement does not relieve such agency of any other requirements of law that may be applicable to such a modification.

(g) The groundwater coordinating committee is authorized and empowered to promulgate such legislative rules as may be necessary to implement this section in accordance with the provisions of chapter twenty-nine-a of this code.

§22-12-8. Groundwater certification.

(a) To ensure a comprehensive, consistent and unfragmented approach to the management and protection of groundwater, including evaluation of the cumulative effects of all activities that have the potential to impact on groundwater, the director shall oversee and coordinate the implementation of this article by each of the groundwater regulatory agencies through a groundwater certification program as hereby established.

(b) Every state, county or local government body which reviews or issues permits, licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or practices which may affect groundwater quality shall first submit to the director
for review and approval an application for certification. Such application shall include a copy of the approval proposed by such body, including any terms and conditions which have been imposed by it. Upon receipt of this application, the director shall act within thirty days to determine whether to waive or exercise his or her certification powers. If no decision is made or communicated by the director within said thirty day period, groundwater certification is approved. If the director decides to exercise his or her certification powers, he or she may utilize additional time, not to exceed an additional sixty days, to further review the materials submitted or to conduct such investigations as he or she deems necessary.

(c) The director may waive, grant, grant with conditions, or deny groundwater certification. Groundwater certification, and all conditions required under such certification, shall become a condition on any permit, approval or renewal thereof, issued by any state, county or local government body. Where appropriate, the director may provide general groundwater certification for or may waive certification for classes or categories of activities or approvals.

§22-12-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established; groundwater remediation fund established.

(a) The director of the division of environmental protection shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater protection fees applicable to persons who own or operate facilities or conduct activities subject to the provisions of this article. The schedule of fees shall be calculated by the director to recover the reasonable and necessary costs of implementing the provisions of this article as it relates to a particular facility or activity. In addition, the fee may include an appropriate assessment of other program costs not otherwise attributable to any particular facility or activity. Such fees in the aggregate shall
not exceed one million dollars per year and shall be deposited into the groundwater protection fund established pursuant to this article: Provided, That any unexpended balance in the groundwater protection fund at the end of each fiscal year may, by an act of the Legislature, be transferred to the groundwater remediation fund created by this article: Provided, however, That if no action is taken to transfer the unexpended balance to the remediation fund, such moneys shall not be transferred to the general revenue fund, but shall remain in the groundwater protection fund. Such fees imposed by this section are in addition to all other fees and taxes levied by law. The director shall require such fees to be paid at the time of certification pursuant to section eight of this article, or at such more frequent time as the director may deem to be appropriate. The director may withhold certification pursuant to section eight of this article where such fees have not been timely paid.

(b) The director of the division of environmental protection shall also promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code establishing a schedule of groundwater remediation fees which in the aggregate shall not exceed two hundred fifty thousand dollars. Such groundwater remediation fees shall be assessed over a time period not to exceed two years from effective date of such rules and shall be deposited into the groundwater remediation fund established pursuant to this article. Such fees shall be assessed against persons who own or operate facilities or conduct activities subject to the provisions of this article in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this section for the year in which such groundwater remediation fees, or any portion thereof, are assessed.

(c) The following two special revenue accounts are continued in the state treasury:

(1) The "Groundwater Protection Fund", the moneys of which shall be expended by the director in the administration, certification, enforcement, inspection, monitoring, planning, research and other activities of
the environmental quality board, division of environmental protection, bureau of public health and department of agriculture in accordance with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code. The moneys, including the interest thereon, in said fund shall be kept and maintained by the director and expended without appropriation by the Legislature for the purpose of implementing the provisions of this article. The director may withhold the payment of any such moneys to any agency whose groundwater protection program has been determined by the director, in consultation with the groundwater coordinating committee, not to be sufficient to satisfy the requirements of this article and where such agency has failed to adequately address such determination within the time period specified by the director. At the end of each fiscal year, any unexpended balance of said fund may not be transferred to the general revenue fund, but shall remain in the groundwater protection fund.

(2) The "Groundwater Remediation Fund", the moneys of which, to the extent that moneys are available, shall be expended by the director for the purposes of investigation, clean-up and remedial action intended to identify, minimize or mitigate damage to the environment, natural resources, public and private water supplies, surface waters and groundwaters and the public health, safety and general welfare which may result from contamination of groundwater or the related environment. The director or other authorized agency officials are authorized to recover through civil action or cooperative agreements with responsible persons the full amount of any and all groundwater remediation fund moneys expended pursuant to this article. All moneys expended from such fund which are so recovered shall be deposited in such fund. The director may expend moneys from said fund and the interest thereon without necessity of appropriation by the Legislature. All civil penalties and assessments of civil administrative penalties collected pursuant to this article shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts, grants, contributions or
other moneys accruing to the state which are specifically
designated for inclusion in the fund.

§22-12-10. Civil and criminal penalties; civil administra-
tive penalties; dedication of penalty pro-
cceeds; injunctive relief; enforcement orders;
hearings.

(a) Any person who violates any provision of this
article, or any permit or agency approval, rule or order
issued to implement this article, is subject to civil
penalties in accordance with the provisions of section
twenty-two, article eleven of this chapter: Provided,
That such penalties are in lieu of civil penalties which
may be imposed under other provisions of this code for
the same violation.

(b) Any person who willfully or negligently violates
any provision of this article, or any provision of a permit
or agency approval, rule or order issued to implement
this article, is subject to criminal penalties in accord-
ance with the provisions of section twenty-four, article
eleven of this chapter: Provided, That such penalties are
in lieu of other criminal penalties which may be imposed
under other provisions of this code for the same
violation.

(c) Any person who violates any provision of this
article, or any permit or rule or order issued to
implement this article, is subject to a civil administra-
tive penalty to be levied by the director, the commis-
sioner of agriculture or the commissioner of the bureau
of public health, as appropriate, of not more than five
thousand dollars for each day of such violation, not to
exceed a maximum of twenty thousand dollars. In
assessing any such penalty, any such official shall take
into account the seriousness of the violation and any
good faith efforts to comply with applicable require-
ments as well as any other appropriate factors as may
be established by such official by legislative rules
promulgated pursuant to this article and the provisions
of chapter twenty-nine-a of this code. No assessment
may be levied pursuant to this subsection until after the
alleged violator has been notified by such official by
certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator shall have twenty calendar days from receipt of the notice within which to deliver to such official a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, such official shall inform the alleged violator of the time and place of the hearing. Such official may appoint an assessment officer to conduct the informal hearing who shall make a written recommendation to such official concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, such official shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of such official's decision, the alleged violator may request a formal hearing before the board in accordance with the provisions of section eleven of this article. Any administrative civil penalty assessed pursuant to this section is in lieu of any other civil penalty which may be assessed under any provision of this code for the same violation. No combination of assessments against any violator under this section may exceed twenty-five thousand dollars per day of each such violation. All administrative penalties shall be levied in accordance with legislative rules promulgated by such official in accordance with the provisions of chapter twenty-nine-a of this code.

(d) The net proceeds of all civil penalties collected pursuant to subsection (a) of this section and all assessments of any civil administrative penalties collected pursuant to subsection (c) of this section shall be deposited into the groundwater remediation fund established pursuant to this article.
(e) Any such official may seek an injunction, or may institute a civil action against any person in violation of any provision of this article or any permit, agency approval, rule or order issued to implement this article. In seeking an injunction, it is not necessary for such official to post bond nor to allege or prove at any point in the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) If any such official upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, or any permit, order or rules issued to implement the provisions of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders implementing this article which (1) suspend, revoke or modify permits; (2) require a person to take remedial action; or (3) are cease and desist orders.

(g) Any person issued a cease and desist order under subsection (f) of this section may file a notice of request for reconsideration with such official not more than seven days from the issuance of such order and shall have a hearing before such official to contest the terms and conditions of such order within ten days after filing such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.

§22-12-11. Appeal procedures.

Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director or any public official authorized to take or
implement an agency action, or by the issuance or denial of a permit issued to implement this article or by such permit’s term or conditions, or by the failure or refusal to act within a reasonable time, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.

§22-12-12. Rule-making petition.

Any person may petition the appropriate rule-making agency for rule making on an issue arising under this article. The appropriate rule-making agency, if it believes such issue to merit rule making, may initiate rule making in accordance with the provisions of chapter twenty-nine-a of this code. A decision by the appropriate rule-making agency not to pursue rule making must set forth in writing reasons for refusing to do so. Any person may petition an agency to issue a declaratory ruling pursuant to section one, article four, chapter twenty-nine-a of this code with respect to the applicability to any person, property or state of facts of any rules promulgated by that agency pursuant to this article.

§22-12-13. Existing rights and remedies preserved; effect of compliance.

(a) It is the purpose of this article to provide additional and cumulative remedies to address the quality of the groundwater of the state. This article does not alter the authority of any agency with respect to water other than groundwater. Except as expressly stated in this article, it is not the intention of the Legislature in enacting this article to repeal any other provision of this code.

(b) Nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article, or any act done by virtue of this article, estop the state, municipalities, public health officers or persons as riparian owners or otherwise, in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing, or to recover damages.

(c) Where a person is operating a source or conducting
an activity in compliance with the terms and conditions of a permit, rule, order, directive or other authorization issued by a groundwater regulatory agency pursuant to this article, such person is not subject to criminal prosecution for pollution recognized and authorized by such permit, rule, order, directive or other authorization.

§22-12-14. Effective dates of provisions subject to federal approval.

To the extent that this article modifies any powers, duties, functions and responsibilities of any state agency that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of federal regulatory programs by the state, any such modifications become effective upon a proclamation by the governor stating either that final approval of such modifications has been given by the appropriate federal agency or official or that final approval of such modification is not necessary to avoid disruption of the federal-state relationship under which such regulatory programs are implemented.

ARTICLE 13. NATURAL STREAMS PRESERVATION ACT.

§22-13-1. Short title.

This article may be known and cited as the “Natural Streams Preservation Act.”


In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not impound, flood or divert all streams within the state of West Virginia, leaving no streams designated for preservation and protection in their natural condition, it is hereby declared to be the public policy of this state to secure for the citizens of West Virginia of present and future generations the benefits of an enduring resource of free-flowing streams possessing outstanding scenic, recreational, geological, fish and wildlife, botanical, historical, archeological or other scientific or cultural values.
 definitions.


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

2 (1) "Board" means the environmental quality board;

3 (2) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

4 (3) "Free-flowing" means existing or flowing in natural condition without impoundment, by diversion, or flooding of the waterway;

5 (4) "Modification" means the impounding, diverting or flooding of a stream within the natural stream preservation system;

6 (5) "Modify" means to impound, divert or flood a stream within the natural stream preservation system;

7 (6) "Permit" means a permit required by section seven of this article;

8 (7) "Person," "persons" or "applicants" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; state of West Virginia; governmental agencies; political subdivision; county commission; municipal corporations; industries; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever;

9 (8) "Protected stream" means any stream designated as such in section five of this article, but does not include tributaries or branches unless specifically designated or described in section five of this article;

10 (9) "Stream" means a flowing body of water or a section or portion thereof, including rivers, streams, creeks, branches or small lakes.
§22-13-4. Establishment of natural stream preservation system.

For the purpose of implementing the public policy declared in section two of this article, there is hereby established a natural stream preservation system to be composed of streams designated by the Legislature as “protected streams,” and these shall be administered for the use and enjoyment of the citizens of West Virginia in such manner as will leave them unimpaired for future use and enjoyment as free-flowing streams, and so as to provide for the protection and the preservation of these streams in their natural character.

§22-13-5. Designation of protected streams.

The following streams are hereby designated as protected streams within the natural streams preservation system, namely:

(a) Greenbrier River from its confluence with Knapps Creek to its confluence with the New River.

(b) Anthony Creek from its headwaters to its confluence with the Greenbrier River.

(c) Cranberry River from its headwaters to its confluence with the Gauley River.

(d) Birch River from the Cora Brown bridge in Nicholas county to the confluence of the river with the Elk River.

(e) New River from its confluence with the Gauley River to its confluence with the Greenbrier River.

§22-13-6. General powers and duties of director with respect to protected streams.

(a) In addition to all other powers and duties of the director, as prescribed in this article or elsewhere by law, the director shall exercise supervision over the administration and enforcement of the provisions of this article, and all orders and permits issued pursuant to the provisions of this article.

(b) In addition to all other powers and duties of the director, as prescribed in this article or elsewhere by
law, the director has authority to promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the director by the provisions of this article and otherwise by law:

Provided, That all such rules shall be consistent with the declaration of public policy set forth in section two of this article.

(c) The director and duly authorized representatives, have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rules promulgated by the director, and with the terms and conditions of any permit issued in accordance with the provisions of section nine of this article. In order to make such investigations, inspections and inquiries, the director and duly authorized representatives, have the power and authority to enter at all reasonable times upon any private or public property, subject to responsibility for any damage to the property entered. Upon entering, and before making any investigation, inspection and inquiry, such person shall immediately present himself or herself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or a subdivision, and before making any investigation, inspection and inquiry, such person shall immediately present himself or herself to the person in charge of the operation, and if he or she is not available, to a managerial employee. All persons shall cooperate fully with the person entering such property for such purposes. Upon a refusal of the person owning or controlling such property to permit such entrance or the making of such inspections, investigations and inquiries, the director may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance and the making of such inspections, investigations, and inquiries; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief
asked is necessary for the proper enforcement of this article. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

§22-13-7. When permits required; when permits not to be issued.

It is unlawful for any person, until the division's permit therefor has been granted, to modify any protected stream or any part thereof. No permit shall be issued unless the work proposed to be done under such permit: (a) Will not materially alter or affect the free-flowing characteristics of a substantial part of a protected stream or streams; (b) is necessary to prevent an undue hardship; and (c) meets with the approval of the director.

§22-13-8. Application for permit; form of application; information required; fees.

The director shall prescribe a form of application for all permits. All applications for permits shall be submitted to the division and shall be on the prescribed form.

A permit fee of ten dollars shall accompany the application when filed with the division. The permit fee shall be deposited in the state treasury to the credit of the state general fund.

§22-13-9. Procedure for issuance or denial of permit; transfer of permits.

(a) Before issuing a permit, a public hearing shall be held. The director shall consider the application and shall fix a time and place for hearing on such application. The hearing shall be held in a county in which the proposed modification is to be made and, if the proposed modification is to be made in more than one county, then a separate hearing shall be held in each county in which the proposed modification is to be made. The applicant shall cause a notice of the time and place of such hearing and the purpose thereof to be published as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the
publication area for such publication is the county or counties in which the proposed modification is to be made. Publication of the notice shall be completed at least fifteen days before such hearing. The applicant shall also cause to be served, at least fifteen days before such hearings, in the manner provided by law for the service of notice and process, a notice showing the time, place and purpose of such hearing, upon every owner of property, and every person holding a lien thereon, abutting on that portion of the stream on which the modification is to be made, or abutting on any portion of such stream within two miles above or below the proposed modification. The affidavit of publication of such notice shall be filed with the director or his or her duly designated hearing examiner at or before the hearing as a part of the record in the proceedings.

(b) At the time and place fixed for the hearings, the director or his or her duly designated hearing examiner shall hear any evidence relating to the proposed modification, the necessity therefor, the effect of such modification on the stream and any and all other matters relevant to the application and the proposed modification. If the director concludes and finds upon the record and evidence in the proceedings that the proposed modification should be permitted, he or she shall proceed to issue the permit: Provided, That the director may attach such conditions, qualifications or limitations to such permit as he or she finds appropriate.

(c) An application for any such permit shall be acted upon by the director and the division's permit delivered or mailed, or a copy of any order of the director denying any such application mailed as hereinafter specified, as the case may be, to the applicant by the director within forty-five days after the hearings have been completed.

(d) When it is established that an application for a permit should be denied, the director shall make and enter an order to that effect, which order shall specify the reasons for such denial, and shall cause a copy of such order to be served on the applicant by registered or certified mail. The director shall also cause a notice to be served with the copy of such order, which notice
shall advise the applicant of his or her right to appeal
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to the board by filing a notice of appeal, on a form
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prescribed by the board for such purpose, with the
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board, within the time specified in and in accordance
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with the provisions of section seven, article one, chapter
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twenty-two-b of this code. However, an applicant may
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offer the plans and specifications for the proposed
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modification and submit a new application for any such
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permit, in which event the procedure hereinbefore
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outlined with respect to an original application shall
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apply.
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(e) Upon the sale of property which includes an
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activity for which the division's permit was granted, the
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permit is transferable to the new owner, but the transfer
67
does not become effective until it is made in the records
68
of the division.

§22-13-10. Inspections; orders to compel compliance with
permits; service of order.

After issuance of the division's permit for any such
modification, the director and duly authorized represen-
tatives may make field inspections of the work on the
modification, and, after completion thereof, may inspect
the completed modification, and, from time to time, may
inspect the maintenance and operation of such
modification.

To compel compliance with the terms and conditions
of the division's permit for any such modification and
with the plans and specifications therefor and the plan
of maintenance and method of operation thereof, the
director is hereby authorized after reasonable notice to
make and enter an order revoking or suspending such
permit and directing the person to whom such permit
was issued to stop or suspend any and all work on such
activity or, to take affirmative action to correct the
deficiencies specified in such order so there will be full
compliance with the terms and conditions of such permit
and with the plans and specifications therefor, and the
plan of maintenance and method of operation thereof.

The director shall cause a copy of any such order to
be served by registered or certified mail or by a law-
enforcement officer upon the person to whom any such
permit was issued. The director shall also cause a notice
to be served with the copy of such order, which notice
shall advise such person of his or her right to appeal to
the board by filing a notice of appeal on the form
prescribed by the board for such purpose, with the
board, within the time specified in and in accordance
with the provisions of section seven, article one, chapter
twenty-two-b of this code.

§22-13-11. Appeal to environmental quality board.

(a) Any person adversely affected by an order made
and entered by the director in accordance with the
provisions of this article, or aggrieved by failure or
refusal of the director to act within the time required
by section nine of this article on an application for a
permit or aggrieved by the terms and conditions of a
permit granted under the provisions of this article, may
appeal to the environmental quality board for an order
vacating or modifying such order, or for such order,
action or terms and conditions as the director should
have entered, taken or imposed.

(b) Notwithstanding the provisions of section nine,
article one, chapter twenty-two-b of this code:

(1) Appeals from orders of the board in cases involving
an order denying an application for a permit, or
approving or modifying the terms and conditions of a
permit, shall be filed, within the time specified in said
section, in the circuit court of any county in which such
modification is proposed to be made.

(2) Appeals from orders of the board in cases involving
an order revoking or suspending a permit and directing
any and all work on such modification to stop, or
directing that affirmative action be taken to correct
alleged and specified deficiencies concerning any such
modification, shall be filed, within the time specified in
said section, in the circuit court of any county in which
any part of such modification is proposed to be made.

§22-13-12. Actions to abate nuisances; injunctive relief.

Whether any violation of the provisions of this article
or any final order of the director or the board results
in prosecution or conviction or not, any such violation
is a nuisance which may be abated upon application by
the chief to the circuit court of the county in which such
nuisance or any part thereof exists, or to the judge
thereof in vacation. Upon application by the director,
the circuit courts of this state may by mandatory or
prohibitive injunction compel compliance with all final
orders of the director or board. Any application for an
injunction to compel compliance with any final order of
the director or board shall be made to the circuit court
of any county in which the modification to which the
order relates is proposed to be made, or in which the
modification to which the order relates is situate or
would be situate upon completion thereof. Upon appli-
cation by the director to the circuit court of the county
in which a municipal corporation is located, or in which
any person resides or does business, or to the judge
thereof in vacation, such court may by injunction
require the performance of any duty imposed upon such
municipal corporation or person by the provisions of this
article. The court may issue a temporary injunction in
any case pending a decision on the merits of any
application filed. In cases of modifications where
irreparable damage will result from any delay incident
to the administrative procedures set forth in this article,
the director may forthwith apply to the circuit court of
any county in which the modification is taking place for
a temporary injunction. Such court may issue a tempor-
ary injunction pending final disposition of the case by
the director or the board, in the event an appeal is taken
to the board.

The judgment of the circuit court upon any applica-
tion permitted by the provisions of this section is final
unless reversed, vacated or modified on appeal to the
supreme court of appeals. Any such appeal shall be
sought in a manner provided by law for appeals for
circuit courts in other civil cases, except that the
petition seeking such review must be filed with said
supreme court of appeals within ninety days from the
date of entry of the judgment of the circuit court.
43 The director shall be represented in all such proceed-
44 ings by the attorney general or his or her assistant and
45  in such proceedings in the circuit court by the prosecut-
46  ing attorneys of the several counties as well, all without
47  additional compensation.


1 All applications under section twelve of this article
2 and all proceedings for judicial review under article one,
3 chapter twenty-two-b of this code shall take priority on
4 the docket of the circuit court in which pending, and
5 shall take precedence over all other civil cases. Where
6 such applications and proceedings for judicial review
7 are pending at the same time, such applications shall
8 take priority on the docket and shall take precedence
9 over proceedings for judicial review.

§22-13-14. Violations; criminal penalties.

1 Any person who fails or refuses to discharge any duty
2 imposed upon him or her by this article or by any final
3 order of the director or board, or who fails or refuses
4 to apply for and obtain a permit as required by the
5 provisions of this article, is guilty of a misdemeanor,
6 and, upon conviction thereof, shall be punished for a
7 first offense by a fine of not less than twenty-five dollars
8 nor more than one hundred dollars, and for a second
9 offense by a fine of not less than two hundred dollars
10 nor more than five hundred dollars, and for a third
11 offense and each subsequent offense by a fine of not less
12 than five hundred dollars nor more than one thousand
13 dollars or by imprisonment for a period not to exceed
14 six months, or in the discretion of the court by both such
15 fine and imprisonment.


1 The criminal liabilities provided for in section
2 fourteen of this article may not be imposed for any
3 violation resulting from accident or caused by an act of
4 God, war, strike, riot or other catastrophe as to which
5 negligence or wilful conduct on the part of such person
6 was not the proximate cause.
ARTICLE 14. DAM CONTROL ACT.

§22-14-1. Short title.

This article shall be known and cited as the "Dam Control and Safety Act".

§22-14-2. Legislative findings; intent and purpose of article.

The Legislature finds that dams may constitute a potential hazard to people and property; therefore, dams in this state must be properly regulated and controlled to protect the health, safety and welfare of people and property in this state. It is the intent of the Legislature by this article to provide for the regulation and supervision of dams in this state to the extent necessary to protect the public health, safety and welfare. The Legislature has ordained this article to fulfill its responsibilities to the people of this state and to protect their lives and private and public property from the danger of a potential or actual dam failure. The Legislature finds and declares that in light of the limited state resources available for the purposes of this article, and in view of the high standards to which the United States soil conservation service designs dams, independent state review of the plans and specifications for dams designed by the soil conservation service and construction oversight should not be required. The Legislature further finds and declares that dams designed and constructed by the soil conservation service but not owned or operated by it should be subject to the same provisions of inspection, after construction and certification by the soil conservation service, as other dams covered by this article, so long as any dam under the soil conservation service program is designed with standards equal to or exceeding state requirements under this article.

§22-14-3. Definition of terms used in article.

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

(a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam which
may affect its safety, which determination shall be made by the director.

(b) "Application for a certificate of approval" means the request in writing by a person to the director requesting that person be issued a certificate of approval.

(c) "Appurtenant works" means any structure or facility which is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to, spillways, a reservoir and its rim, low level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

(d) "Certificate of approval" means the approval in writing issued by the director to a person who has applied to the director for a certificate of approval which authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

(e) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter

(f) "Division" means the division of environmental protection.

(g) "Dam" means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and: (1) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or (2) is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water: Provided, That the term "dam" does not include: (A) Any dam owned by the federal govern-
ment; (B) any dam for which the operation and maintenance thereof is the responsibility of the federal government; (C) farm ponds constructed and used primarily for agricultural purposes, including, but not limited to, livestock watering, irrigation, retention of animal wastes and fish culture, and which have no potential to cause loss of human life in the event of embankment failure; or (D) structures which do not or will not impound water under normal conditions and which have a designed culvert or similar conveyance or such capacity as would be used under a highway at the same location: Provided, however, That the director may apply the provisions of section ten of this article for hazardous, nonimpounding structures which are brought to his or her attention.

(h) "Enlargement" means any change in or addition to an existing dam which: (1) Raises the height of the dam; (2) raises or may raise the water storage elevation of the water impounded by the dam; (3) increases or may increase the amount of water impounded by the dam; or (4) increases or may increase the watershed area from which water is impounded by the dam.

(i) "Person" means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the state of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any other legal entity whatever. The term "person", when used in this article, includes and refers to any authorized agent, lessee or trustee of any of the foregoing or receiver or trustee appointed by any court for any of the foregoing.

(j) "Reservoir" means any basin which contains or will contain impounded water.

(k) "Soil conservation service" means the soil conser-
vation service of the United States department of agriculture or any successor agency.

(l) "Water" means any liquid, including any solids or other matter which may be contained therein, which is or may be impounded by a dam.

(m) "Water storage elevation" means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.

§22-14-4. General powers and duties of director; maximum fee established for certificates of approval and annual registration.

The director has the following powers and duties:

(a) To control and exercise regulatory jurisdiction over dams as provided for in this article;

(b) To review all applications for a certificate of approval for the placement, construction, enlargement, alteration, repair or removal of any dam;

(c) To grant, modify, amend, revoke, restrict or refuse to grant any certificate of approval if proper or necessary to protect life and property as provided in this article;

(d) To adopt, modify, repeal and enforce rules and issue orders, in such manner as the director may otherwise do, to implement and make effective the powers and duties vested in it by the provisions of this article;

(e) To take any lawful action considered necessary for the effective enforcement of the provisions of this article;

(f) To establish and charge reasonable fees not to exceed three hundred dollars for the review of applications for certificates of approval and the issuance thereof and for assessment of an annual registration fee not to exceed one hundred dollars for persons holding a certificate of approval for existing dams. The director shall promulgate rules to establish a schedule of application fees and to establish annual registration
fees: Provided, That no fee shall be assessed for dams designed and constructed by the soil conservation service for soil conservation districts;

(g) To employ qualified consultants or additional persons as necessary to review applications for certificates of approval and to recommend whether they should be approved, to inspect dams and to enforce the provisions of this article;

(h) To cooperate and coordinate with agencies of the federal government, this state and counties and municipalities of this state to improve, secure, study and enforce dam safety and dam technology within this state;

(i) To investigate and inspect dams as is necessary to implement or enforce the provisions of this article and when necessary to enter the public or private property of any dam owner. The director may investigate, inspect or enter private or public property after notifying the dam owner or other person in charge of the dam of an intent to investigate, inspect or enter: Provided, That where the owner or person in charge of the dam is not available, the director may investigate, inspect and enter without notice; and

(j) To prepare and publish within a reasonable time, criteria to govern the design, construction, repair, inspection and maintenance of proposed dams herein defined, and to review these criteria annually in order to consider improved technology for inclusion in such criteria.

§22-14-5. Unlawful to place, construct, enlarge, alter, repair, remove or abandon dam without certificate of approval; application required to obtain certificate.

It is unlawful for any person to place, construct, enlarge, alter, repair, remove or abandon any dam under the jurisdiction of the director until he or she has first: (a) Filed an application for a certificate of approval with the division; and (b) obtained from the division a certificate of approval: Provided, That routine
repairs which do not affect the safety of a dam are not
subject to the application and approval requirements. A
separate application for a certificate of approval must
be submitted by a person for each dam he or she desires
to place, construct, enlarge, alter, repair, remove or
abandon. One application may be valid for more than
one dam involved in a single project or in the formation
of a reservoir.

Each application for a certificate of approval shall be
made in writing on a form prescribed by the director
and shall be signed and verified by the applicant. The
application shall contain and provide information which
may be reasonably required by the director to admin-
ister the provisions of this article.

In the case of dams designed by the soil conservation
service for transfer to any political subdivision, the
director shall, within sixty days after receipt of a
completed application therefor, issue a certificate of
approval without review of the plans and specifications.

§22-14-6. Plans and specifications for dams to be in
charge of registered professional engineer.

Plans and specifications for the placement, construc-
tion, enlargement, alteration, repair or removal of dams
shall be in the charge of a registered professional
engineer licensed to practice in West Virginia. Any
plans or specifications submitted to the division shall
bear the seal of a registered professional engineer.

§22-14-7. Granting or rejecting applications for certifi-
cate of approval by division; publication of
notice of application; hearing upon application.

Upon receipt of an application for a certificate of
approval and the fee required under the provisions of
this article, the director shall proceed to consider the
application for sufficiency. The director shall approve or
disapprove the application within sixty days after
receipt.

If an application is defective, it shall be returned to
the applicant by certified or registered mail, return
receipt requested, in order that the applicant may
correct any defect: Provided, That a defective applica-
tion must be returned to the division by the applicant
within thirty days after it has been returned to the
applicant or it shall be treated as a new application:
Provided, however, That for good cause shown, the
director may extend the thirty-day period.

Upon approval by the director of the sufficiency of the
application, the applicant shall immediately publish the
application as a Class I legal advertisement in com-
pliance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for the
publication is the county in which the proposed dam is
to be located or in which the existing dam is located.
The notice shall include, but not be limited to, the name
and address of the owner of the dam and the location
of the dam for which the application was filed.

Any person who may be adversely affected by the
issuance of a certificate of approval has a right to a
hearing before the director if the person demands the
hearing in writing within fifteen days of publication of
the certificate of approval. The written request for
hearing shall include specific objections to the certifi-
cate of approval.

Upon receipt by the director of the written request for
hearing, the director shall immediately set a date for the
hearing and shall notify the person or persons demand-
ing a hearing. The hearing shall be held within ten days
after receipt of the written request. The director shall
hear evidence from all interested parties and shall
either: (1) Refuse to issue a certificate of approval; or
(2) issue a certificate of approval which shall be subject
to terms, conditions and limitations as the director may
consider necessary to protect life and property.

Unless otherwise extended by the director, a certifi-
cate of approval is valid for a period of not more than
one year.

§22-14-8. Content of certificates of approval for dams;
revocation or suspension of certificates.
Each certificate of approval issued by the director under the provisions of this article may contain other terms and conditions as the director may prescribe.

The director may revoke or suspend any certificate of approval whenever it is determined that the dam for which the certificate was issued constitutes a danger to life and property. If necessary to safeguard life and property, the director may also amend the terms and conditions of any certificate by issuing a new certificate containing the revised terms and conditions.

Before any certificate of approval is amended or revoked by the director, the director shall hold a hearing in accordance with the provisions of article five, chapter twenty-nine-a of this code.

Any person adversely affected by an order entered following the hearing has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-14-9. Inspections during progress of work on dam.

During the placement, construction, enlargement, repair, alteration or removal of any dam, the director shall, either with the division's own engineers or by consulting engineers or engineering organizations, make periodic inspections for the purpose of ascertaining compliance with the certificate of approval. The director shall require the owner at his or her expense to perform work or tests as necessary and to provide adequate supervision during the placement, construction, enlargement, repair, alteration or removal of a dam: Provided, That with respect to dams designed by and constructed under the supervision of the soil conservation service, as to such dams no state inspections are required.

If at any time during placement, construction, enlargement, repair, alteration or removal of any dam, the director finds that the work is not being done in accordance with the provisions of the original or revised certificate of approval, the director shall notify the owner by certified or registered mail, return receipt requested, to correct the deficiency, cease and desist
work or to show cause as to why the certificate of approval should not be revoked.

The notice shall state the reason or reasons why the work is not in accordance with the certificate of approval. The director may order that work on the dam cease until the owner has complied with the notice.

If the director finds that amendments, modifications or changes are necessary to ensure the safety of the dam, the director may order the owner to revise his or her plans and specifications. If conditions are revealed which will not permit the placement, construction, enlargement, repair, alteration or removal of the dam in a safe manner, the certificate of approval may be revoked.

Immediately upon completion of a new dam or enlargement, repair or alteration of a dam, the owner shall notify the director: Provided, That immediately upon completion of a dam constructed under the supervision of the soil conservation service, a certification of completion shall be sent to the director by the soil conservation service, and a complete set of design documents "as built" plans, and specifications and safety plan of evacuation shall be provided to the director within ninety days after completion of the dam.

§22-14-10. Procedures for handling emergencies involving dams; remedial actions to alleviate emergency; payment of costs of remedial actions to be paid by dam owner.

The owner of a dam has the primary responsibility for determining when an emergency involving a dam exists. When the owner of a dam determines an emergency does exist, the owner shall take necessary remedial action and shall notify the director and the owner shall also notify any persons who may be endangered if the dam should fail.

The director shall notify any persons, not otherwise notified, who may be endangered if the dam should fail. The director may take any remedial action necessary to protect life and property if: (a) The condition of the dam
so endangers life and property that time is not sufficient
to permit the issuance and enforcement of an order for
the owner to correct the condition; or (b) passing or
imminent floods or other conditions threaten the safety
of the dam. Remedial actions may include, but are not
limited to:

(1) Taking full charge and control of the dam.

(2) Lowering the level of water impounded by the dam
by releasing such impounded water.

(3) Completely releasing all water impounded by the
dam.

(4) Performing any necessary remedial or protective
work at the site of the dam.

(5) Taking any other steps necessary to safeguard life
and property.

Once the director has taken full charge of the dam,
the director shall remain in charge and control until in
the director's opinion it has been rendered safe or the
emergency occasioning the action has ceased and the
director concludes that the owner is competent to
reassume control of the dam and its operation. The
assumption of control of the dam will not relieve the
owner of a dam of liability for any negligent act or acts
of the owner or the owner's agent or employee.

When the director declares that making repairs to the
dam or breaching the dam is necessary to safeguard life
and property, repairs or breaching shall be started
immediately by the owner, or by the director at the
owner's expense, if the owner fails to do so. The owner
shall notify the director at once of any emergency
repairs or breaching the owner proposes to undertake
and of work he or she has under way to alleviate the
emergency. The proposed repairs, breaching and work
shall be made to conform with orders of the director.
The director may obtain equipment and personnel for
emergency work from any person as is necessary and
expedient to accomplish the required work. Any person
undertaking work at the request of the division shall be
paid by the division and is immune from civil liability
under the provisions of section fifteen, article seven, chapter fifty-five of this code.

The costs reasonably incurred in any remedial action taken by the director shall be paid out of funds appropriated to the division. All costs incurred by the division shall be promptly repaid by the owner upon request or, if not repaid, the division may recover costs and damages from the owner by appropriate civil action.

§22-14-11. Requirements for dams completed prior to effective date of this section.

The director shall give notice to file an application for a certificate of approval to every owner of a dam which was completed prior to the effective date of this section: Provided, That no such notice need be given to a person who has applied for and obtained a certificate of approval on or after the first day of July, one thousand nine hundred seventy-three, in accordance with the provisions of the prior enactment of section five of this article. Such notice shall be given by certified or registered mail, return receipt requested, to the owner at his or her last address of record in the office of the county assessor of the county in which the dam is located and such mailing shall constitute service. A separate application for each dam a person owns shall be filed with the director in writing upon forms supplied by him or her and shall include or be accompanied by appropriate information concerning the dam as the director requires.

The director shall make inspections of such dams or reservoirs at state expense. The director shall require owners of such dams to perform at their expense such work or tests as may reasonably be required to disclose information sufficient to enable the director to determine whether to issue a certificate of approval or to issue an order directing further work at the owner's expense necessary to safeguard life and property. For this purpose, the director may require an owner to lower the water level of, or to empty, water impounded by the dam adjudged by the director to be unsafe. If, upon
inspection or upon completion to the satisfaction of the
director of all work that he or she ordered, the director
finds that the dam is safe to impound water, a certificate
of approval shall be issued.

**§22-14-12. Dam owner not relieved of legal responsibilities by any provision of article.**

Nothing in this article relieves the owner of a dam of
the legal duties, obligations or liabilities incident to the
ownership or operation of a dam.

**§22-14-13. Offenses and penalties.**

(a) Any person who violates any of the provisions of
this article or any certificate of approval, order, rule or
requirement of the director or division is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than one hundred dollars nor more than
one thousand dollars, or imprisoned in the county jail
not more than six months, or both fined and imprisoned.

(b) Any person who willfully obstructs, hinders or
prevents the director or division or its agents or
employees from performing the duties imposed on them
by the provisions of this article or who willfully resists
the exercise of the control and supervision conferred by
the provisions of this article upon the director or division
or its agents or employees or any owner or any person
acting as a director, officer, agent or employee of an
owner, or any contractor or agent or employee of a
contractor who engages in the placement, construction,
enlargement, repair; alteration, maintenance or removal
of any dam who knowingly does work or permits work
to be executed on the dam without a certificate of
approval or in violation of or contrary to any approval
as provided for by the provisions of this article; and any
inspector, agent or employee of the division who has
knowledge of and who fails to notify the director of
unapproved modifications to a dam is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not less than one thousand dollars nor more than
five thousand dollars, or imprisoned in the county jail
not more than one year, or both fined and imprisoned.
§22-14-14. Enforcement orders; hearings.

(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any certificate of approval, notice, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or amending certificates of approval, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c), section fifteen of this article;

(3) Institute a civil action in accordance with subsection (c), section fifteen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section twelve of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of the order and shall have a hearing before the director contesting the terms and conditions of the order within ten days of the filing of the notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of the cease and desist order.

§22-14-15. Civil penalties and injunctive relief.

(a) Any person who violates any provision of this article, any certificate of approval or any rule, notice or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than two hundred dollars for each day of the violation, not to exceed a maximum of four hundred dollars. In assessing any penalty, the director shall take
into account the seriousness of the violation and any
good faith efforts to comply with applicable require-
ments as well as any other appropriate factors as may
be established by rules promulgated by the director. No
assessment shall be levied pursuant to this subsection
until after the alleged violator has been notified by
certified mail or personal service. The notice shall
include a reference to the section of the statute, rule,
notice, order or statement of the certificate of approval's
terms that was allegedly violated, a concise statement
of the facts alleged to constitute the violation, a
statement of the amount of the administrative penalty
to be imposed and a statement of the alleged violator's
right to an informal hearing. The alleged violator has
twenty calendar days from receipt of the notice within
which to deliver to the director a written request for an
informal hearing. If no hearing is requested, the notice
becomes a final order after the expiration date of the
twenty-day period. If a hearing is requested, the
director shall inform the alleged violator of the time and
place of the hearing. Within thirty days following the
informal hearing, the director shall issue and furnish to
the violator a written decision, and the reasons therefor,
concerning the assessment of a civil administrative
penalty. The authority to levy an administrative penalty
is in addition to all other enforcement provisions of this
article and the payment of any assessment does not
affect the availability of any other enforcement provi-
sion in connection with the violation for which the
assessment is levied: Provided, That no combination of
assessments against a violator shall exceed four hundred
dollars per day of each violation: Provided, however,
That any violation for which the violator has paid a civil
administrative penalty assessed under this subsection is
not subject to a separate civil penalty action under this
article to the extent of the amount of the civil adminis-
trative penalty paid. Civil administrative penalties shall
be levied in accordance with the rules promulgated
under the authority of section four of this article. The
net proceeds of assessments collected pursuant to this
subsection shall be deposited in the dam safety fund
established pursuant to section seventeen of this article.
Any person adversely affected by the assessment of a civil administrative penalty has the right to appeal to the environmental quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

(b) No assessment levied pursuant to subsection (a) of this section is due and payable until the procedures for review of the assessment as set out in said subsection have been completed.

(c) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any certificate of approval, rule, notice or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond or to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom the relief is sought.

(d) Upon request of the director, the attorney general or the prosecuting attorney of the county in which the violation occurs, shall assist the director in any civil action under this section.

(e) In any action brought pursuant to the provisions of this section, the state or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

§22-14-16. Schedule of application fees established.

The director shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of application fees for which the appropriate fee shall be submitted by the applicant to the division together with the application for a certificate of approval filed pursuant to this article. The schedule of application fees shall be designed to
establish reasonable categories of certificate application fees based upon the complexity of the permit application review process required by the director pursuant to the provisions of this article and the rules promulgated under this article. The director shall not process any certificate application pursuant to this article until the certificate application fee has been received.

§22-14-17. Schedule of annual registration fees established.

The director shall promulgate rules in accordance with the provisions of section four of this article, to establish a schedule of annual registration fees which shall be assessed annually upon each person holding a certificate of approval issued pursuant to this article. Each person holding a certificate of approval shall pay the prescribed annual registration fee to the division pursuant to the rules promulgated under this article. The schedule of annual registration fees shall be designed to establish reasonable categories of annual registration fees, including, but not limited to, the size of the dam and its classification. Any certificate of approval issued pursuant to this article becomes void without notification to the person holding a certificate of approval when the annual registration fee is more than one hundred eighty days past due pursuant to the rules promulgated under this section.

§22-14-18. Continuation of dam safety fund; components of fund.

(a) The special fund designated "The Dam Safety Fund" hereinafter referred to as "the fund" shall be continued.

(b) All certificate application fees and annual registration fee assessments, any interest or surcharge assessed and collected by the division, interest accruing on investments and deposits of the fund, and any other moneys designated by the division shall be paid into the fund. Accrual of funds shall not exceed three hundred thousand dollars per year, exclusive of application fees. The division shall expend the proceeds of the fund for the review of applications, inspection of dams, payment
ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-1. Purpose and legislative findings.

(a) The purpose of this article is to establish a comprehensive program of controlling all phases of solid waste management.

(b) The Legislature finds that uncontrolled, inadequately controlled and improper collection, transportation, processing and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborage and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property; (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste; (6) that resource recovery and recycling reduces the need for landfills and extends their life; and that (7) proper disposal, resource recovery or recycling of solid waste is for the general welfare of the citizens of this state.

(c) The Legislature further finds that disposal in West Virginia of solid waste from unknown origins threatens the environment and the public health, safety and welfare, and therefore, it is in the interest of the public to identify the type, amount and origin of solid waste accepted for disposal at West Virginia solid waste facilities.

(d) The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal in the state of
increasingly large amounts of infectious, dangerous and undesirable solid wastes and hazardous waste by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes.

(e) The Legislature further finds that Class A landfills often have capacities far exceeding the needs of the state or the areas of the state which they serve and that such landfills create special environmental problems that require statewide coordination of the management of such landfills.

(f) The Legislature further finds that incineration technologies present potentially significant health and environmental problems.

(g) The Legislature further finds that there is a need for efforts to continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible.


1 Unless the context clearly requires a different meaning, as used in this article the terms:

(1) “Agronomic rate” means the whole sewage sludge application rate, by dry weight, designed:

(A) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop or vegetation on the land; and

(B) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the ground water.

(2) “Applicant” means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management or family relationships as the director may specify, including the following: Spouses, parents and children and siblings.

(3) “Approved solid waste facility” means a solid waste
facility or practice which has a valid permit under this
article.

(4) "Backhauling" means the practice of using the
same container to transport solid waste and to transport
any substance or material used as food by humans,
animals raised for human consumption or reusable item
which may be refilled with any substance or material
used as food by humans.

(5) "Bulking agent" means any material mixed and
composted with sewage sludge.

(6) "Class A facility" means a commercial solid waste
facility which handles an aggregate of between ten
thousand and thirty thousand tons of solid waste per
month. Class A facility includes two or more Class B
solid waste landfills owned or operated by the same
person in the same county, if the aggregate tons of solid
waste handled per month by such landfills exceeds nine
thousand nine hundred ninety-nine tons of solid waste
per month.

(7) "Commercial recycler" means any person, corpora-
tion or business entity whose operation involves the
mechanical separation of materials for the purpose of
reselling or recycling at least seventy percent by weight
of the materials coming into the commercial recycling
facility.

(8) "Commercial solid waste facility" means any solid
waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility
and does not include an approved solid waste facility
owned and operated by a person for the sole purpose of
disposing of solid wastes created by that person or such
person and other persons on a cost-sharing or nonprofit
basis and does not include land upon which reused or
recycled materials are legitimately applied for structu-
ral fill, road base, mine reclamation and similar
applications.

(9) "Composting" means the aerobic, thermophilic
decomposition of natural constituents of solid waste to
produce a stable, humus-like material.

(10) "Composting facility" means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a facility for composting solid waste that is located at the site where the waste was generated.

(11) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(12) "Division" means the division of environmental protection.

(13) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(14) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

(15) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(16) "Landfill" means any solid waste facility for the disposal of solid waste on land. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(17) "Materials recovery facility" means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does
96  not include a composting facility.
97  (18) “Mixed solid waste” means solid waste from
98  which materials sought to be reused or recycled have not
99  been source-separated from general solid waste.
100  (19) “Mixed waste processing facility” means any solid
101  waste facility at which materials are recovered from
102  mixed solid waste through manual or mechanical means
103  for purposes of reuse, recycling or composting.
104  (20) “Municipal solid waste incineration” means the
105  burning of any solid waste collected by any municipal
106  or residential solid waste disposal company.
107  (21) “Open dump” means any solid waste disposal
108  which does not have a permit under this article, or is
109  in violation of state law, or where solid waste is disposed
110  in a manner that does not protect the environment.
111  (22) “Person” or “persons” mean any industrial user,
112  public or private corporation, institution, association,
113  firm or company organized or existing under the laws
114  of this or any other state or country; state of West
115  Virginia; governmental agency, including federal
116  facilities; political subdivision; county commission;
117  municipal corporation; industry; sanitary district;
118  public service district; drainage district; soil conserva-
119  tion district; watershed improvement district; partner-
120  ship; trust; estate; person or individual; group of persons
121  or individuals acting individually or as a group; or any
122  legal entity whatever.
123  (23) “Recycling facility” means any solid waste facility
124  for the purpose of recycling at which neither land
125  disposal nor biological, chemical or thermal transforma-
126  tion of solid waste occurs: Provided, That mixed waste
127  recovery facilities, sludge processing facilities and
128  composting facilities are not considered recycling
129  facilities nor considered to be reusing or recycling solid
130  waste within the meaning of this article, article four,
131  chapter twenty-two-c and article eleven, chapter twenty
132  of this code.
133  (24) “Sewage sludge” means solid, semisolid or liquid
134  residue generated during the treatment of domestic
sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum or solids removed in primary, secondary or advanced wastewater treatment processes and a material derived from sewage sludge. "Sewage sludge" does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(25) "Sewage sludge processing facility" is a solid waste facility that processes sewage sludge for land application, incineration or disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic digestion and anaerobic digestion.

(26) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(27) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven of this chapter, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen of this chapter or refuse, slurry, overburden or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas and other mineral resources placed or disposed of at a facility
which is regulated under articles two, three, four, six, seven, eight, nine or ten of this chapter, chapter twenty-two-a or articles two, seven, eight, or nine, chapter twenty-two-c of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to such provisions of the code.

(28) “Solid waste disposal” means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing any solid waste to be placed, deposited, dumped or thrown.

(29) “Solid waste disposal shed” means the geographical area which the solid waste management board designates and files in the state register pursuant to section nine, article three, chapter twenty-two-c of this code.

(30) “Solid waste facility” means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, composting facilities and other such facilities not herein specified, but not including land upon which sewage sludge is applied in accordance with subsection (b), section twenty of this article. Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: Provided, That a salvage yard, licensed and regulated pursuant to the terms of article twenty-three, chapter seventeen of this code, is not a solid waste facility.

(31) “Source-separated materials” means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.


(a) The purpose of this section is to allow for the combustion of wood waste without a solid waste facility permit and to allow facilities to use wood waste as an alternative fuel.
(b) "Wood waste" means wood residues from logging operations, sawmills, wood product manufacturing, furniture making operations, recycling of wood products and other industrial processes, but does not include wood waste which contains hazardous constituents, including copper chromium arsenate, which would cause such wood waste to be regulated pursuant to article eighteen of this chapter.

(c) For purposes of section two of this article and section two, article four, chapter twenty-two-c of this code:

(1) Wood waste is not "solid waste" unless disposed of at a solid waste facility or an open dump;

(2) Wood waste is a material which may be used as an effective substitute for commercial products or raw material feedstock.

(d) The use of incineration technologies in an energy recovery incinerator for the purposes of combusting wood waste is not prohibited and no solid waste facility permit is required. The provisions of this section do not allow the combustion of wood waste without a source permit from the director if such permit is required by article five of this chapter or the rules promulgated under the provisions of said article five.

(e) The division may promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to effectuate the purposes of this section.


Although the director is primarily responsible for the permitting and regulating of solid wastes, the commissioner of the bureau of public health may enforce the public health laws over solid waste management which presents an imminent and substantial endangerment to the public health.


In addition to all other powers, duties, responsibilities and authority granted and assigned to the director in
this code and elsewhere described by law, the director is empowered as follows:

(a) The director shall promulgate rules in compliance with the West Virginia administrative procedures act to carry out the provisions of this article including modifying any existing rules and establishing permit application fees up to an amount sufficient to defray the costs of permit review. In promulgating rules the director shall consider and establish requirements based on the quantity of solid waste to be handled, including different requirements for solid waste facilities or approved solid waste facilities which handle more than one hundred tons of solid waste per day, the environmental impact of solid waste disposal, the nature, origin or characteristics of the solid waste, potential for contamination of public water supply, requirements for public roadway standards and design for access to the facilities with approval by the commissioner of the division of highways, public sentiment, the financial capability of the applicant, soil and geological considerations and other natural resource considerations.

(b) The director, after public notice and opportunity for public hearing near the affected community, may issue a permit with reasonable terms and conditions for installation, establishment, modification, operation or closure of a solid waste facility: Provided, That the director may deny the issuance of a permit on the basis of information in the application or from other sources including public comment, if the solid waste facility is likely to cause adverse impacts on the environment. The director may also prohibit the installation or establishment of specific types and sizes of solid waste facilities in a specified geographical area of the state based on the above cited factor and may delete such geographical area from consideration for that type and size solid waste facility.

(c) The director may refuse to grant any permit if he or she has reasonable cause to believe, as indicated by documented evidence, that the applicant, or any officer, director or manager, thereof, or person owning a five percent or more interest, beneficial or otherwise, or
other person conducting or managing the affairs of the applicant or of the proposed licensed premises, in whole or in part:

(1) Has demonstrated, either by his or her police record or by his or her record as a permittee under articles eleven through nineteen of this chapter or chapter twenty of this code, a lack of respect for law and order, generally, or for the laws and rules governing the disposal of solid wastes;

(2) Has misrepresented a material fact in applying to the director for a permit;

(3) Has been convicted of a felony or other crime involving moral turpitude;

(4) Has exhibited a pattern of violating environmental laws in any state or the United States or combination thereof; or

(5) Has had any permit revoked under the environmental laws of any state or the United States.

(d) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter onto any approved solid waste facility, open dump or property where solid waste is present for the purpose of making an inspection or investigation of solid waste disposal.

(e) The director or any authorized representative, employee or agent of the division may, at reasonable times, enter any approved solid waste facility, open dump or property where solid waste is present and take samples of the waste, soils, air or water or may, upon issuance of an order, require any person to take and analyze samples of such waste, soil, air or water.

(f) The director may also perform or require a person, by order, to perform any and all acts necessary to carry out the provisions of this article or the rules promulgated thereunder.

(g) The director or his or her authorized representative, employee or agent shall make periodic inspections at every approved solid waste facility to effectively
implement and enforce the requirements of this article or its rules and may, in coordination with the commissioner of the division of highways, conduct at weigh stations or any other adequate site or facility inspections of solid waste in transit.

(h) The director shall require and set the amount of performance bonds for persons engaged in the practice of solid waste disposal in this state, pursuant to section twelve of this article.

(i) The director shall require: (1) That persons disposing of solid waste at commercial solid waste facilities within the state file with the operator of the commercial solid waste facility records concerning the type, amount and origin of solid waste disposed of by them; and (2) that operators of commercial solid waste facilities within the state maintain records and file them with the director concerning the type, amount and origin of solid waste accepted by them.

(j) Identification of interests. — The director shall require an applicant for a solid waste facility permit to provide the following information:

(1) The names, addresses and telephone numbers of:

(A) The permit applicant;

(B) Any other person conducting or managing the affairs of the applicant or of the proposed permitted premises, including any contractor for gas or energy recovery from the proposed operation, if the contractor is a person other than the applicant; and

(C) Parties related to the applicant by blood, marriage or business association, including the relationship to the applicant.

(2) The names and addresses of the owners of record of surface and subsurface areas within, and contiguous to, the proposed permit area.

(3) The names and addresses of the holders of record to a leasehold interest in surface or subsurface areas within, and contiguous to, the proposed permit area.
(4) A statement of whether the applicant is an individual, corporation, partnership, limited partnership, government agency, proprietorship, municipality, syndicate, joint venture or other entity. For applicants other than sole proprietorships, the application shall contain the following information, if applicable:

(A) Names and addresses of every officer, general and limited partner, director and other persons performing a function similar to a director of the applicant;

(B) For corporations, the principal shareholders;

(C) For corporations, the names, principal places of businesses and internal revenue service tax identification numbers of United States parent corporations of the applicant, including ultimate parent corporations and United States subsidiary corporations of the applicant and the applicant's parent corporations; and

(D) Names and addresses of other persons or entities having or exercising control over any aspect of the proposed facility that is regulated by the division, including, but not limited to, associates and agents.

(5) If the applicant or an officer, principal shareholder, general or limited partner or other related party to the applicant, has a beneficial interest in, or otherwise manages or controls another person or municipality engaged in the business of solid waste collection, transportation, storage, processing, treatment or disposal, the application shall contain the following information:

(A) The name, address and tax identification number or employer identification number of the corporation or other person or municipality; and

(B) The nature of the relationship or participation with the corporation or other person or municipality.

(6) An application shall list permits or licenses, issued by the division or other environmental regulatory agency to each person or municipality identified in paragraph (1) and to other related parties to the applicant, that are currently in effect or have been in
effect in at least part of the previous ten years. This list
shall include the type of permit or license, number,
location, issuance date and when applicable, the
expiration date.

(7) An application shall identify the solid waste
facilities in the state which the applicant or a person or
municipality identified in paragraph (1) of this subdi-
vision and other related parties to the applicant
currently owns or operates, or owned or operated in the
previous ten years. For each facility, the applicant shall
identify the location, type of operation and state or
federal permits under which they operate or have
operated. Facilities which are no longer permitted or
which were never under permit shall also be listed.

(k) Compliance information. — An application shall
contain the following information for the ten-year period
prior to the date on which the application is filed:

(1) A description of notices of violation, including the
date, location, nature and disposition of the violation,
that were sent by the division to the applicant or a
related party, concerning any environmental law, rule,
or order of the division, or a condition of a permit or
license. In lieu of a description the applicant may
provide a copy of notices of violation.

(2) A description of administrative orders, civil
penalty assessments and bond forfeiture actions by the
division, and civil penalty actions adjudicated by the
state, against the applicant or a related party concern-
ing any environmental law, rule, or order of the division,
or a condition of a permit or license. The description
shall include the date, location, nature and disposition
of the actions. In lieu of a description, the applicant may
provide a copy of the orders, assessments and actions.

(3) A description of a summary, misdemeanor or
felony conviction, a plea of guilty or plea of no contest
that has been obtained in this state against the applicant
or a related party under any environmental law or rule
concerning the storage, collection, treatment, transpor-
tation, processing or disposal of solid waste. The
description shall include the date, location, nature and
disposition of the actions.

(4) A description of a court proceeding concerning any environmental law or rule that was not described under paragraph (3) of this subdivision in which the applicant or a related party has been party. The description shall include the date, location, nature and disposition of the proceedings.

(5) A description of a consent order, consent adjudication, consent decree or settlement agreement involving the applicant or a related party concerning any environmental law or rule in which the division, other governmental agencies, the United States Environmental Protection Agency, or a county health department was a party. The description shall include the date, location, nature and disposition of the action. In lieu of a description, the applicant may provide a copy of the order, adjudication, a decree or agreement.

(6) For facilities and activities identified under paragraph (1) of this subdivision, a statement of whether the facility or activity was the subject of an administrative order, consent agreement, consent adjudication, consent order, settlement agreement, court order, civil penalty, bond forfeiture proceeding, criminal conviction, guilty or no contest plea to a criminal charge or permit or license suspension or revocation under the act or the environmental protection acts. If the facilities or activities were subject to these actions, the applicant shall state the date, location, nature and disposition of the violation. In lieu of a description, the applicant may provide a copy of the appropriate document. The application shall also state whether the division has denied a permit application filed by the applicant or a related party, based on compliance status.

(7) When the applicant is a corporation, a list of the principal shareholders that have also been principal shareholders of other corporations which have committed violations of any environmental law or rule. The list shall include the date, location, nature and disposition of the violation, and shall explain the relationship between the principal shareholder and both the appli-
237 cant and the other corporation.

238 (8) A description of a misdemeanor or felony conviction, a plea of guilty and a plea of no contest, by the
239 applicant or a related party for violations outside of this
240 state of any environmental protection laws or regulations. The description shall include the date of the
241 convictions or pleas, and the date, location and nature
242 of the offense.

245 (9) A description of final administrative orders, court
246 orders, court decrees, consent decrees or adjudications,
247 consent orders, final civil penalty adjudications, final
248 bond forfeiture actions or settlement agreements
249 involving the applicant or a related party for violations
250 outside of this state of any environmental protection
251 laws or regulations. The description shall include the
252 date of the action and the location and nature of the
253 underlying violation. In lieu of a description, the
254 applicant may provide a copy of the appropriate
255 document.

256 (I) All of the information provided by the applicant
257 pursuant to this section is not confidential and is
258 disclosable pursuant to the provisions of chapter twenty-
259 nine-b of this code.

§22-15-6. Fee for filing a certificate of site approval.

1 The fee for the certificate of site approval is twenty-
2 five dollars payable upon the filing of the application
3 therefor with the county, county solid waste authority
4 or regional solid waste authority, as the case may be.

§22-15-7. Special provision for residential solid waste
disposal.

1 All commercial and public solid waste facilities shall
2 establish and publish a yearly schedule providing for
3 one day per month on which a person not in the business
4 of hauling or disposing of solid waste, who is a resident
5 of the wasteshed in which the facility is located, may
6 dispose of an amount of residential solid waste up to one
7 pick-up truckload or its equivalent, free of all charges
8 and fees.

(a) On and after the first day of October, one thousand nine hundred ninety-one, it is unlawful to operate any commercial solid waste facility that handles between ten thousand and thirty thousand tons of solid waste per month, except as provided in section nine of this article and sections twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code.

(b) Except as provided in section nine of this article, the maximum quantity of solid waste which may lawfully be handled at any commercial solid waste facility is thirty thousand tons per month.


(a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of the following criteria, any person who on the first day of October, one thousand nine hundred ninety-one, has:

(1) Obtained site approval for a commercial solid waste facility from a county or regional solid waste authority or county commission pursuant to a prior enactment of this code, or has otherwise satisfied the requirements of subsection (a), section twenty-five, article four, chapter twenty-two-c of this code;

(2) Entered into a contract with a county commission regarding the construction and operation of a solid waste facility, which contract contains rates for the disposal of solid waste originating within the county;

(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the public service commission approving the rates established in the contract with the county commission; and
(4) An application for a permit for a commercial solid waste facility pending with the division of environmental protection, or is operating under a permit or compliance order, is permitted to handle in excess of the limitation established in section eight of this article up to fifty thousand tons of solid waste per month at a commercial solid waste facility so long as the person complies with the provisions of this section.

(b) Any person desiring to operate a commercial solid waste facility which handles an amount of solid waste per month in excess of the limitation established in section eight of this article, but not exceeding the tonnage limitation described in subsection (a) of this section may file a notice with the county commission of the county in which the facility is or is to be located requesting a countywide referendum. Upon receipt of such notice, the county commission shall order a referendum be placed upon the ballot, not less than fifty-six days before the next primary or general election.

(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section eight of this article not to exceed fifty thousand tons per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within ____________ county, West Virginia?

☐ For the facility
☐ Against the facility

(Place a cross mark in the square opposite your choice.)"
If a majority of the legal votes cast upon the question is against the facility handling an amount of solid waste of up to fifty thousand tons per month then the division shall not proceed any further with the application. If a majority of the legal votes cast upon the question is in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote is not binding on or require the division to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates, and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person's commercial solid waste facility within the county under this article or article four, chapter twenty-two-c, or previously enacted sections of articles five-f and nine, chapter twenty of this code are valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions are cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Provided, That such person is entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a), notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons
within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

§22-15-10. Prohibitions; permits required; priority of disposal.

(a) Open dumps are prohibited and it is unlawful for any person to create, contribute to or operate an open dump or for any landowner to allow an open dump to exist on the landowner's property unless that open dump is under a compliance schedule approved by the director. Such compliance schedule shall contain an enforceable sequence of actions leading to compliance and shall not exceed two years. Open dumps operated prior to the first day of April, one thousand nine hundred eighty-eight, by a landowner or tenant for the disposal of solid waste generated by the landowner or tenant at his or her residence or farm are not a violation of this section if such open dump did not constitute a violation of law on the first day of January, one thousand nine hundred eighty-eight, and unauthorized dumps which were created by unknown persons do not constitute a violation of this section: Provided, That no person shall contribute additional solid waste to any such dump after the first day of April, one thousand nine hundred eighty-eight, except that the owners of the land on which unauthorized dumps have been or are being made are not liable for such unauthorized dumping unless such landowners refuse to cooperate with the division in stopping such unauthorized dumping.

(b) It is unlawful for any person, unless the person holds a valid permit from the division to install, establish, construct, modify, operate or abandon any solid waste facility. All approved solid waste facilities shall be installed, established, constructed, modified, operated or abandoned in accordance with this article, plans, specifications, orders, instructions and rules in effect.
(c) Any permit issued under this article shall be issued in compliance with the requirements of this article, its rules and article eleven of this chapter and the rules promulgated thereunder, so that only a single permit is required of a solid waste facility under these two articles. Each permit issued under this article shall have a fixed term not to exceed five years: Provided, That the director may administratively extend a permit beyond its five-year term if the approved solid waste facility is in compliance with this article, its rules and article eleven of this chapter and the rules promulgated thereunder: Provided, however, That such administrative extension may not be for more than one year. Upon expiration of a permit, renewal permits may be issued in compliance with rules promulgated by the director.

(d) For existing solid waste facilities which formerly held division of health permits which expired by law and for which complete permit applications for new permits pursuant to this article were submitted as required by law, the division may enter an administrative order to govern solid waste activities at such facilities, which may include a compliance schedule, consistent with the requirements of the division's solid waste management rules, to be effective until final action is taken to issue or deny a permit for such facility pursuant to this article, or until further order of the division.

(e) No person may dispose in the state of any solid waste, whether such waste originates in state or out of state, in a manner which endangers the environment or the public health, safety or welfare as determined by the director: Provided, That the carcasses of dead animals may be disposed of in any solid waste facility or in any other manner as provided for in this code. Upon request by the director, the commissioner of the bureau of public health shall provide technical advice concerning the disposal of solid waste or carcasses of dead animals within the state.

(f) A commercial solid waste facility shall first ensure that the disposal needs of the wasteshed in which it is located are met. If one or more local solid waste
authorities in the wasteshed in which the facility is located determine that the present or future disposal needs of the wasteshed are not being, or will not be, met by the commercial solid waste facility, such authorities may apply to the director or to modify the applicable permit. The director, in consultation with the solid waste management board, may then modify the applicable permit in order to reduce the total monthly tonnage of out of wasteshed waste the facility is permitted to accept by an amount that shall not exceed the total monthly tonnage necessary to ensure the disposal needs of the wasteshed in which the facility is located.

(g) In addition to all the requirements of this article and the rules promulgated hereunder, a permit to construct a new commercial solid waste facility or to expand the spatial area of an existing facility, not otherwise allowed by an existing permit, may not be issued unless the public service commission has granted a certificate of need, as provided in section one-c, article two, chapter twenty-four of this code. If the director approves a permit or permit modification, the certificate of need shall become a part of the permit and all conditions contained in the certificate of need shall be conditions of the permit and may be enforced by the division in accordance with the provisions of this article.

(h) The director shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code which reflect the purposes as set forth in this section.


(a) Imposition. — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of one dollar and seventy-five cents per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.
(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section and section twenty-two, article five, chapter seven of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definition of solid waste disposal facility. — For purposes of this section, the term “solid waste disposal facility” means any approved solid waste facility or open dump in this state, and includes a transfer station when
the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) **Exemptions.** — The following transactions are exempt from the fee imposed by this section:

1. Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

2. Reuse or recycling of any solid waste;

3. Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director is exempt from the solid waste assessment fee; and

4. Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(f) **Procedure and administration.** — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of this code shall apply to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) **Criminal penalties.** — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code shall apply to the fee imposed by this section
with like effect as if said sections were applicable only
to the fee imposed by this section and were set forth in
ex tenso herein.

(h) Dedication of proceeds. — The net proceeds of the
fee collected by the tax commissioner pursuant to this
section shall be deposited at least monthly in an account
designated by the director. The director shall allocate
twenty-five cents for each ton of solid waste disposed of
in this state upon which the fee imposed by this section
is collected and shall deposit the total amount so
allocated into the “Solid Waste Reclamation and
Environmental Response Fund” to be expended for the
purposes hereinafter specified. The first one million
dollars of the net proceeds of the fee imposed by this
section collected in each fiscal year shall be deposited
in the “Solid Waste Enforcement Fund” and expended
for the purposes hereinafter specified. The next two
hundred fifty thousand dollars of the net proceeds of the
fee imposed by this section collected in each fiscal year
shall be deposited in the “Solid Waste Management
Board Reserve Fund”, and expended for the purposes
hereinafter specified: Provided, That in any year in
which the water development authority determines that
the solid waste management board reserve fund is
adequate to defer any contingent liability of the fund,
the water development authority shall so certify to the
director and the director shall then cause no less than
fifty thousand dollars nor more than two hundred fifty
thousand dollars to be deposited to the fund: Provided,
however, That in any year in which the water develop-
ment authority determines that the solid waste manage-
ment board reserve fund is inadequate to defer any
contingent liability of the fund, the water development
authority shall so certify to the director and the director
shall then cause not less than two hundred fifty
dollars nor more than five hundred thousand
dollars to be deposited in the fund: Provided further,
That if a facility owned or operated by the state of West
Virginia is denied site approval by a county or regional
solid waste authority, and if such denial contributes, in
whole or in part, to a default, or drawing upon a reserve
fund, on any indebtedness issued or approved by the
solid waste management board, then in that event the
solid waste management board or its fiscal agent may
withhold all or any part of any funds which would
otherwise be directed to such county or regional
authority and shall deposit such withheld funds in the
appropriate reserve fund. The director shall allocate the
remainder, if any, of said net proceeds among the
following three special revenue accounts for the purpose
of maintaining a reasonable balance in each special
revenue account, which are hereby continued in the
state treasury:

(1) The “Solid Waste Enforcement Fund” which shall
be expended by the director for administration, inspec-
tion, enforcement and permitting activities established
pursuant to this article;

(2) The “Solid Waste Management Board Reserve
Fund” which shall be exclusively dedicated to providing
a reserve fund for the issuance and security of solid
waste disposal revenue bonds issued by the solid waste
management board pursuant to article three, chapter
twenty-two-c of this code;

(3) The “Solid Waste Reclamation and Environmental
Response Fund” which may be expended by the director
for the purposes of reclamation, cleanup and remedial
actions intended to minimize or mitigate damage to the
environment, natural resources, public water supplies,
water resources and the public health, safety and
welfare which may result from open dumps or solid
waste not disposed of in a proper or lawful manner.

(i) Findings. — In addition to the purposes and
legislative findings set forth in section one of this article,
the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid
waste should bear the responsibility of disposing of said
solid waste or compensate other localities for costs
associated with accepting such solid waste;

(2) The costs of maintaining and policing the streets
and highways of the state and its communities are
increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.


(a) After a solid waste permit application has been approved pursuant to this article, or once operations have commenced pursuant to a compliance order, but before a permit has been issued, each operator of a commercial solid waste facility shall furnish bond, on a form to be prescribed and furnished by the director, payable to the state of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article, rules promulgated hereunder and the permit: Provided, That the director has the discretion to waive the requirement of a bond from the operator of a commercial solid waste facility, other than a Class A facility, which is operating under a compliance order. The amount of the bond required is one thousand dollars per acre and may include an additional amount determined by the director based upon the total estimated cost to the state of completing final closure according to the permit granted to such facility and such measures as are necessary to prevent adverse effects upon the environment; such measures include, but are not limited to, satisfactory monitoring, post-closure care and remedial measures: Provided, however, That the amount of the bond shall not exceed eight thousand dollars per acre. All permits shall be bonded for at least ten thousand dollars. The bond shall cover either (1) the entire area to be used for the disposal of solid waste, or (2) that increment of land within the permit area upon which the operator will initiate and conduct commercial solid waste facility operations within the initial term of the permit pursuant to legislative rules promulgated by the director pursuant to chapter twenty-nine-a of this code. If the operator chooses to use incremental bonding, as succeeding
increments of commercial solid waste facility operations are to be initiated and conducted within the permit area, the operator shall file with the director an additional bond or bonds to cover such increments in accordance with this section: Provided further, That once the operator has chosen to proceed with bonding either the entire area to be used for the disposal of solid waste or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for performance bond coverage shall commence with issuance of a permit and continue for the full term of the permit and for a period of up to thirty full years after final closure of the permit site: Provided, That any further time period necessary to achieve compliance with the requirements in the closure plan of the permit is considered an additional liability period.

(c) The form of the performance bond shall be approved by the director and may include, at the option of the director, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation (as established by the director), self-bonding or a combination of these methods.

If collateral bonding is used, the operator may elect to deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank, or of the homeowners' loan corporation; full faith and credit general obligation bonds of the state of West Virginia, or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the division. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the
permit is issued. The operator making the deposit is entitled from time to time to receive from the state treasurer, upon the written approval of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with the treasurer in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(d) Within twelve months prior to the expiration of the thirty-year period following final closure, the division will conduct a final inspection of the facility. The purpose of the inspection is to determine compliance with this article, the division's rules, the terms and conditions of the permit, orders of the division and the terms and conditions of the bond. Based upon this determination, the division will either forfeit the bond prior to the expiration of the thirty-year period following final closure, or release the bond at the expiration of the thirty-year period following final closure. Bond release requirements shall be provided in rules promulgated by the director.

(e) If the operator of a commercial solid waste facility abandons the operation of a solid waste disposal facility for which a permit is required by this article or if the permittee fails or refuses to comply with the requirements of this article in any respect for which liability has been charged on the bond, the director shall declare the bond forfeited and shall certify the same to the attorney general who shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operation has deposited cash or securities as collateral in lieu of corporate surety, the director shall declare said collateral forfeited and shall direct the state treasurer to pay said funds into a waste management fund to be used by the director to effect proper closure and to defray the cost of administering this article. Should any corporate surety fail to promptly pay, in full, forfeited bond, it is disqualified from writing any further surety bonds under this article.


Any person investigating an area for the purpose of
siting a commercial solid waste facility where no current solid waste permit exists, in order to determine a feasible, approximate location, shall prior to filing an application for a solid waste permit publish a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is to be located. Such notice shall inform the public of the location, nature and other details of the proposed activity as prescribed in rules promulgated by the director. Within five days of such publication such person shall file with the director a pre-siting notice, which shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. Such notice shall contain a certification of publication from a qualified newspaper, description of the area, the period of investigative review, a United States geological survey topographic map and a map showing the location of property boundaries of the area proposed for siting and other such information as required by rules promulgated pursuant to this section. The director shall hold a public hearing on the pre-siting notice in the area potentially affected. The director shall define pre-siting activities by promulgating legislative rules pursuant to chapter twenty-nine-a of this code. The pre-siting notice, as prescribed by the director, shall also be filed with the county or regional solid waste authority, established pursuant to article four, chapter twenty-two-c of this code, according to the county or region in which the proposed site is located within five days of the publication of the notice.

§22-15-14. Limitations on permits; encouragement of recycling.

(a) The director shall by rules promulgated in accordance with chapter twenty-nine-a of this code establish standards and criteria applicable to commercial solid waste facilities for the visual screening of such facilities from any interstate highway, turnpike, federal and state primary highway or scenic parkway. The director shall not issue a permit under this article to install, establish, construct or operate any commercial solid waste facility without proper visual screening from
any interstate highway, turnpike, federal or state
primary highway or scenic parkway.

(b) The director shall give substantial deference and
consideration to the county or regional litter and solid
waste control plan approved pursuant to article four,
chapter twenty-two-c of this code and to the comprehen-
sive county plan adopted by the county commission
pursuant to article twenty-four, chapter eight of this
code in the issuance or the renewal of any permit under
this article: Provided, That the authority and discretion
of the director under this article is not diminished or
modified by this subsection.

(c) The director is authorized and directed to promul-
gate legislative rules pursuant to chapter twenty-nine-
a of this code encouraging each commercial solid waste
facility and each person, partnership, corporation and
governmental agency engaged in the commercial
collection, transportation, processing and disposal of
solid waste to recycle paper, glass, plastic and alumi-
num materials and such other solid wastes as the
director may specify.

(d) The director is authorized and directed to promul-
gate legislative rules pursuant to chapter twenty-nine-
a of this code encouraging each person, partnership,
corporation and governmental agency subscribing to
solid waste collection services to segregate paper, glass,
plastic and aluminum material, and such other solid
waste material as the director may specify, prior to
collection of such wastes at their source for purposes of
recycling.

(e) Under no condition shall transloading solid waste
materials be permitted within a municipality except
those facilities owned or operated on behalf of the
municipality in which the facility is located.

§22-15-15. Orders, inspections and enforcement; civil and
criminal penalties.

(a) If the director, upon inspection or investigation by
duly authorized representatives or through other means
observes, discovers or learns of a violation of this article,
its rules, article eleven of this chapter or its rules, or any permit or order issued under this article, he or she shall:

(1) Issue an order stating with reasonable specificity the nature of the alleged violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (e) of this section;

(3) Institute a civil action in accordance with subsection (e) of this section; or

(4) Request the attorney general, or the prosecuting attorney of the county wherein the alleged violation occurred, to bring an appropriate action, either civil or criminal in accordance with subsection (b) of this section.

(b) Any person who willfully or negligently violates the provisions of this article, any permit or any rule or order issued pursuant to this article is subject to the same criminal penalties as set forth in section twenty-four, article eleven of this chapter.

(c) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than five thousand dollars for each day of such violation, not to exceed a maximum of twenty thousand dollars.

(1) In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal
service. The notice shall include a reference to the
section of the statute, rule, order or statement of permit
conditions that was allegedly violated, a concise state-
ment of the facts alleged to constitute the violation, a
statement of the amount of the administrative penalty
to be imposed and a statement of the alleged violator's
right to an informal hearing. The alleged violator has
twenty calendar days from receipt of the notice within
which to deliver to the director a written request for an
informal hearing. If no hearing is requested, the notice
becomes a final order after the expiration of the twenty-
day period. If a hearing is requested, the director shall
inform the alleged violator of the time and place of the
hearing. The director may appoint an assessment officer
to conduct the informal hearing and then make a
written recommendation to the director concerning the
assessment of a civil administrative penalty. Within
thirty days following the informal hearing, the director
shall issue and furnish to the alleged violator a written
decision, and the reasons therefor, concerning the
assessment of a civil administrative penalty. Within
thirty days after notification of the director's decision,
the alleged violator may request a formal hearing before
the environmental quality board in accordance with the
provisions of section sixteen of this article. The authority
to levy a civil administrative penalty is in addition to
all other enforcement provisions of this article and the
payment of any assessment does not affect the availa-
bility of any other enforcement provision in connection
with the violation for which the assessment is levied:

Provided, That no combination of assessments against a
violator under this section shall exceed twenty-five
thousand dollars for each day of such violation: Pro-
vided, however, That any violation for which the violator
has paid a civil administrative penalty assessed under
this section shall not be the subject of a separate civil
penalty action under this article to the extent of the
amount of the civil administrative penalty paid. All
administrative penalties shall be levied in accordance
with rules issued pursuant to subsection (a), section five
of this article. The net proceeds of assessments collected
pursuant to this subsection shall be deposited in the solid
waste reclamation and environmental response fund established in subdivision (3), subsection (h), section eleven of this article.

(2) No assessment levied pursuant to subdivision (1), subsection (c) above becomes due and payable until the procedures for review of such assessment as set out in said subsection have been completed.

(d) Any person who violates any provision of this article, Any permit or any rule or order issued pursuant to this article is subject to a civil penalty not to exceed twenty-five thousand dollars for each day of such violation, which penalty shall be recovered in a civil action either in the circuit court wherein the violation occurs or in the circuit court of Kanawha county.

(e) The director may seek an injunction, or may institute a civil action against any person in violation of any provisions of this article or any permit, rule or order issued pursuant to this article. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief or a civil penalty action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

(f) Upon request of the director, the attorney general or the prosecuting attorney of the county in which the violation occurs shall assist the director in any civil action under this section.

(g) In any civil action brought pursuant to the provisions of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

(h) In addition to all other grounds for revocation, the director shall revoke a permit for any of the following reasons:
(1) Fraud, deceit or misrepresentation in securing the permit, or in the conduct of the permitted activity;

(2) Offering, conferring or agreeing to confer any benefit to induce any other person to violate the provisions of this chapter, or of any other law relating to the collection, transportation, treatment, storage, or disposal of solid waste, or of any rule adopted pursuant thereto;

(3) Coercing a customer by violence or economic reprisal or the threat thereof to utilize the services of any permittee; or

(4) Preventing, without authorization of the division, any permittee from disposing of solid waste at a licensed treatment, storage or disposal facility.


Any person having an interest which is or may be adversely affected, or who is aggrieved by an order of the director, or by the issuance or denial of a permit or by the permit's terms or conditions, may appeal to the environmental quality board as provided in article one, chapter twenty-two-b of this code.


(a) The director may grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to a solid waste facility required under the terms of an extension granted pursuant to this subsection to close by the thirtieth day of June, one thousand nine hundred ninety-three, or required by solid waste management rules to close by the thirtieth day of September, one thousand nine hundred ninety-three, provided that the solid waste facility:

(1) Has a solid waste facility permit, or by the first day of March, one thousand nine hundred ninety-three, had an application to obtain a permit pending before the division for the construction of a landfill in accordance with title forty-seven, series thirty-eight, solid waste
management rules; and

(2) Has a certificate of need or had an application pending therefor, from the public service commission; and

(3) Has been determined by the director to pose no significant hazard to public health, safety or the environment; and

(4) Has entered into a compliance schedule with the division to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with title forty-seven, series thirty-eight, solid waste management rules or to be in full compliance, no later than the thirtieth day of September, one thousand nine hundred ninety-four, with preclosure provisions of title forty-seven, series thirty-eight, solid waste management rules: Provided, That no such extension of closure deadline shall extend beyond the thirty-first day of March, one thousand nine hundred ninety-four, for any landfill in a county in which there is also located a commercial solid waste landfill which has installed a composite liner system in accordance with the requirements of the solid waste management rules.

(b) Any solid waste facility seeking to extend its closure deadline until the thirtieth day of September, one thousand nine hundred ninety-four, shall submit to the director, no later than the thirtieth day of April, one thousand nine hundred ninety-three, an application sufficient to demonstrate compliance with the requirements of subsection (a) of this section. The director shall grant or deny any application within thirty days of receipt thereof: Provided, That as a condition precedent for granting such closure extension, a solid waste facility must enter into an agreement with the director that the solid waste facility shall, no later than the thirtieth day of September, one thousand nine hundred ninety-three, complete and submit to the director an analysis of the facility's specific requirements and cost to comply with the applicable design criteria, groundwater monitoring provisions of title forty-seven, series...
(c) Any party who is aggrieved by an order of the director regarding the grant or denial of an extension of the closure deadline for a solid waste facility pursuant to this section may obtain judicial review thereof in the same manner as provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall apply to and govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in section four, article five, chapter twenty-nine-a of this code, in the circuit court of the county where such facility exists: Provided, That the court shall not in any manner permit the continued acceptance of solid waste at the facility pending review of the decision of the director of the division.

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

(e) Notwithstanding any other provision of this article, the director, upon receipt of a request for an extension, shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste facility required to close on the thirty-first day of March, one thousand nine hundred ninety-three, or the thirtieth day of September, one thousand nine hundred ninety-three, which is owned by a solid waste authority or owned by a municipality and which accepts at least thirty percent of its waste from within the county in which it is located.
and which has not been determined by the director to pose a significant risk to human health and safety or cause substantial harm to the environment and which could not be granted an extension up to the thirtieth day of September, one thousand nine hundred ninety-four, pursuant to the terms of subsections (a) and (b) of this section if:

(1) The cost of transporting the waste is prohibitive; or

(2) The cost of disposing of waste in other solid waste facilities within the wasteshed would increase.

(f) Notwithstanding any other provision of this article, the director shall grant an extension of the closure deadline up to the thirtieth day of September, one thousand nine hundred ninety-four, to any solid waste landfill which, on or before the first day of March, one thousand nine hundred ninety-three, has entered into a compliance schedule with the director for the construction of a transfer station or to any solid waste landfill which on the first day of March, one thousand nine hundred ninety-three, is already in the process of constructing a solid waste transfer station and applies by the first day of April, one thousand nine hundred ninety-three, to enter into with the director, a compliance schedule for the completion of the transfer station: Provided, That upon the completion of the transfer station and commencement of operations of the transfer station, such landfill shall cease accepting solid waste for disposal.


(a) Notwithstanding any other provision of this code, a permit application for a solid waste landfill facility submitted by any person who has owned, operated or held a permit for a solid waste landfill upon which funds have been, or are to be, expended on pursuant to the provisions of article sixteen of this chapter, may be approved under the provisions of this article only if all funds so expended are repaid in full, plus interest, or arrangements, satisfactory to the director, are made for the repayment of the funds and the interest. The
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repayment shall be made a specific condition of a permit.

(b) In the case where a permittee has entered into a repayment arrangement with the director in order to obtain a permit under this article, the repayment of the funds shall be considered by the public service commission a reasonable cost of operating the newly permitted landfill in determining rates to be charged at the landfill.


(a) Notwithstanding any other provision of this code to the contrary, it is unlawful to install, establish or construct a new municipal or commercial solid waste facility utilizing incineration technology for the purpose of solid waste incineration: Provided, That such prohibition does not include the development of pilot projects which may include tire or tire material incineration, designed to analyze the efficiency and environmental impacts of incineration technologies: Provided, however, That any pilot project proposing to incinerate solid waste must comply with regulatory requirements for solid waste facilities established in this chapter and shall demonstrate with particularity to the division that it has the financial and technical ability to comply with all rules applicable to solid waste facilities utilizing incineration technologies. The division shall require a surety bond, deposit or similar instrument in an amount sufficient to cover the costs of potential future environmental harm at the site.

(b) It is unlawful to engage in the practice of backhauling as such term is defined in section two of this article.


(a) The division shall develop and implement a comprehensive program for the regulation and management of sewage sludge. The division is authorized to require permits for all facilities and activities which...
generate, process or dispose of sewage sludge by whatever means, including, but not limited to, land application, composting, mixed waste composting, incineration or any other method of handling sewage sludge within the state.

(b) The director shall promulgate rules necessary for the efficient and orderly regulation of sewage sludge no later than ninety days after the effective date of this article. The Legislature finds and declares that conditions warranting a rule to be promulgated as an emergency rule do exist and that the promulgation of the initial rule required by this section should be accorded emergency status. All rules, whether emergency or not, promulgated pursuant to this section shall assure, at a minimum, the following:

(1) That entities either producing sewage sludge within the state or importing sewage sludge into the state are required to report to the division the following:

   (i) The specific source of the sewage sludge;
   (ii) The amount of sewage sludge actually generated or imported;
   (iii) The content of heavy metals, pathogens, toxins or vectors present in the sewage sludge; and
   (iv) Each location that the sewage sludge is stored, land applied or otherwise disposed of; the amount so stored, land applied or otherwise disposed of; and the capacity of that location to accept sewage sludge;

(2) That the division engage in reasonable and periodic monitoring of all sewage sludge related activities and to monitor data supplied by sewage sludge producers or importers to ensure compliance with state and federal regulations;

(3) That representatives of the division have the ability to enter onto any land application site for the purposes of inspecting and analyzing the effects of sewage sludge application on that site;

(4) That no permit for the processing or disposal of sewage sludge will be issued until there is an accurate
finding that it has been adequately tested and shown not
to contain heavy metals, pathogens, toxins or vectors in
excess of regulatory standards;

(5) That the director may require a surety bond,
deposit or similar instrument in an amount sufficient to
cover the costs of future environmental remediation
from producers and importers of sewage sludge;

(6) That no person or entity be allowed to apply
sewage sludge to land in a manner that will result in
exceeding the maximum soil concentration for all
pollutants, including, but not limited to, arsenic,
cadmium, chromium, copper, lead, mercury, molybde-
num, nickel, selenium and zinc;

(7) That no land, except a solid waste facility, be
allowed to accept or store so much sewage sludge as to
exceed the agronomic rate or a rate of fifteen dry tons
per acre per year, whichever is less: *Provided*, That up
to twenty-five dry tons per acre per year may be applied
in the reclamation of surface mine land;

(8) That information relating to the disposal of sewage
sludge is available to affected communities;

(9) That all sewage sludge processing facilities contain
sufficient design specifications to protect ground and
surface waters;

(10) That regulation of composting facilities varies
according to types and quantities of materials handled;

(11) That only living or dead plant tissues are used as
bulking agents in sewage sludge processing facilities;

(12) That a fee, to be paid by the producer or importer,
be levied and imposed on the land application of sewage
sludge, to be collected at a per ton rate, sufficient to
cover the costs of the sewage sludge management
program. Fees collected pursuant to the terms of this
subsection shall be deposited in the special revenue fund
designated the “water quality management fund”
established under the provisions of section ten, article
eleven of this chapter. The fee schedule shall vary
according to the volume of materials handled and the contaminant level of the sewage sludge and shall be subject to the provisions of article three, chapter twenty-nine-a of this code.

(c) For those publicly owned treatment works (POTW) which produce sewage sludge and are regulated by the division pursuant to an NPDES permit required under article eleven of this chapter, a sewage sludge processing permit shall be a part of the existing water pollution control permit and shall include a sewage sludge management plan approved by the director.

(d) On and after the tenth day of April, one thousand nine hundred ninety-three, any facility seeking to land apply, compost, incinerate or recycle sewage sludge shall first apply for and obtain a permit from the division. No such permit may be issued until the rule provided for in subsection (b) of this section is effective.

(e) All sewage sludge placed in, or upon, or used by a solid waste facility or processed or handled, pursuant to a permit issued by the division, shall be subject to the same tipping and other fees levied by this chapter on the disposal of solid waste and shall be included in said facility's total tonnage, subject to the limitations established in this article and the provisions of article four, chapter twenty-two-c: Provided, That no land within a solid waste facility, but outside a landfill disposal cell, be allowed to accept the permanent application of so much sewage sludge as to exceed the agronomic rate or a rate of fifteen dry tons per acre per year, whichever is less: Provided, however, That no such fees, excepting assessment fees provided for in subdivision (12), subsection (b) of this section shall be levied upon the application of sewage sludge to land outside a solid waste facility in accordance with this section.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-1. Legislative findings and purpose.

1 The Legislature finds that:

2 There are numerous landfills throughout the state
that must be closed because they cannot be operated in
an environmentally sound manner;

The permittees of many of the landfills that will be
closing do not have the financial resources to close their
landfills in a manner that is timely and environmentally
sound;

As long as these landfills remain open, the threat of
continuing harm to the environment and the health and
safety of the citizens of West Virginia exists, and the
cost to remediate their adverse effects will continue to
grow;

The untimely and disorderly closure of these landfills
represents a significant threat to the health and safety
of the people of West Virginia and its environment; and

It is in the best interests of all the citizens of this state
to provide a mechanism to assist the permittees of these
landfills in properly closing them.

Therefore, it is the purpose of this article to provide
an assistance program that will be available to permit-
tees of landfills that will facilitate the closure of these
landfills in a timely and environmentally sound manner.

§22-16-2. Definitions.

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

(1) “Commercial recycler” means any person, corpora-
tion or business entity whose operation involves the
mechanical separation of materials for the purpose of
reselling or recycling at least seventy percent by weight
of the materials coming into the commercial recycling
facility;

(2) “Cost of project” includes the cost of the services
authorized in sections three and fifteen of this article,
property, material and labor which are essential thereto,
financing charges, interest during construction and all
other expenses, including legal fees, trustees’, engineers’
and architects’ fees which are necessarily or properly
incidental to the program;
(3) "Director" means the director of the division of environmental protection or such other person to whom the director has delegated duties or authority pursuant to sections six or eight, article one of this chapter;

(4) "Landfill" means any solid waste facility for the disposal of solid waste on land, and also means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located;

(5) "Permittee" means a person who has or should obtain a permit for a commercial solid waste facility that is a landfill;

(6) "Project" means the providing of closure assistance to one or more landfills under this article.

The definitions provided in section two, article fifteen of this chapter, to the extent they are applicable, apply in this article.

§22-16-3. Commercial solid waste landfill closure assistance program.

(a) There is established within the division of environmental protection the commercial solid waste landfill closure assistance program. The purpose of the program is to provide assistance for the closure of landfills which are required to cease operations pursuant to the closure deadlines provided for in this chapter.

(b) Upon the acceptance of an application of the permittee of a solid waste landfill that satisfies the requirements in section ten of this article, the director shall provide, in accordance with the provisions of this article, and to the extent that funds are available, the following closure related services:

(1) Closure design, including an analysis of the effects of the landfill on groundwater and the design of
measures necessary to protect and monitor the groundwater;

(2) Construction of all closure-related structures necessary to provide sufficient leachate management, sediment and erosion control, gas management, groundwater monitoring and final cover and cap, all to meet the closure-related requirements of article fifteen of this chapter and rules promulgated pursuant thereto; and

(3) All surface water and groundwater monitoring activities required pursuant to articles eleven and fifteen of this chapter and applicable rules promulgated thereunder.

(c) To the extent that there are funds available in the fund established in section twelve of this article or subdivision (3), subsection (h), section eleven, article fifteen of this chapter, the director may take remedial actions necessary to protect the groundwater and surface water, other natural resources and the health and safety of the citizens of this state.

§22-16-4. Solid waste assessment fee; penalties.

(a) Imposition. — A solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of three dollars and fifty cents per ton or like ratio on any part thereof of solid waste, except as provided in subsection (e) of this section: Provided, That any solid waste disposal facility may deduct from this assessment fee an amount, not to exceed the fee, equal to the amount that such facility is required by the public service commission to set aside for the purpose of closure of that portion of the facility required to close by article fifteen of this chapter. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) Collection, return, payment and records. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this
and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator shall file returns on forms and in the manner prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice shall remain in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by article ten, chapter eleven of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the tax commissioner may require in accordance with the rules of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by this section is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the public service commission under chapter twenty-four-a of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the public service commission shall, within fourteen days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) Definitions. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing in this section autho-
izes in any way the creation or operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director as exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of thirty percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the division, upon request.

(f) Procedure and administration. — Notwithstanding section three, article ten, chapter eleven of this code, each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten, chapter eleven of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.
(h) *Dedication of proceeds.* — Fifty percent of the proceeds of the fee collected pursuant to this article in excess of thirty thousand tons per month from any landfill which is permitted to accept in excess of thirty thousand tons per month pursuant to section nine, article fifteen of this chapter shall be remitted, at least monthly, to the county commission in the county in which the landfill is located. The remainder of the proceeds of the fee collected pursuant to this section shall be deposited in the closure cost assistance fund established pursuant to section twelve of this article.

§22-16-5. Solid waste management board empowered to issue solid waste closure revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The solid waste management board is hereby empowered to issue, from time to time, solid waste closure revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance, in whole or in part, the closure of solid waste landfills by the division pursuant to the provisions of this article, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues pledged for the payment of bonds and notes issued pursuant to this section, and shall not exceed in the aggregate the sum of one hundred fifty million dollars.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste closure revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes are obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding.
from the time the pledge is made and the revenue so
pledged and thereafter received by the board is
immediately subject to the lien of such pledge without
any physical delivery thereof or further act and the lien
of any such pledge is valid and binding as against all
parties having claims of any kind in tort, contract or
otherwise against the board irrespective of whether such
parties have notice thereof. All such bonds and notes
shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution
of the board, shall bear such dates and shall mature at
such times, in the case of any such note or any renewals
thereof not exceeding five years from the date of issue
of such original note, and in the case of any such bond
not exceeding fifty years from the date of issue, as such
resolution may provide. The bonds and notes shall bear
interest at such rate, be in such denominations, be in
such form, either coupon or registered, carry such
registration privileges, be payable in such medium of
payment, at such place and be subject to such terms of
redemption as the board may authorize. The board may
sell such bonds and notes at public or private sale, at
the price the board determines. The bonds and notes
shall be executed by the chair and vice chair of the
board, both of whom may use facsimile signatures. The
official seal of the board or a facsimile thereof shall be
affixed thereto or printed thereon and attested, manu-
ally or by facsimile signature, by the secretary-treasurer
of the board, and any coupons attached thereto shall
bear the signature or facsimile signature of the chair of
the board. In case any officer whose signature, or a
facsimile of whose signature, appears on any bonds,
notes or coupons ceases to be such officer before delivery
of such bonds or notes, such signature or facsimile is
nevertheless sufficient for all purposes the same as if he
or she had remained in office until such delivery and,
in case the seal of the board has been changed after a
facsimile has been imprinted on such bonds or notes,
such facsimile seal will continue to be sufficient for all
purposes.

Any resolution authorizing any bonds or notes or any
issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the board to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the board; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the cost of projects as provided in this article, related to closure activities, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the board; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the board to do all things necessary for the authorization, issuance and sale of bonds in such amounts as may be necessary for the timely retirement of notes issued in anticipation of the issuance of bonds; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the holders of which must consent thereto, and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the board for operating, administrative or other expenses of the board; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes are less than the
minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chair of the board shall certify, on
or before the first day of December of each year, the
amount of such deficiency to the governor of the state,
for inclusion, if the governor shall so elect, of the amount
of such deficiency in the budget to be submitted to the
next session of the Legislature for appropriation to the
board to be pledged for payment of such bonds or notes:
Provided, That the Legislature is not required to make
any appropriation so requested, and the amount of such
deficiencies does not constitute a debt or liability of the
state.

Neither the members of the board nor any person
executing the bonds or notes are liable personally on the
bonds or notes or be subject to any personal liability or
accountability by reason of the issuance thereof.

§22-16-6. Establishment of reserve funds, replacement
and improvement funds and sinking funds; fiscal agent; purposes for use of bond pro-
cceeds; application of surplus.

(a) Before issuing any revenue bonds in accordance
with the provisions of this article, the solid waste
management board shall consult with and be advised by
the West Virginia water development authority as to the
feasibility and necessity of the proposed issuance of
revenue bonds.

(b) Prior to issuing revenue bonds under the provi-
sions of this article, the board shall enter into agree-
ments satisfactory to the West Virginia water develop-
ment authority with regard to the selection of all
consultants, advisors and other experts to be employed
in connection with the issuance of such bonds and the
fees and expenses to be charged by such persons, and
to establish any necessary reserve funds and replace-
ment and improvement funds, all such funds to be
administered by the water development authority, and,
so long as any such bonds remain outstanding, to
establish and maintain a sinking fund or funds to retire
such bonds and pay the interest thereon as the same may become due. The amounts in any such sinking fund, as and when so set apart by the board, shall be remitted to the West Virginia water development authority at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by the water development authority, as agent for the board, in a manner consistent with the provisions of this article and with the resolution pursuant to which the bonds have been issued. The water development authority shall act as fiscal agent for the administration of any sinking fund and reserve fund established under each resolution authorizing the issuance of revenue bonds pursuant to the provisions of this article, and shall invest all funds not required for immediate disbursement in the same manner as funds are invested pursuant to the provisions of section fifteen, article one, chapter twenty-two-c of this code.

(c) Notwithstanding any other provision of this article to the contrary, no revenue bonds shall be issued, nor the proceeds thereof expended or distributed, pursuant to the provisions of this article, without the prior approval of the water development authority.

(d) If the proceeds of revenue bonds issued for any solid waste landfill closure project exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used by the fiscal agent for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but not at a price exceeding the price at which any of such bonds are in the same year redeemable, as fixed by the board in its said resolution, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

§22-16-7. Legal remedies of bondholders.

Any holder of solid waste disposal revenue bonds issued under the authority of this article or any of the coupons appertaining thereto, except to the extent the rights given by this article may be restricted by the
applicable resolution, may by civil action, mandamus or other proceeding, protect and enforce any rights granted under the laws of this state or granted under this article, by the resolution authorizing the issuance of such bonds, and may enforce and compel the performance of all duties required by this article, or by the resolution, to be performed by the board or any officer or employee thereof, including the fixing, charging and collecting of sufficient rentals, fees, service charges or other charges.

§22-16-8. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

Solid waste closure revenue bonds and notes and solid waste closure revenue refunding bonds issued under authority of this article and any coupons in connection therewith are not a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. This article does not authorize the board to incur indebtedness or liability on

1 The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste closure revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for insurance companies.

§22-16-10. Limitation on assistance.

1 The director may provide closure assistance only to permittees who meet the following requirements:

(1) The permittee of a landfill that does not have a liner and ceases accepting solid waste on or before the thirtieth day of November, one thousand nine hundred ninety-one, except for those landfills allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter and ceases accepting solid waste on or before the extension deadline as determined by the director; or the permittee of a landfill that has only a single liner and ceases accepting solid waste on or before the thirtieth day of September one thousand nine hundred ninety-three;

(2) The permittee of the landfill must demonstrate to the satisfaction of the director that it does not have the financial resources on hand or the ability to generate the amounts needed to comply, in a timely manner, with the closure requirements provided in article fifteen of this chapter and any rules promulgated pursuant thereto; and

(3) The permittee must maintain a permit for the landfill pursuant to the provisions of section ten, article fifteen of this chapter and maintain the full amount of the bond required to be submitted pursuant to section twelve, article fifteen of this chapter.
WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994

VOLUME II

ENROLLED

HOUSE BILL No. 4065

(Pages 503 through 941)

[Commencing with Section 22-16-11]

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

Passed March 12, 1994

In Effect Ninety Days from Passage

(a) The director shall provide an application and application procedure for all permittees of solid waste landfills desiring to receive closure assistance under this article. At a minimum the procedure shall require that:

1. The permittee of a landfill that does not have a liner system must submit its application no later than the fifteenth day of September, one thousand nine hundred ninety-two, except the permittee of a landfill that has been allowed to accept solid waste pursuant to the provisions of section seventeen, article fifteen of this chapter must submit its application no later than the eleven months following the expiration of the extension; and

2. The permittee of a landfill that has only a single liner system must submit its application no later than eleven months following the date of closure of the landfill.

(b) The director shall, within a reasonable time after receipt of a complete application, notify the applicant of the acceptance or rejection of the application. If the application is rejected the notice shall contain the reasons for the rejection.

§22-16-12. Closure cost assistance fund.

(a) The "Closure Cost Assistance Fund" is continued as a special revenue account in the state treasury. The fund shall operate as a special fund whereby all deposits and payments thereto do not expire to the general revenue fund, but remain in such account and be available for expenditure in the succeeding fiscal year. Separate sub-accounts may be established within the special account for the purpose of identification of various revenue resources and payment of specific obligations.

(b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

(c) The fund consists of the following:

1. Moneys collected and deposited in the state
15 treasury which are specifically designated by acts of the
16 Legislature for inclusion in the fund, including moneys
17 collected and deposited into the fund pursuant to section
18 four of this article;

19 (2) Contributions, grants and gifts from any source,
20 both public and private, which may be used by the
21 director for any project or projects;

22 (3) Amounts repaid by permittees pursuant to section
23 eighteen, article fifteen of this chapter; and

24 (4) All interest earned on investments made by the
25 state from moneys deposited in this fund.

26 (d) The solid waste management board, upon written
27 approval of the director, has the authority to pledge all
28 or such part of the revenues paid into the closure cost
29 assistance fund as may be needed to meet the require-
30 ments of any revenue bond issue or issues of the solid
31 waste management board authorized by this article,
32 including the payment of principal of, interest and
33 redemption premium, if any, on such revenue bond issue
34 or issues when other moneys pledged may be insufficient
35 therefor. Any pledge of moneys in the closure cost
36 assistance fund for revenue bonds shall be a prior and
37 superior charge on such fund over the use of any of the
38 moneys in such fund to pay for the cost of any project
39 on a cash basis. Expenditures from the fund, other than
40 for the retirement of revenue bonds, may only be made
41 in accordance with the provisions of this article.

42 (e) The amounts deposited in the fund may be
43 expended only on the cost of projects as provided for in
44 sections three and fifteen of this article and the amounts
45 may be expended for payment of bonds and notes issued
46 pursuant to section five of this article: Provided, That
47 no more than one percent of the annual deposits to such
48 fund may be used for administrative purposes.


1 The director shall promulgate rules that are necessary
§22-16-14. Liability of owner or operator.

Nothing in this article relieves the owner, operator or permittee of a landfill of the legal duties, obligations or liabilities incident to the ownership or operation of a landfill, except that the performance by the director of any of the activities set forth in subsection (b), section three of this article relieves the operator from the requirement to perform such activities.

§22-16-15. Procedures for handling remedial actions; payment of costs of remedial actions to be paid by owner or operator.

When the director, in performing activities pursuant to this article determines action, not set forth in subsection (b), section three of this article, is necessary to prevent or remediate any adverse effects of the landfill he or she shall notify the permittee and make and enter an order directing the permittee to take corrective or remedial action. The order shall contain findings of fact upon which the director based his or her determination to make and enter such order. The director shall fix a time limit for the completion of such action.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon such person.

If the corrective action is not taken within the time limit or the permittee notifies the director that it is unable to comply with the order, the director may expend amounts, as provided herein, to make the remediation.

The costs reasonably incurred in any remedial action taken by the director as provided in this article may be paid for initially by amounts available to the director in the fund created in subdivision (3), subsection (h), section eleven, article fifteen of this chapter or, to the extent funds are available, from the fund created in section twelve of this article, and such sums so ex-
pended, if not promptly repaid by the permittee upon request of the director, may be recovered from the permittee by appropriate civil action to be initiated by the attorney general upon request of the director. All funds so recovered shall be deposited in the fund from which said funds were expended.

§22-16-16. Right of entry.

The director or his or her duly authorized representatives have the right, upon presentation of proper identification, to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of a landfill, to determine the feasibility of the remediation or prevention of such adverse effects and to perform the activities set forth in sections three and fifteen of this article. Such entry is as an exercise of the police power of the state for the protection of public health, safety and general welfare and is not an act of condemnation of property or trespass thereon. Nothing contained in this section eliminates any obligation to follow any process that may be required by law.

§22-16-17. Authority of director to accept grants and gifts.

The director has the authority, on behalf of the division of environmental protection, to accept for deposit in the closure cost assistance fund established in section twelve of this article, all gifts, grants, property, funds, security interest, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

§22-16-18. Management and control of project.

(a) The director shall manage and control all projects, and may make and enter into all contracts or agreements necessary and incidental to the performance of the duties imposed under this article.
(b) On or before the thirty-first day of December, one thousand nine hundred ninety-two, the director, in consultation with the public service commission, shall complete a statewide closure plan, a comprehensive analysis of the total costs of closure anticipated under such statewide closure plan, and a proposal for implementation of closure assistance funding. The director, in consultation with the public service commission, shall prepare and issue a report which shall include the following:

1. An identification of specific landfills expected to be closed during the three-year period next following the completion of the plan;

2. An estimate of the projected closure costs associated with each such identified landfill, including such engineering and technical analysis as may be necessary to provide a reasonable estimate;

3. The extent to which closure assistance will be needed for each such specific landfill; and

4. An assessment of the order of priority which should be established for closure of landfills and all moneys potentially available therefor.

The plan and report required pursuant to the provisions of this section shall be submitted to the Legislature for its approval or rejection by a concurrent resolution.

ARTICLE 7. UNDERGROUND STORAGE TANK ACT.

§22-17-1. Short title.

This article may be known and cited as the “Underground Storage Tank Act.”

§22-17-2. Declaration of policy and purpose.

The Legislature recognizes that large quantities of petroleum and hazardous substances are stored in underground storage tanks within the state of West Virginia and that emergency situations involving these substances can and will arise which may present a hazard to human health, safety or the environment. The
Legislature also recognizes that some of these substances have been stored in underground storage tanks in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enactedSubtitle I of the federal Resource Conservation and Recovery Act of 1976, as amended, which provides for a federal program to remove the threat and remedy the effects of releases from leaking underground storage tanks and authorizes federal assistance to respond to releases of petroleum from underground storage tanks. The Legislature declares that the state of West Virginia desires to produce revenue for matching the federal assistance provided under the federal act; to create a program to control the installation, operation and abandonment of underground storage tanks and to provide for corrective action to remedy releases of regulated substances from these tanks. Therefore, the Legislature hereby enacts the West Virginia underground storage tank act to create an underground storage tank program and to assume regulatory primacy for such federal programs in this state.

§22-17-3. Definitions.

(a) "Change in status" means causing an underground storage tank to be no longer in use or a change in the reported uses, contents or ownership of an underground storage tank.

(b) "Director" means the director of the West Virginia division of environmental protection or or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter.

(c) "Nonoperational storage tank" means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after the eighth day of November, one thousand nine hundred eighty-four.

(d) "Operator" means any person in control of, or having responsibility for, the daily operation of an underground storage tank.
(e) "Owner" means:

(1) In the case of an underground storage tank in use on the eighth day of November, one thousand nine hundred eighty-four, or brought into use after that date, a person who owns an underground storage tank used for the storage, use or dispensing of a regulated substance.

(2) In the case of an underground storage tank in use before the eighth day of November, one thousand nine hundred eighty-four, but no longer in use on that date, a person who owned such a tank immediately before the discontinuation of its use.

(f) "Person" means any individual, trust, firm, joint stock company, corporation (including government corporations), partnership, association, state, municipality, commission, political subdivision of a state, inter-state body, consortium, joint venture, commercial entity and the United States government.

(g) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute.

(h) "Regulated substance" means:

(1) Any substance defined in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act of 1976, as amended; or

(2) Petroleum.

(i) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an underground storage tank into groundwater, surface water or subsurface soils.

55 (k) “Underground storage tank” means one tank or a combination of tanks, and the underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground, but does not include:

62 (1) Farm or residential tanks with a capacity of eleven hundred gallons or less and used for storing motor fuel for noncommercial purposes;

65 (2) Tanks used for storing heating oil for consumptive use on the premises where stored;

67 (3) Septic tanks;

68 (4) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1968, or an intrastate pipeline facility regulated under state laws comparable to the provisions of either of those acts;

74 (5) Surface impoundments, pits, ponds or lagoons;

75 (6) Storm water or waste water collection systems;

76 (7) Flow-through process tanks;

77 (8) Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or

80 (9) Storage tanks situated in an underground area such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the floor.

84 The term “underground storage tank” does not include any pipes connected to any tank which is described in subparagraphs (1) through (9).

§22-17-4. Designation of division of environmental protection as the state underground storage tank program lead agency.

1 The division of environmental protection is hereby
designated as the state underground storage tank program lead agency for purposes of Subtitle I and is hereby authorized to take all actions necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the United States environmental protection agency, other agencies of the federal government, agencies of this state or other states, and other interested persons in all matters relating to underground storage tank regulation.

§22-17-5. Powers and duties of director; integration with other acts.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle I.

(b) The director shall cooperate with and may receive and expend money from the federal government or other source.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts and cooperative arrangements under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

§22-17-6. Promulgation of rules and standards by director.

(a) The director has overall responsibility for the promulgation of rules under this article. In promulgating and revising such rules the director shall comply with the provisions of chapter twenty-nine-a of this code. Such rules shall be no more stringent than the rules and regulations promulgated by the United States environmental protection agency pursuant to Subtitle I.

(b) The director shall promulgate rules applicable to owners or operators of underground storage tanks or other affected persons, as appropriate, as follows:
(1) A requirement for a yearly registration fee for underground storage tanks;

(2) A requirement that an owner or operator register with the director each underground storage tank after the effective date of the rules and that an owner or operator report annually on changes in status of any underground storage tank;

(3) Such release detection, prevention and correction rules applicable to underground storage tanks as may be necessary to protect human health and the environment;

(4) Requirements for maintaining a leak detection system, inventory control systems together with tank testing, or a comparable system or method designed to identify releases from underground storage tanks in a manner consistent with the protection of human health and the environment;

(5) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(6) Rules for procedures and amount of fees to be assessed for the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund established pursuant to this article, which shall include a capitalization fee to be assessed against all owners or operators of underground tanks to be used for initial establishment of the underground storage tank insurance fund;

(7) Procedures for making expenditures from the underground storage tank administrative fund, the leaking underground storage tank response fund and the underground storage tank insurance fund;

(8) Acceptable methods by which an owner or operator may demonstrate financial responsibility;

(9) Requirements for reporting of releases and corrective action taken in response to a release;
(10) Requirements for taking corrective action in response to a release from an underground storage tank;

(11) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(12) Requirements for certification of installation, removal, retrofit, testing and inspection of underground storage tanks and leak detection systems by a registered professional engineer or other qualified person;

(13) Requirements for public participation in the enforcement of the state underground storage tank program;

(14) Procedures establishing when and how the director determines if information obtained by any agency under this article is confidential;

(15) Standards of performance for new underground storage tanks; or

(16) Any other rules or standards necessary and appropriate for the effective implementation and administration of this article.

§22-17-7. Underground storage tank advisory committee; purpose.

The underground storage tank advisory committee is continued. The committee is composed of seven members, which shall include a member of the West Virginia petroleum council, a member of the West Virginia service station dealers association, a member of the West Virginia petroleum marketers association, the director, a member of the West Virginia manufacturers association, the West Virginia insurance commissioner, and a representative from the citizenry-at-large who is appointed by the governor.

The committee is advisory to the director and the division of environmental protection regarding the expenditure of funds from the leaking underground storage tank response fund and the underground storage tank insurance fund created by this article. The director shall deliver to the committee annually a report on
expenditures made from each fund. The committee shall
consider any matter brought before it by the director
or any member of the committee and may consider any
matter referred to it by a person not a member of the
committee. At the conclusion of its consideration of any
proposal, the committee shall make its recommendation
to the director. The director is not bound by any
recommendations of the committee. The committee may
also formulate general or long-range plans for improve-
ments in the administration of the funds for the
consideration of the director.

By the second Wednesday of January of each year the
committee shall prepare and deliver to the director and
to the Legislature a report of all matters it considered,
recommendations it made and plans it formulated
during the preceding calendar year. The report shall
include any recommendation it may have for changes in
the law which would be necessary to implement any of
its administrative recommendations.

§22-17-8. Notification requirements.

(a) Underground storage tank owners shall notify the
director of any underground storage tank brought into
use on or after the tenth day of June, one thousand nine
hundred eighty-eight within thirty days of such use, on
a form prescribed by the director. The notice shall
specify the date of tank installation, tank location, type
of construction, size and age of such tank and the type
of regulated substance to be stored therein. If, at the
time this information is required to be submitted, the
director has not prepared the form required by this
section, the owner shall nevertheless submit the infor-
mation in writing to the director.

(b) A person who sells a tank intended to be used as
an underground storage tank shall reasonably notify the
owner or operator of such tank of the owner's notifica-
tion requirements of this section.

(c) A new owner of any underground storage tank
shall notify the director in writing of the transfer of
ownership of any underground storage tank. The new
owner upon the effective date of such transfer becomes
subject to all provisions of this article. The director may
 prescribe by rule the appropriate form and timing for
 such notification.
§22-17-9. Registration requirements; undertaking activities without registration.
(a) No person may operate any underground storage
tank for the purpose of storing any regulated substance
identified or listed under this article without registering
with the director and paying a registration fee for such
underground storage tank.
(b) No person may install any underground storage
tank after the effective date of this article without first
registering said tank in a form and manner prescribed
by the director.
§22-17-10. Financial responsibility.
The director shall promulgate rules, as provided in
section six of this article, containing requirements for
maintaining evidence of financial responsibility as
deemed necessary and desirable for taking reasonable
corrective action and for compensating third parties for
bodily injury and property damage caused by sudden
and nonsudden accidental releases arising from operat-
ing an underground storage tank. Such means of
financial responsibility may include, but not be limited
to, insurance, guarantee, surety bond, letter of credit,
proof of assets or qualification as a self-insurer. In
promulgating rules under this section, the director is
authorized to specify policy or other contractual terms,
conditions or defenses which are necessary or are
unacceptable in establishing such evidence of financial
responsibility in order to effectuate the purposes of this
article.
§22-17-11. Performance standards for new underground
storage tanks.
(a) The director shall promulgate performance
standards for new underground storage tanks as
provided in section six of this article. The performance
standards for new underground storage tanks shall
include, but not be limited to, design, construction,
installation, release detection and compatibility standards.

(b) New underground storage tank construction standards must include at least the following requirements:

(1) That an underground storage tank will prevent releases of regulated substances stored therein, which may occur as a result of corrosion or structural failure, for the operational life of the tank;

(2) That an underground storage tank will be cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material or designed in a manner to prevent the release or threatened release of stored regulated substances; and

(3) That materials used in the construction or lining of an underground storage tank are compatible with the regulated substances to be stored therein.

§22-17-12. Confidentiality.

(a) Any records, reports or information obtained from any persons under this article shall be available to the public, except that upon a showing satisfactory to the director by any person that records, reports or information, or a particular part thereof, to which the director or any officer, employee, or representative thereof has access under this section, if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, such information or particular portion thereof is confidential in accordance with the purposes of this section, except that such record, report, document or information may be disclosed to other officers, employees, or authorized representatives of this state implementing the provisions of this article.

(b) Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not
more than one year, or both fined and imprisoned.

(c) In submitting data under this article, a person required to provide such data may designate the data which he or she believes is entitled to protection under this section and submit such designated data separately from other data submitted under this article. A designation under this subsection shall be made in writing and in such manner as the director may prescribe.

§22-17-13. Inspections, monitoring and testing.

(a) For the purposes of developing or assisting in the development of any rule, conducting any study, taking any corrective action or enforcing the provisions of this article, any owner or operator of an underground storage tank shall, upon request of the director, furnish information relating to such tanks, their associated equipment and contents, conduct reasonable monitoring or testing, permit the director or his or her authorized representative at all reasonable times to have access to, and to copy all records relating to such tanks and permit the director or his or her authorized representative to have access to the underground storage tank for corrective action.

(b) For the purposes of developing or assisting in the development of any rule, conducting any study, taking corrective action or enforcing the provisions of this article, the director or his or her authorized representative may:

(1) Enter at reasonable times any establishment or other place where an underground storage tank is located;

(2) Inspect and obtain samples from any person of any regulated substances contained in such tank;

(3) Conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface, water or groundwater; and

(4) Take corrective action as specified in this article.

Each such inspection shall be commenced and com-
§22-17-14. Corrective action for underground petroleum storage tanks.

(a) Prior to the effective date of rules promulgated pursuant to subdivision (9) or (10), subsection (b), section six of this article, the director is authorized to:

(1) Require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum from said tank when the director determines that such corrective action shall be done properly and promptly by the owner or operator if, in the judgment of the director, such action is necessary to protect human health and the environment; or

(2) Undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if, in the judgment of the director, such action is necessary to protect human health and the environment.

The corrective action undertaken or required under this subsection shall be such as may be necessary to protect human health and the environment. The director shall use funds in the leaking underground storage tank response fund established pursuant to this article for payment of costs incurred for corrective action taken under subparagraph (2) of this subsection in the manner set forth in subsection (e), section twenty-one of this article. The director shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment and where the director cannot identify a solvent owner or operator of the tank who will undertake action properly.

(b) Following the effective date of rules promulgated under subdivision (9) or (10), subsection (b), section six of this article, all actions or orders of the director described in subsection (a) of this section shall be in
conformity with such rules. Following such effective date the director may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if, in the judgment of the director, such action is necessary to protect human health and environment and one or more of the following situations exists:

(1) If no person can be found within ninety days, or such shorter period as may be necessary to protect human health and the environment, who is an owner or operator of the tank concerned, subject to such corrective action rules and capable of carrying out such corrective action properly.

(2) A situation exists which requires prompt action by the director under this subsection to protect human health and the environment.

(3) Corrective action costs at a facility exceed the amount of coverage required pursuant to the provisions of section ten of this article and, considering the class or category of underground storage tank from which the release occurred, expenditures from the leaking underground storage tank response fund are necessary to assure an effective corrective action.

(4) The owner or operator of the tank has failed or refused to comply with an order of the director under this section or of the environmental quality board under article one, chapter twenty-two-b of this code to comply with the corrective action rules.

(c) The director is authorized to draw upon the leaking underground storage tank response fund in order to take action under subdivision (1) or (2), subsection (b) of this section if the director has made diligent good faith efforts to determine the identity of the party or parties responsible for the release or threatened release and:

(1) He or she is unable to determine the identity of the responsible party or parties in a manner consistent with the need to take timely corrective action; or

(2) The party or parties determined by the director to be responsible for the release or threatened release have
been informed in writing of the director's determination and have been requested by the director to take appropriate corrective action but are unable or unwilling to take such action in a timely manner.

(d) The written notice to a responsible party must inform the responsible party that if that party is subsequently found liable for releases pursuant to subsection (a) or (b) of this section, he or she will be required to reimburse the leaking underground storage tank response fund for the costs of the investigation, information gathering and corrective action taken by the director.

(e) If the director determines that immediate response to an imminent threat to public health and welfare or the environment is necessary to avoid substantial injury or damage to persons, property or resources, corrective action may be taken pursuant to subsections (a) and (b) of this section without the prior written notice required by subdivision (2), subsection (c) of this section. In such a case the director must give subsequent written notice to the responsible party within fifteen days after the action is taken describing the circumstances which required the action to be taken without prior notice.

(f) As used in this section, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining or marketing, holds indicia of ownership primarily to protect the person's security interest in the tank.

§22-17-15. Administrative orders; injunctive relief; requests for reconsideration.

(a) Whenever on the basis of any information, the director determines that any person is in violation of any requirement of this article, he or she may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period or the director may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha county for appropriate relief, including a temporary or
permanent injunction. The director may, except as
provided in subsection (b) of this section, stay any order
he or she issues upon application, until the order is
reviewed by the environmental quality board.

(b) Any person issued an order may file a notice of
request for reconsideration with the director not more
than seven days from the issuance of such order. The
notice of request for reconsideration shall identify the
order to be reconsidered and shall set forth in detail the
reasons for which reconsideration is requested. The
director shall grant or deny the request for reconsider-
ation within twenty days of the filing of the notice of
request of reconsideration.

§22-17-16. Civil penalties.

(a) Any violator who fails to comply with an order of
the director issued under subsection (a), section fifteen
of this article within the time specified in the order is
liable for a civil penalty of not more than twenty-five
thousand dollars for each day of continued
noncompliance.

(b) Any owner who knowingly fails to register or
knowingly submits false information pursuant to this
article is liable for a civil penalty not to exceed ten
thousand dollars for each tank which is not registered
or for which false information is submitted.

(c) Any owner or operator of an underground storage
tank who fails to comply with any requirement or
standard promulgated by the director under section six
of this article is subject to a civil penalty not to exceed
ten thousand dollars for each tank for each day of
violation.

§22-17-17. Public participation.

Any adversely affected person may intervene in any
civil or administrative proceeding under this article
when such person claims an interest relating to the
property or transaction which is the subject of the action
and such person is so situated that the disposition of the
action may as a practical matter impair or impede his
or her ability to protect that interest.
§22-17-18. Appeal to environmental quality board.

Any person aggrieved or adversely affected by an order of the director made and entered in accordance with the provisions of this article may appeal to the environmental quality board, pursuant to the provisions of article one, chapter twenty-two-b of this code.

§22-17-19. Disclosures required in deeds and leases.

(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property, or the substrata of such property whether or not the grantor or lessor is at time of such conveyance or lease the owner of such substrata, contains an underground storage tank. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the same or the substrata thereof contained an underground storage tank which was being actively used for storing any regulated substance or who have actual knowledge or reason to believe that such real property or the substrata thereof contains an underground storage tank.

(b) Any lessee of real estate or of any substratum underlying said real estate who intends to install an underground storage tank in the leased real estate or any substratum underlying the same shall disclose in writing at the time of such lease, or within thirty days prior to such installation, such fact to the lessor of such real estate or substratum. Such disclosure shall describe the proposed location upon said property where the tank is to be located and all other information required by the director.

§22-17-20. Appropriation of funds; underground storage tank administrative fund.

(a) The director shall collect annual registration fees from owners of underground storage tanks. The registration fee collected under this section shall not exceed twenty-five dollars per tank per year. All such registra-
tion fees and the net proceeds of all fines, penalties and
forfeitures collected under this article including accrued
interest shall be paid into the state treasury into a
special fund designated "the underground storage tank
administrative fund" to be used to defray the cost of
administering this article in accordance with rules
promulgated pursuant to section six of this article.

(b) The total fee assessed shall be sufficient to assure
a balance in the fund of not to exceed four hundred
thousand dollars at the beginning of each year.

(c) Any amount received pursuant to subsection (a) of
this section which exceeds the annual balance required
in subsection (b) of this section shall be deposited into
the leaking underground storage tank response fund
established pursuant to this article to be used for the
purposes set forth therein.

(d) The net proceeds of all fines, penalties and
forfeitures collected under this article shall be approp-
riated as directed by article XII, section 5 of the
constitution of West Virginia. For the purposes of this
section, the net proceeds of such fines, penalties and
forfeitures are the proceeds remaining after deducting
therefrom those sums appropriated by the Legislature
for defraying the cost of administering this article. In
making the appropriation for defraying the cost of
administering this article, the Legislature shall first
take into account the sums included in such special fund
prior to deducting such additional sums as may be
needed from the fines, penalties and forfeitures collected
pursuant to this article. At the end of each fiscal year
any unexpended balance of such collected fines, penal-
ties, forfeitures and registration fees shall not be
transferred to the general revenue fund but shall
remain in the fund.

§22-17-21. Leaking underground storage tank response
fund.

(a) Each underground petroleum storage tank owner
within this state shall pay an annual fee, if assessed by
the director, to establish a fund to assure adequate
response to leaking underground petroleum storage
tanks. The fees assessed pursuant to this section shall not exceed twenty-five dollars per tank per year. The proceeds of such assessment shall be paid into the state treasury into a special fund designated "the leaking underground storage tank response fund," which is hereby continued.

(b) Each owner of an underground petroleum storage tank subject to a fee assessment under subsection (a) of this section shall pay a fee based on the number of underground petroleum storage tanks he or she owns. The director shall vary the fees annually to a level necessary to produce a fund of at least seven hundred fifty thousand dollars at the beginning of each calendar year taking into account those amounts deposited in the fund pursuant to subsection (c), section twenty of this article. In no event shall the fees assessed in this section be set to produce revenues exceeding two hundred fifty thousand dollars in any year.

(c) When the unobligated balance of the leaking underground storage tank response fund exceeds one million dollars at the end of a calendar year, fee assessment under this section shall cease until such time as the unobligated balance at the end of any year is less than seven hundred fifty thousand dollars.

(d) At the end of each fiscal year, any unexpended balance including accrued interest of such collected fees shall not be transferred to the general revenue fund but shall remain in the fund.

(e) The director is authorized to enter into agreements and contracts and to expend the moneys in the fund for the following purposes:

(1) Responding to underground petroleum storage tank releases when, based on readily available information, the director determines that immediate action may prevent or mitigate significant risk of harm to human health, safety or the environment from regulated substances in situations for which no federal funds are immediately available for such response, cleanup or containment: Provided, That the director shall apply for and diligently pursue available federal funds for such
releases at the earliest possible time.

(2) Reimbursing any person for reasonable cleanup costs incurred with the authorization of the director in responding to an underground petroleum storage tank release.

(3) Reimbursing any person for reasonable costs incurred with the authorization of the director responding to perceived, potential or threatened releases from underground petroleum storage tanks where response activities do not indicate that any release has occurred.

(4) Financing the nonfederal share of the cleanup and site reclamation activities pursuant to Subtitle I of the federal Resource Conservation and Recovery Act, as amended, as well as future operation and maintenance costs for these sites: Provided, That no portion of the moneys in the leaking underground storage tank response fund shall be used for defraying the costs of administering this article.

(5) Financing the nonfederal share of costs incurred in compensating third parties, including payment of judgments, for bodily injury and property damage, caused by release of petroleum into the environment from an underground storage tank.

§22-17-22. Underground storage tank insurance fund.

(a) The director may establish an underground storage tank insurance fund for the purpose of satisfying the financial responsibility requirements established pursuant to section ten of this article. In addition to the capitalization fee to be assessed against all owners or operators of underground storage tanks provided by subdivision (6), subsection (b), section six of this article, the director shall promulgate rules establishing an annual financial responsibility assessment to be assessed on and paid by owners or operators of underground storage tanks who are unable to obtain insurance or otherwise meet the financial responsibility requirements established pursuant to section ten of this article. Such assessments shall be paid into the state treasury into a special fund designated "the underground storage tank
insurance fund”.

(b) At the end of each fiscal year, any unexpended balance of such assessment shall not be transferred to the general revenue fund but shall remain in the underground storage tank insurance fund.

§22-17-23. Duplicative enforcement prohibited.

No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.


This article may be known and cited as the “Hazardous Waste Management Act.”


(a) The Legislature finds that:

(1) Continuing technological progress and increases in the amount of manufacture and the abatement of air and water pollution have resulted in ever increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner;

(3) The knowledge and technology necessary for alleviating adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are generally available;

(4) The manufacture, refinement, processing, treatment and use of coal, raw chemicals, ores, petroleum, gas and other natural and synthetic products are activities that make a significant contribution to the economy of this state; and

(5) The problem of managing hazardous wastes has
become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this article are:

(1) To protect the public health and safety, and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes;

(3) To assure the safe and adequate management of hazardous wastes within this state; and

(4) To assume regulatory primacy through Subtitle C of the Resource Conservation and Recovery Act.


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

(1) “Director” means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) “Disposal” means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters;

(3) “Division” means the division of environmental protection;

(4) “Generation” means the act or process of producing hazardous waste materials;


(6) “Hazardous waste” means a waste or combination of wastes, which because of its quantity, concentration
or physical, chemical or infectious characteristics, may:
(A) Cause, or significantly contribute to, an increase in
mortality or an increase in serious irreversible, or
incapacitating reversible, illness; or (B) pose a substan-
tial present or potential hazard to human health or the
environment when improperly treated, stored, trans-
ported, disposed of or otherwise managed;

(7) "Hazardous waste fuel" means fuel produced from
any hazardous waste identified or listed pursuant to
subsection (2), subsection (a), section six of this article,
or produced from any hazardous waste identified or
listed pursuant to section six;

(8) "Hazardous waste management" means the syste-
matic control of the collection, source separation,
storage, transportation, processing, treatment, recovery
and disposal of hazardous wastes;

(9) "Land disposal" means any placement of hazardous
waste in a landfill, surface impoundment, waste pile,
injection well, land treatment facility, salt dome
formation, salt bed formation, or underground mine or
cave;

(10) "Manifest" means the form used for identifying
the quantity, composition and the origin, routing and
destination of hazardous waste during its transportation
from the point of generation to the point of disposal,
treatment or storage;

(11) "Person" means any individual, trust, firm, joint
stock company, public, private or government corpora-
tion, partnership, association, state or federal agency,
the United States government, this state or any other
state, municipality, county commission or any other
political subdivision of a state or any interstate body;

(12) "Resource Conservation and Recovery Act" means
the federal Resource Conservation and Recovery Act of
1976, 90 Stat. 2806, as amended;

(13) "Storage" means the containment of hazardous
waste, either on a temporary basis or for a period of
years, in such a manner as not to constitute disposal of
such hazardous waste; (14) "Subtitle C" means
Subtitle C of the Resource Conservation and Recovery Act;

(15) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous;

(16) "Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended, or source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended.

§22-18-4. Designation of division of environmental protection as the state hazardous waste management lead agency.

The division of environmental protection is hereby designated as the hazardous waste management lead agency for this state for purposes of Subtitle C of the Resource Conservation and Recovery Act, and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said legislation. In carrying out the purposes of this article, the director is hereby authorized to cooperate with the federal environmental protection agency and other agencies of the federal government, this state and other states and other interested persons in all matters relating to hazardous
§22-18-5. Powers and duties of director; integration with other acts; establishment of study of hazardous waste management.

(a) In addition to all other powers and duties prescribed in this article or otherwise by law, and unless otherwise specifically set forth in this article, the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Resource Conservation and Recovery Act.

(b) The director shall integrate all provisions of this article for purposes of administration and enforcement and shall avoid duplication to the maximum extent practicable, with the appropriate provisions of: the public health laws in chapter sixteen of this code; article sixteen-a, chapter nineteen of this code; this chapter; and chapters twenty-two-b and twenty-two-c of this code.

(c) The director may enter into any agreements, including reimbursement for services rendered, contracts or cooperative arrangements, under such terms and conditions as he or she deems appropriate, with other state agencies, educational institutions or other organizations and individuals as necessary to implement the provisions of this article.

(d) The director shall cooperate with and may receive and expend money from the federal government and other sources.

(e) The director shall (1) encourage, participate in and conduct an ongoing investigation and analysis of methods, incentives, technologies of source reduction, reuse, recycling or recovery of potentially hazardous waste and a strategy for encouraging the utilization or reduction of hazardous waste, and (2) investigate the feasibility of operating an information clearinghouse for hazardous wastes.

(f) The director shall provide for the continuing education and training of appropriate division personnel in matters of hazardous waste management.

(a) The director has overall responsibility for the promulgation of rules under this article. The director shall promulgate the following rules, in consultation with the department of health and human resources, the office of emergency services, the public service commission, the state fire marshal, the department of public safety, the division of highways, the department of agriculture, and the environmental quality board. In promulgating and revising such rules, the director shall comply with the provisions of chapter twenty-nine-a of this code, shall avoid duplication to the maximum extent practicable with the appropriate provisions of the acts and laws set out in subsection (b), section five of this article and shall be consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the federal environmental protection agency pursuant to the Resource Conservation and Recovery Act:

1. Rules establishing a plan for the safe and effective management of hazardous wastes within the state;

2. Rules establishing criteria for identifying the characteristics of hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of this article: Provided, That:

   A. Each waste listed below shall, except as provided in paragraph (B) of this subdivision, be subject only to regulation under other applicable provisions of federal or state law in lieu of this article until proclamation by the governor finding that at least six months have elapsed since the date of submission of the applicable study required to be conducted under Section 8002 of the federal Solid Waste Disposal Act, as amended, and that regulations have been promulgated with respect to such wastes in accordance with Section 3001 (b)(3)(C) of the Resource Conservation and Recovery Act, and finding in the case of the wastes identified in subpara-

   B. Provided, That:
accordance with Section 3001 (b)(2) of the Resource Conservation and Recovery Act:

(i) Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels;

(ii) Solid waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore;

(iii) Cement kiln dust waste; and

(iv) Drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil or natural gas or geothermal energy.

(B) Owners and operators of disposal sites for wastes listed in paragraph (A) of this subdivision may be required by the director through rule prescribed under authority of this section:

(i) As to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future; and

(ii) To provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record;

(3) Rules establishing such standards applicable to generators of hazardous waste identified or listed under this article as may be necessary to protect public health and safety and the environment, which standards shall establish requirements respecting: (A) Record-keeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to public health or the environment and the disposition of such wastes; (B) labeling practices for any containers used for the storage, transport or disposal of such hazardous waste such as will identify accurately such waste; (C) use of appropriate containers for such
hazardous waste; (D) furnishing of information on the
general chemical composition of such hazardous wastes
to persons transporting, treating, storing or disposing of
such wastes; (E) use of a manifest system and any other
reasonable means necessary to assure that all such
hazardous waste generated is designated for treatment,
storage or disposal in, and arrives at treatment, storage
or disposal facilities (other than facilities on the
premises where the waste is generated) with respect to
which permits have been issued which are required: (i)
By this article or any rule required by this article to be
promulgated; (ii) by Subtitle C of the Resource Conser-
vation and Recovery Act; (iii) by the laws of any other
state which has an authorized hazardous waste program
pursuant to Section 3006 of the Resource Conservation
and Recovery Act; or (iv) by Title I of the federal Marine
Protection, Research and Sanctuaries Act; and (F) the
submission of reports to the director at such times as
the director deems necessary setting out the quantities
of hazardous wastes identified or listed under this
article that the generator has generated during a
particular time period, and the disposition of all such
hazardous waste;

(4) Rules establishing such performance standards
applicable to owners and operators of facilities for the
treatment, storage or disposal of hazardous waste
identified or listed under this article as may be
necessary to protect public health and safety and the
environment, which standards shall, where appropriate,
distinguish in such standards between requirements
appropriate for new facilities and for facilities in
existence on the date of promulgation of such rules and
shall include, but need not be limited to, requirements
respecting: (A) Maintaining records of all hazardous
wastes identified or listed under this article which are
treated, stored or disposed of, as the case may be, and
the manner in which such wastes were treated, stored
or disposed of; (B) satisfactory reporting, monitoring
and inspection and compliance with the manifest system
referred to in subdivision (3) of subsection (a) of this
section; (C) treatment, storage or disposal of all such
waste received by the facility pursuant to such operating
methods, techniques and practices as may be satisfactory to the director; (D) the location, design and construction of such hazardous waste treatment, disposal or storage facilities; (E) contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of any such hazardous waste; (F) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel and financial responsibility as may be necessary or desirable; however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage or disposal of specified hazardous waste; and (G) compliance with the requirements of section eight of this article respecting permits for treatment, storage or disposal;

(5) Rules specifying the terms and conditions under which the director shall issue, modify, suspend, revoke or deny such permits as may be required by this article;

(6) Rules for the establishment and maintenance of records; the making of reports; the taking of samples and the performing of tests and analyses; the installing, calibrating, operating and maintaining of monitoring equipment or methods; and the providing of any other information as may be necessary to achieve the purposes of this article;

(7) Rules establishing standards and procedures for the certification of personnel at hazardous waste treatment, storage or disposal facilities or sites.

(8) Rules for public participation in the implementation of this article;

(9) Rules establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes;
(10) Rules establishing procedures and requirements for the submission and approval of a plan, applicable to owners or operators of hazardous waste storage, treatment and disposal facilities, as necessary or desirable for closure of the facility, post-closure monitoring and maintenance, sudden and accidental occurrences and nonsudden and accidental occurrences;

(11) Rules establishing a schedule of fees to recover the costs of processing permit applications and permit renewals;

(12) Rules, including exemptions and variances, as appropriate: (A) Establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods; (B) establishing standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes; (C) establishing standards applicable to producers, distributors or marketers of hazardous waste fuels; and (D) as are otherwise necessary to allow the state to assume primacy for the administration of the federal hazardous waste management program under the Resource Conservation and Recovery Act and in particular, the Hazardous and Solid Waste Amendments of 1984: Provided, That such rules authorized by this subdivision shall be consistent with but no more expansive in coverage nor more stringent in effect than rules and regulations promulgated by the federal environmental protection agency under Subtitle C;

(13) Rules: (A) Establishing air pollution performance standards and permit requirements and procedures as may be necessary to comply with the requirements of this article and in accordance with the provisions of article five of this chapter. Such permits shall be in addition to those permits required by section eight of this article;

(B) for the monitoring and control of air emissions at hazardous waste treatment storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to
protect human health and the environment; and

(C) establishing standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section or which is produced from any hazardous waste identified or listed pursuant to subdivision (2), subsection (a) of this section and any other material, as may be necessary to protect human health and the environment: Provided. That such legislative rules shall be consistent with Subtitle C.

Any person aggrieved or adversely affected by an order of the director made and entered to implement or enforce the rules required by this subdivision or by the failure or refusal of said director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted under the provisions of the rules required by this subdivision, may appeal to the air quality board in accordance with the procedure set forth in article one, chapter twenty-two-b of this code, and orders made and entered by said board are subject to judicial review in accordance with the procedures set forth in article one, chapter twenty-two-b of this code, except that as to cases involving an order granting or denying an application for a permit, revoking or suspending a permit or approving or modifying the terms and conditions of a permit or the failure to act within a reasonable time on an application for a permit, the petition for judicial review shall be filed in the circuit court of Kanawha county.

(14) Rules developing performance standards and other requirements under this section as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil. The director shall ensure that such rules do not discourage the recovery or recycling of used oil. For these purposes, “used oil” shall mean any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.
(15) Such other rules as are necessary to effectuate the purposes of this article.

(b) The rules required by this article to be promulgated shall be reviewed and, where necessary, revised not less frequently than every three years. Additionally, the rules required to be promulgated by this article shall be revised, as necessary, within two years of the effective date of any amendment of the Resource Conservation and Recovery Act and within six months of the effective date of any adoption or revision of rules required to be promulgated by the Resource Conservation and Recovery Act.

(c) Notwithstanding any other provision in this article, the director shall not promulgate rules which are more properly within the jurisdiction and expertise of any of the agencies empowered with rule-making authority pursuant to section seven of this article.

§22-18-7. Authority and jurisdiction of other state agencies.

(a) The commissioner of the division of highways, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, and in accordance with the provisions of chapter twenty-nine-a of this code, shall promulgate, as necessary, legislative rules governing the transportation of hazardous wastes by vehicle upon the roads and highways of this state. Such legislative rules shall be consistent with applicable rules issued by the federal department of transportation and consistent with this article: Provided, That such legislative rules apply to the interstate transportation of hazardous waste within the boundaries of this state, as well as the intrastate transportation of such waste.

In lieu of those enforcement and inspection powers conferred upon the commissioner of the division of highways elsewhere by law with respect to the transportation of hazardous waste, the commissioner of the division of highways has the same enforcement and
inspection powers as those granted to the director, or
authorized representative or agent, or any authorized
employee or agent of the division, as the case may be,
under sections twelve, thirteen, fourteen, fifteen,
sixteen, seventeen and eighteen of this article. The
limitations of this subsection do not affect in any way
the powers of the division of highways with respect to
weight enforcement.

(b) The public service commission, in consultation
with the director, and avoiding inconsistencies with and
avoiding duplication to the maximum extent practicable
with rules required to be promulgated pursuant to this
article by the director or any other rule-making
authority, and in accordance with the provisions of
chapter twenty-nine-a of this code, shall promulgate, as
necessary, rules governing the transportation of hazard-
ous wastes by railroad in this state. Such rules shall be
consistent with applicable rules and regulations issued
by the federal department of transportation and
consistent with this article: Provided, That such rules
apply to the interstate transportation of hazardous waste
within the boundaries of this state, as well as the
intrastate transportation of such waste.

In lieu of those enforcement and inspection powers
conferred upon the public service commission elsewhere
by law with respect to the transportation of hazardous
waste, the public service commission has the same
enforcement and inspection powers as those granted to
the director or authorized representative or agent or any
authorized employee or agent of the division, as the case
may be, under sections twelve, thirteen, fourteen,
fifteen, sixteen, seventeen and eighteen of this article.

(c) The rules required to be promulgated pursuant to
subsections (a) and (b) of this section apply equally to
those persons transporting hazardous wastes generated
by others and to those transporting hazardous wastes
they have generated themselves or combinations thereof.
Such rules shall establish such standards, applicable to
transporters of hazardous waste identified or listed
under this article, as may be necessary to protect public
health, safety and the environment. Such standards
shall include, but need not be limited to, requirements respecting (A) record keeping concerning such hazardous waste transported, and its source and destination; (B) transportation of such waste only if properly labeled; (C) compliance with the manifest system referred to in subdivision (3), subsection (a), section six of this article; and (D) transportation of all such hazardous waste only to the hazardous waste treatment, storage or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under: (1) This article or any rule required by this article to be promulgated; (2) Subtitle C; (3) the laws of any other state which has an authorized hazardous waste program pursuant to section 3006 of the Resource Conservation and Recovery Act; or (4) Title I of the Federal Marine Protection, Research and Sanctuaries Act.

(d) The secretary of the department of health and human resources, in consultation with the director, and avoiding inconsistencies with and avoiding duplication to the maximum extent practicable with legislative rules required to be promulgated pursuant to this article by the director or any other rule-making authority, shall promulgate rules pursuant to article five-j, chapter twenty of this code. The secretary of the department of health and human resources shall have the same enforcement and inspection powers as those granted to the director or or agent or any authorized employee or agent of the division, as the case may be, under sections twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen of this article, and in addition thereto, the department of health and human resources shall have those inspection and enforcement powers with respect to hazardous waste with infectious characteristics as provided for in article five-j chapter twenty of this code.

(e) The environmental quality board, in consultation with the director, and in accordance with the provisions of chapter twenty-nine-a of this code, shall, as necessary, promulgate water quality standards governing discharges into the waters of this state of hazardous waste resulting from the treatment, storage or disposal of
hazardous waste as may be required by this article. The standards shall be consistent with this article.

(f) All legislative rules promulgated pursuant to this section shall be consistent with rules and regulations promulgated by the federal environmental protection agency pursuant to the resource conservation and recovery act.

(g) The director shall submit written comments to the legislative rule-making review committee regarding all legislative rules promulgated pursuant to this article.

§22-18-8. Permit process; undertaking activities without a permit.

(a) No person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under this article, nor shall any person store, treat or dispose of any such hazardous waste without first obtaining a permit from the director for such facility, site or activity and all other permits as required by law. Such permit shall be issued, after public notice and opportunity for public hearing, upon such reasonable terms and conditions as the director may direct if the application, together with all supporting information and data and other evidence establishes that the construction, modification, operation or closure, as the case may be, of the hazardous waste facility, site or activity will not violate any provisions of this article or any of the rules promulgated by the director as required by this article: Provided, That in issuing the permits required by this subsection, the director shall not regulate those aspects of a hazardous waste treatment, storage or disposal facility which are the subject of the permitting or licensing requirements of; (1) section seven of this article, and which need not be regulated in order for the director to perform his or her duties under this article; or (2) subdivision (13), subsection (a), section six of this article, which need not be regulated under any other provision of this article.

(b) The director shall prescribe a form of application for all permits issued by the director.
(c) The director may require a plan for the closure of such facility or site to be submitted along with an application for a permit which plan for closure shall comply in all respects with the requirements of this article and any rules promulgated hereunder. Such plan of closure is subject to modification upon application by the permit holder to the director and approval of such modification by the director.

(d) An environmental analysis shall be submitted with the permit application for all hazardous waste treatment, storage or disposal facilities which are major facilities as that term may be defined by rules promulgated by the director: Provided, That facilities in existence on the nineteenth day of November, one thousand nine hundred eighty, need not comply with this subsection. Such environmental analysis shall contain information of the type, quality and detail that will permit adequate consideration of the environmental, technical and economic factors involved in the establishment and operation of such facilities:

(1) The portion of the applicant's environmental analysis dealing with environmental assessments shall contain, but not be limited to:

(A) The potential impact of the method and route of transportation of hazardous waste to the site and the potential impact of the establishment and operation of such facilities on air and water quality, existing land use, transportation and natural resources in the area affected by such facilities;

(B) A description of the expected effect of such facilities; and

(C) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's environmental analysis dealing with technical and economic assessments shall contain, but not be limited to:

(A) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity and location on the
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site and estimates of the cost and charges to be made for material accepted, if any;

(B) Provisions for managing the site following cessation of operation of the facility; and

(C) Qualifications of owner and operation, including a description of the applicant's prior experience in hazardous waste management operations.

e) Any person undertaking, without a permit, any of the activities for which a permit is required under this section or under section seven of this article, or any person violating any term or condition under which a permit has been issued pursuant to this section or pursuant to section seven of this article, is subject to the enforcement procedures of this article.

(f) Notwithstanding any provision to the contrary in subsections (a) through (e) of this section or section seven of this article, any surface coal mining and reclamation operation that has a permit covering any coal mining wastes or overburden which has been issued or approved under article three of this chapter, shall be considered to have all necessary permits issued pursuant to this article with respect to the treatment, storage or disposal of such wastes or overburden. Rules promulgated under this article are not applicable to treatment, storage or disposal of coal mining wastes and overburden which are covered by such a permit.


(a) All permits issued after the date the state is delegated authority by the federal environmental protection agency to administer the portion of the federal hazardous waste program covered under the Hazardous and Solid Waste Amendments of 1984 shall contain conditions requiring corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage or disposal facility seeking a permit under this article regardless of the time at which waste was placed in such unit. Permits issued under this article shall contain schedules of compliance for such corrective action

Before the issuing of a permit to any person with respect to any facility for the treatment, storage or disposal of hazardous waste under sections seven or eight of this article, the director or other permit issuing authority shall:

(a) Cause to be published as a Class I-O legal advertisement in a newspaper of general circulation, and the publication area is the county wherein the real
estate or greater portion thereof is situate, and broad-
cast over local radio stations notice of the director's or
other permit issuing authority's intention to issue such
permit; and

(b) Transmit written notice of the director's or other
permit issuing authority's intention to issue such permit
to each unit of local government having jurisdiction over
the area in which such facility is proposed to be located
and to each state agency having any authority under
state law with respect to the construction or operation
of such facility.

If within forty-five days the director or other permit
issuing authority receives written notice of opposition to
the director's or other permit issuing authority's
intention to issue such permit and a request for a
hearing, or if the director or other permit issuing
authority determines on his or her own initiative, to
have a hearing he or she shall hold an informal public
hearing (including an opportunity for presentation of
written and oral views) on whether he or she should
issue a permit for the proposed facility. Whenever
possible the director or other permit issuing authority
shall schedule such hearing at a location convenient to
the nearest population center to such proposed facility
and give notice in the aforementioned manner of the
date, time and subject matter of such hearing.

§22-18-11. Transition program for existing facilities.

Any person who owns or operates a facility required
to have any permit under this article, which facility was
in existence on the ninth day of July, one thousand nine
hundred eighty-one, shall be treated as having been
issued such permit until such time as final administra-
tive disposition is made with respect to an application
for such permit: Provided, That on said date such
facility is operating and continues to operate in com-
pliance with the interim status requirement of the
federal environmental protection agency established
pursuant to section 3005 of the federal Solid Waste
Disposal Act, as amended, if applicable, and in such a
manner as will not cause or create a substantial risk of
a health hazard or public nuisance or a significant adverse effect upon the environment: Provided, however, that the owner or operator of such facility shall make a timely and complete application for such permit in accordance with rules promulgated pursuant to this article specifying procedures and requirements for obtaining such permit.


Information obtained by any agency under this article shall be available to the public unless the director certifies such information to be confidential. The director may make such certification where any person shows, to the satisfaction of the director, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this section may be construed as limiting the disclosure of information by the division to any officer, employee or authorized representative of the state or federal government concerned with effecting the purposes of this article.

Any person who knowingly and willfully divulges or discloses any information entitled to protection under this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.

§22-18-13. Inspections; right of entry; sampling; reports and analyses; subpoenas.

(a) The director or any authorized representative, employee or agent of the division, upon the presentation of proper credentials and at reasonable times, may enter any building, property, premises, place, vehicle or permitted facility where hazardous wastes are or have been generated, treated, stored, transported or disposed of for the purpose of making an investigation with reasonable promptness to ascertain the compliance by any person with the provisions of this article or the rules promulgated by the director or permits issued by the director hereunder. Nothing contained in this section eliminates any obligation to follow any process that may
be required by law.

(b) The director or his or her authorized representative, employee or agent shall make periodic inspections at every permitted facility as necessary to effectively implement and enforce the requirements of this article or the rules promulgated by the director or permits issued by the director hereunder. After an inspection is made, a report shall be prepared and filed with the director and a copy of such inspection report shall be promptly furnished to the person in charge of such building, property, premises, place, vehicle or facility. Such inspection reports shall be available to the public in accordance with the provisions of article one, chapter twenty-nine-b of this code.

(c) Whenever the director has cause to believe that any person is in violation of any provision of this article, any condition of a permit issued by the director, any order or any rule promulgated by the director under this article, he or she shall immediately order an inspection of the building, property, premises, place, vehicle or permitted facility at which the alleged violation is occurring.

(d) The director or any authorized representative, employee or agent of the division may, upon presentation of proper credentials and at reasonable times, enter any establishment, building, property, premises, vehicle or other place maintained by any person where hazardous wastes are being or have been generated, transported, stored, treated or disposed of to inspect and take samples of wastes, soils, air, surface water and groundwater and samples of any containers or labelings for such wastes. In taking such samples, the division may utilize such sampling methods as it determines to be necessary, including, but not limited to, soil borings and monitoring wells. If the representative, employee or agent obtains any such samples, prior to leaving the premises, he or she shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. The division shall promptly provide a copy of any analysis
made to the owner, operator or agent in charge.

(e) Upon presentation of proper credentials and at reasonable times, the director or any authorized representative, employee or agent of the division shall be given access to all records relating to the generation, transportation, storage, treatment or disposal of hazardous wastes in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste, the director or an authorized representative, employee or agent shall be furnished with copies of all such records or given the records for the purpose of making copies. If the director, upon inspection, investigation or through other means, observes or learns of a violation or probable violation of this article, he or she is authorized to issue subpoenas and subpoenas duces tecum and to order the attendance and testimony of witnesses and to compel the production of any books, papers, documents, manifests and other physical evidence pertinent to such investigation or inspection.


(a) If the director determines, upon receipt of any information, that (1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated or disposed of, or (2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he or she may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis and reporting with respect to such facility or site as the director deems reasonable to ascertain the nature and extent of such hazard.

(b) In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the director finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he or she may issue an order requiring the most recent previous...
owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

(c) An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the director within thirty days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis and reporting. The director may, after providing such person with an opportunity to confer with the director respecting such proposal, require such person to carry out such monitoring, testing, analysis and reporting in accordance with such proposal, and such modifications in such proposal as the director deems reasonable to ascertain the nature and extent of the hazard.

(d) The following duties shall be carried out by the director:

(1) If the director determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis or reporting satisfactory to the director, if the director deems any such action carried out by an owner or operator to be unsatisfactory or if the director cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis or reporting, he or she may conduct monitoring, testing or analysis (or any combination thereof) which he or she deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or authorize a state or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the director or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the director which confirms the results of the order issued under subsection (a) or (b) of this section.
(e) If the monitoring, testing, analysis and reporting conducted pursuant to this section indicates that a potential hazard to human health or the environment may or does exist, the director may issue an appropriate order requiring that the hazard or risk of hazard be eliminated.

(f) The director may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the circuit court in which the defendant is located, resides or is doing business. Such court has jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed five thousand dollars for each day during which such failure or refusal occurs.


(a) If the director, upon inspection, investigation or through other means observes, discovers or learns of a violation of the provisions of this article, any permit, order or rules issued or promulgated hereunder, he or she may:

(1) Issue an order stating with reasonable specificity the nature of the violation and requiring compliance immediately or within a specified time. An order under this section includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders;

(2) Seek an injunction in accordance with subsection (c) of section seventeen of this article;

(3) Institute a civil action in accordance with subsection (c) of section seventeen of this article; or

(4) Request the attorney general, or the prosecuting attorney of the county in which the alleged violation occurred, to bring a criminal action in accordance with section sixteen of this article.

(b) Any person issued a cease and desist order may file a notice of request for reconsideration with the director not more than seven days from the issuance of such order and shall have a hearing before the director
contesting the terms and conditions of such order within ten days of the filing of such notice of a request for reconsideration. The filing of a notice of request for reconsideration does not stay or suspend the execution or enforcement of such cease and desist order.


(a) Any person who knowingly (1) transports any hazardous waste identified or listed under this article to a facility which does not have a permit required by this article, Section 3005 of the Federal Solid Waste Disposal Act, as amended, the laws of any other state which has an authorized hazardous waste program pursuant to Section 3006 of the federal Solid Waste Disposal Act, as amended, or Title I of the federal Marine Protection, Research and Sanctuaries Act; (2) treats, stores or disposes of any such hazardous waste either (A) without having obtained a permit required by this article, or by Title I of the federal Marine Protection, Research and Sanctuaries Act, or by Section 3005 or 3006 of the federal Solid Waste Disposal Act, as amended, or (B) in knowing violation of a material condition or requirement of such permit, is guilty of a felony, and, upon conviction thereof, shall be fined not to exceed fifty thousand dollars for each day of violation or confined in the penitentiary not less than one nor more than two years, or both such fine and imprisonment or, in the discretion of the court, be confined in jail not more than one year in addition to the above fine.

(b) Any person who knowingly (1) makes any false material statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of compliance with this article; or (2) generates, stores, treats, transports, disposes of or otherwise handles any hazardous waste identified or listed under this article (whether such activity took place before or takes place after the effective date of this article) and who knowingly destroys, alters or conceals any record required to be maintained under rules promulgated by the director pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not to exceed
twenty-five thousand dollars, or sentenced to imprison-
ment for a period not to exceed one year, or both fined
and sentenced to imprisonment for each violation.

(c) Any person convicted of a second or subsequent
violation of subsections (a) and (b) of this section, is
guilty of a felony, and, upon such conviction, shall be
confined in the penitentiary not less than one nor more
than three years, or fined not more than fifty thousand
dollars for each day of violation, or both such fine and
imprisonment.

(d) Any person who knowingly transports, treats,
stores or disposes of any hazardous waste identified or
listed pursuant to this article in violation of subsection
(a) of this section, or having applied for a permit
pursuant to subdivision (13), subsection (a), section six
or sections seven and eight of this article, and knowingly
either (1) fails to include in a permit application any
material information required pursuant to this article,
or rules promulgated hereunder, or (2) fails to comply
with applicable interim status requirements as provided
in section eleven of this article and who thereby exhibits
an unjustified and inexcusable disregard for human life
or the safety of others and he or she thereby places
another person in imminent danger of death or serious
bodily injury, is guilty of a felony, and, upon conviction
thereof, shall be fined not more than two hundred fifty
thousand dollars or imprisoned not less than one year
nor more than four years or both such fine and
imprisonment.

(e) As used in subsection (d) of this section, the term
"serious bodily injury" means:

(1) Bodily injury which involves a substantial risk of
death;

(2) Unconsciousness;

(3) Extreme physical pain;

(4) Protracted and obvious disfigurement; or

(5) Protracted loss or impairment of the function of
a bodily member, organ or mental faculty.
§22-18-17. Civil penalties and injunctive relief.

(a) (1) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article is subject to a civil administrative penalty, to be levied by the director, of not more than seventy-five hundred dollars for each day of such violation, not to exceed a maximum of twenty-two thousand five hundred dollars. In assessing any such penalty, the director shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements as well as any other appropriate factors as may be established by the director by rules promulgated pursuant to this article and article three, chapter twenty-nine-a of this code. No assessment shall be levied pursuant to this subsection until after the alleged violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, order or statement of permit conditions that was allegedly violated, a concise statement of the facts alleged to constitute the violation, a statement of the amount of the administrative penalty to be imposed and a statement of the alleged violator's right to an informal hearing. The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the director a written request for an informal hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the director shall inform the alleged violator of the time and place of the hearing. The director may appoint an assessment officer to conduct the informal hearing and then make a written recommendation to the director concerning the assessment of a civil administrative penalty. Within thirty days following the informal hearing, the director shall issue and furnish to the violator a written decision, and the reasons therefor, concerning the assessment of a civil administrative penalty. Within thirty days after notification of the director's decision, the alleged violator may request a formal hearing before the environmental quality board in accordance with the provisions of article one, chapter twenty-two-b of this code. The authority to levy an administrative penalty is in addition
to all other enforcement provisions of this article and the
payment of any assessment does not affect the availa-

ability of any other enforcement provision in connection
with the violation for which the assessment is levied:

Provided, That no combination of assessments against a

violator under this section shall exceed twenty-five

thousand dollars per day of each such violation:

Provided, however, That any violation for which the

violator has paid a civil administrative penalty assessed

under this section shall not be the subject of a separate
civil penalty action under this article to the extent of the
amount of the civil administrative penalty paid. All
administrative penalties shall be levied in accordance
with rules issued pursuant to subsection (a) of section
six of this article. The net proceeds of assessments
collected pursuant to this subsection shall be deposited
in the hazardous waste emergency response fund
established pursuant to section three, article nineteen of
this chapter.

(2) No assessment levied pursuant to subdivision (1),
subsection (a) above becomes due and payable until the
procedures for review of such assessment as set out in
said subsection have been completed.

(b) Any person who violates any provision of this
article, any permit or any rule or order issued pursuant
to this article is subject to a civil penalty not to exceed
twenty-five thousand dollars for each day of such
violation, which penalty shall be recovered in a civil
action either in the circuit court wherein the violation
occurs or in the circuit court of Kanawha county.

(c) The director may seek an injunction, or may
institute a civil action against any person in violation of
any provisions of this article or any permit, rule or order
issued pursuant to this article. In seeking an injunction,
it is not necessary for the director to post bond nor to
allege or prove at any stage of the proceeding that
irreparable damage will occur if the injunction is not
issued or that the remedy at law is inadequate. An
application for injunctive relief or a civil penalty action
under this section may be filed and relief granted
notwithstanding the fact that all administrative reme-
dies provided for in this article have not been exhausted
or invoked against the person or persons against whom
such relief is sought.

(d) Upon request of the director, the attorney general,
or the prosecuting attorney of the county in which the
violation occurs, shall assist the director in any civil
action under this section.

(e) In any action brought pursuant to the provisions
of this section, the state, or any agency of the state which
prevails, may be awarded costs and reasonable attor-
ney's fees.

§22-18-18. Imminent and substantial hazards; orders;
penalties; hearings.

(a) Notwithstanding any provision of this article to the
contrary, the director, upon receipt of information, or
upon observation or discovery that the handling,
storage, transportation, treatment or disposal of any
hazardous waste may present an imminent and substan-
tial endangerment to public health, safety or the
environment, may:

(1) Request the attorney general or the appropriate
prosecuting attorney to commence an action in the
circuit court of the county in which the hazardous
condition exists to immediately restrain any person
contributing to such handling, storage, transportation,
treatment or disposal to stop such handling, storage,
transportation, treatment or disposal or to take such
other action as may be necessary; or

(2) Take other action under this section including, but
not limited to, issuing such orders as may be necessary
to protect public health and the environment.

(b) Any person who willfully violates, or fails or
refuses to comply with, any order of the director under
subsection (a) of this section may, in an action brought
in the appropriate circuit court to enforce such orders,
be fined not more than five thousand dollars for each
day in which such violation occurs or such failure to
comply continues.

(a) Any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any provision of this article or any condition of a permit issued or rules promulgated hereunder, except that no action may be commenced under this section prior to sixty days after the plaintiff has given notice to the appropriate enforcement, permit issuing or rule-making authority and to the person against whom the action will be commenced, or if the state has commenced and is diligently prosecuting a civil or criminal action pursuant to this article: Provided, That such person may commence a civil action immediately upon notification in the case of an action under subsection (b) of this section. Such actions may be brought in the circuit court in the county in which the alleged violation occurs or in the circuit court of Kanawha county.

(b) Any person may commence a civil action against the appropriate enforcement, permit issuing or rule-making authority where there is alleged a failure of such authority to perform any nondiscretionary duty or act under this article. Such actions may be brought only in the circuit court of Kanawha county.

(c) Any person may petition the appropriate rule-making authority for rule-making on an issue arising under this article. The appropriate rule-making authority, if it believes such issue to merit rule-making, may commence any studies and investigations necessary to issue rules. A decision by the appropriate rule-making authority not to pursue rule-making must be set forth in writing with substantial reasons for refusing to do so.

(d) Nothing in this article restricts any rights of any person or class of persons under statute or common law.

(e) In issuing any final order in any action brought pursuant to this section any court with jurisdiction may award costs of litigation, including reasonable attorney's fees and expert witnesses fees, to any party whenever the court determines such award to be appropriate.
(f) Any enforcement, permit issuing or rule-making authority may intervene as a matter of right in any suit brought under this section.

(g) Any person may intervene as a matter of right in any civil action or administrative action instituted under this article.

(h) Notwithstanding any provision of this article to the contrary, any person may maintain an action to enjoin a nuisance against any permit holder or other person subject to the provisions of this article and may seek damages in said action, all to the same extent and for all intents and purposes as if this article were not enacted, if such person maintaining such action and seeking such damages would otherwise have standing to maintain such action and be entitled to damages by any other rule of law.

§22-18-20. Appeal to environmental quality board.

Any person aggrieved or adversely affected by an order of the director made and entered in accordance with the provisions of this article, or by the failure or refusal of the director to act within a reasonable time on an application for a permit or by the issuance or denial of or by the terms and conditions of a permit granted by the director under the provisions of this article, may appeal to the environmental quality board, in accordance with the provisions of article one, chapter twenty-two-b of this code.


(a) The grantor in any deed or other instrument of conveyance or any lessor in any lease or other instrument whereby any real property is let for a period of time shall disclose in such deed, lease or other instrument the fact that such property or the subsurface of such property, (whether or not the grantor or lessor is at the time of such conveyance or lease the owner of such subsurface) was used for the storage, treatment or disposal of hazardous waste. The provisions of this subsection only apply to those grantors or lessors who owned or had an interest in the real property when the
same or the subsurface thereof was used for the purpose
of storage, treatment or disposal of hazardous waste or
who have actual knowledge that such real property or
the subsurface thereof was used for such purpose or
purposes at any time prior thereto.

(b) Any grantee of real estate or of any substrata
underlying said real estate or any lessee for a term who
intends to use the real estate conveyed or let or any
substrata underlying the same for the purpose of
storing, treating or disposing of hazardous waste shall
disclose in writing at the time of such conveyance or
lease or within thirty days prior thereto such fact to the
grantor or lessor of such real estate or substrata. Such
disclosure shall describe the proposed location upon said
property of the site to be used for the storage, treatment
or disposal of hazardous waste, the identity of such
waste, the proposed method of storage, treatment or
disposal to be used with respect to such waste and any
and all other information required by rules of the
director.

§22-18-22. Appropriation of funds; hazardous waste
management fund.

The net proceeds of all fines, penalties and forfeitures
collected under this article shall be appropriated as
directed by article XII, section 5 of the constitution of
West Virginia. For the purposes of this section, the net
proceeds of such fines, penalties and forfeitures shall be
deemed the proceeds remaining after deducting there-
from those sums appropriated by the Legislature for
defraying the cost of administering this article. All
permit application fees collected under this article shall
be paid into the state treasury into a special fund
designated “The Hazardous Waste Management Fund.”
In making the appropriation for defraying the cost of
administering this article, the Legislature shall first
take into account the sums included in such special fund
prior to deducting such additional sums as may be
needed from the fines, penalties and forfeitures collected
pursuant to this article.
§22-18-23. State program to be consistent with and equivalent to federal program.

The program for the management of hazardous waste pursuant to this article shall be equivalent to and consistent with the federal program established pursuant to Subtitle C of the federal Solid Waste Disposal Act, as amended.


No enforcement proceeding brought pursuant to this article may be duplicated by an enforcement proceeding subsequently commenced under some other article of this code with respect to the same transaction or event unless such subsequent proceeding involves the violation of a permit or permitting requirement of such other article.


(1) Financial responsibility required by subdivision (4), subsection (a), section six of this article may be established in accordance with rules promulgated by the director by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit or qualification as a self-insurer. In promulgating requirements under this section, the director is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this article.

(2) In any case where the owner or operator is in bankruptcy reorganization, or arrangement pursuant to the federal bankruptcy code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor
is entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this article. Nothing in this subsection limits any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection diminishes the liability of any person under section 107 or 111 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 or other applicable law.

(4) For the purposes of this section, the term "guarantor" means any person other than the owner or operator who provides evidence of financial responsibility for an owner or operator under this section.

ARTICLE 19. HAZARDOUS WASTE EMERGENCY RESPONSE FUND.

§22-19-1. Findings; purpose.

The Legislature recognizes that large quantities of hazardous waste are generated within the state, and that emergency situations involving hazardous waste can and will arise which may present a hazard to human health, safety or the environment. The Legislature also recognizes that some hazardous waste has been stored, treated or disposed of at sites in the state in a manner insufficient to protect human health, safety or the environment. The Legislature further recognizes that the federal government has enacted the Comprehensive Environmental Response, Compensation and Liability Act of 1980, which provides for federal assistance to respond to hazardous substance emergencies and to remove and remedy the threat of damage to the public.
health or welfare or to the environment, and declares
that West Virginia desires to produce revenue for
matching the federal assistance provided under the
federal act. Therefore, the Legislature hereby creates a
hazardous waste emergency fund to provide state funds
for responding to hazardous waste emergencies, match-
ing federal financial assistance for restoring hazardous
waste sites and other costs or expenses incurred in the
administration of this article.


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

(1) “Cleanup” means such actions as may be necessary
to monitor, assess and evaluate the threat of release of
hazardous waste, the containment, collection, control,
identification, treatment, dispersal, removal or disposal
of hazardous waste or other such actions as may be
necessary to respond to hazardous waste emergencies or
to prevent, minimize or mitigate damage to the public
health, safety, welfare or to the environment, and
includes, where necessary, replacement of existing, or
provision of alternative, drinking water supplies that
have been contaminated with hazardous waste as a
result of an emergency;

(2) “Cleanup costs” means all costs incurred by the
director, or with the approval of the director, by any
state agency or person participating in the cleanup of
a hazardous waste emergency or remedial action;

(3) “Generator” means any person, corporation,
partnership, association or other legal entity, by site
location, whose act or process produces hazardous waste
as identified or listed by the director in rules promul-
gated pursuant to section six, article eighteen of this
chapter, in an amount greater than twelve thousand
kilograms per year;

All other terms have the meaning as prescribed in the
rules promulgated by the director pursuant to the
provisions of section six, article eighteen of this chapter.

§22-19-3. Hazardous waste emergency response fund;
components of fund.

(a) The special fund designated "The Hazardous Waste Emergency Response Fund," hereinafter referred to as "the fund," shall be continued in the state treasury.

(b) All generator fee assessments, any interest or surcharge assessed and collected by the director, interest accruing on investments and deposits of the fund, and any other moneys designated shall be paid into the fund.

§22-19-4. Fee assessments; tonnage fees; due dates of payments; interest on unpaid fees.

(a) Each generator of hazardous waste within this state shall pay an annual fee based upon the amount of hazardous waste generated as reported to the director by the generator on a fee assessment form prescribed by the director submitted pursuant to article eighteen of this chapter. The director shall establish a fee schedule according to the following: Full assessment for generated hazardous waste disposed or treated off-site; ninety percent of the full assessment for generated hazardous waste either treated or disposed on-site; seventy-five percent of the full assessment for generated hazardous waste treated off-site so that such waste is rendered nonhazardous; and twenty-five percent of the full assessment for generated hazardous waste treated on-site so that such waste is rendered nonhazardous:

Provided, That the generator fee assessment does not apply to the following: (1) Those wastes listed in paragraph (A), subdivision two, subsection (a), section six, article eighteen of this chapter; (2) sludge from any publicly owned treatment works in the state; (3) any discharge to waters of the state of hazardous waste pursuant to a valid water pollution control permit issued under federal or state law; (4) any hazardous wastes beneficially used or reused or legitimately recycled or reclaimed; (5) hazardous wastes which are created or retrieved pursuant to an emergency or remedial action plan; (6) hazardous wastes whose sole characteristic as a hazardous waste is based on corrosivity and which are subjected to on-site elementary neutralization in con-
tainers or tanks.

(b) Each generator of hazardous waste within the state subject to a fee assessment under subsection (a) of this section shall pay a fee based on its annual tonnage of generated hazardous waste. Any unexpended balance of such collected fees shall not be transferred to the general revenue fund, but shall remain in the fund. The director shall vary the fees annually to a level necessary to produce a fund of at least one million dollars at the beginning of each calendar year, but in no event shall the fees established be set to produce revenue exceeding five hundred thousand dollars in any year. When the fund's unobligated balance exceeds one million five hundred thousand dollars at the end of the calendar year, generator assessments under this article shall cease until such time as the fund's unobligated balance at the end of any year is less than one million dollars.

(c) Generator fee assessments are due and payable to the division of environmental protection on the fifteenth day of January of each year. Such payments shall be accompanied by information in such form as the director may prescribe.

(d) If the fees or any portion thereof are not paid by the date prescribed, interest accrues upon the unpaid amount at the rate of ten percent per annum from the date due until payment is actually made. Such interest payments shall be deposited in the fund. If any generator fails to pay the fees imposed before April one of the year in which they are due, there is imposed in addition to the fee and interest determined to be owed a surcharge equivalent to the total amount of the fee which shall also be collected and deposited in the fund.

§22-19-5. Director's responsibilities; fee schedules; authorized expenditures; other powers of director; authorizing civil actions; assistance of attorney general or prosecuting attorney.

(a) The director shall collect all fees assessed pursuant to this article and administer the fund. The fee schedule shall be published in the state register by the first day of August of each year. Each generator who filed the
fee assessment form prescribed by the director shall be
notified and provided with a copy of the fee schedule by
certified mail. In the event the fee schedule is not
published by the first day of August, the date prescribed
for payment in section four of this article shall be
advanced by the same number of days that the publi-
cation of the fee schedule is delayed. The interest and
surcharge provisions of section four of this article shall
be similarly advanced.

(b) The director is authorized to enter into agreements
and contracts and to expend the moneys in the fund for
the following purposes:

(1) Responding to hazardous waste emergencies when,
based on readily available information, the director
determines that immediate action may prevent or
mitigate significant risk of harm to human health,
safety or the environment from hazardous wastes in
situations for which no federal funds are immediately
available for such response clean up or containment:
Provided. That the director shall apply for and dili-
gently pursue available federal funds for such emergen-
cies at the earliest possible time: Provided, however,
That funds shall not be expended under this subsection
to cleanup or contain off-site releases of hazardous waste
which are classified as such only as a result of such
releases;

(2) Reimbursing any person for reasonable clean-up
costs incurred with the authorization of the director in
responding to a hazardous waste emergency pursuant to
authorization of the director;

(3) Financing the nonfederal share of the clean-up and
site reclamation activities pursuant to the federal
Comprehensive Environmental Response, Compensation
and Liability Act of 1980, as well as future operation
and maintenance costs for these sites; and

(4) Financing any and all preparations necessary for
responding to hazardous waste activities and emergen-
cies within the state, including, but not limited to, the
purchase or lease of hazardous waste emergency
response equipment: Provided. That after the fifteenth
of January, one thousand nine hundred eighty-seven, no
funds shall be expended under this subdivision unless
the fund is greater than one million dollars and any
expenditure will not reduce the fund below one million
dollars.

(c) Prior to making expenditures from the fund
pursuant to subdivision (1), (2) or (3), subsection (b) of
this section, the director will make reasonable efforts to
secure agreements to pay the costs of cleanup and
remedial actions from owners or operators of sites or
other responsible persons.

(d) The director is authorized to promulgate and
revise rules in compliance with chapter twenty-nine-a of
this code to implement and effectuate the powers, duties
and responsibilities vested in him or her under this
article. Prior to the assessment of any fees under this
article, the director shall promulgate rules which
account for the mixture of hazardous and nonhazardous
constituents in the hazardous waste which is generated.
The director shall not assess a fee on the nonhazardous
portion, including, but not limited to, the weight of
water.

(e) The director is authorized to recover through civil
action or cooperative agreements with responsible
persons the full amount of any funds expended for
purposes enumerated in subdivision (1), (2) or (3),
subsection (b) of this section. All moneys expended from
the fund which are so recovered shall be deposited in
the fund. Any civil action instituted pursuant to this
subsection may be brought in either Kanawha county or
the county in which the hazardous waste emergency
occurs or the county in which remedial action is taken.

(f) The director is authorized to institute a civil action
against any generator for failure to pay any fee assessed
pursuant to this article. Any action instituted against a
generator pursuant to this subsection may be brought
in either Kanawha county or the county in which the
generator does business. The generator shall pay all
attorney fees and costs of such action if the director
prevails.
(g) Upon request by the director, the attorney general or prosecuting attorney for the county in which an action was brought shall assist the director in any civil action instituted pursuant to this section and any proceedings relating thereto.

(h) The director is authorized to enter into contracts or cooperative agreements with the federal government to secure to the state the benefits of funding for action taken pursuant to the requirements of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(i) The director is authorized to accept gifts, donations, contributions, bequests or devises of money, security or property for deposit in the fund.

(j) The director is authorized to invest the fund to earn a reasonable rate of return on the unexpended balance.


The director shall promulgate rules in compliance with chapter twenty-nine-a of this code, establishing a state hazardous waste contingency plan which shall set forth procedures and standards for responding to hazardous waste emergencies, for conducting remedial cleanup and maintenance of hazardous waste sites and for making expenditures from the fund after the date of promulgation of the plan. The plan shall include:

(a) Methods for discovering, reporting and investigating sites at which hazardous waste may present significant risk of harm to the public health and safety or to the environment;

(b) Methods and criteria for establishing priority responses and for determining the appropriate extent of clean up, containment and other measures authorized by this article;

(c) Appropriate roles for governmental, interstate and nongovernmental entities in effectuating the plan;

(d) Methods for identifying, procuring, maintaining, and storing hazardous waste response equipment and supplies; and
(e) Methods to identify the most appropriate and cost-effective emergency and remedial actions in view of the relative risk or danger presented by each case or event.

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

The director of the division of environmental protection shall appoint a person to serve as the environmental advocate within the division of environmental protection, and shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate. The environmental advocate shall serve at the will and pleasure of the director, who shall also set the salary of the environmental advocate. All funding for the office of environmental advocate shall be from existing funds of the division of environmental protection. The director shall provide an office and secretarial and support staff as needed. The position of environmental advocate shall continue to exist until the first day of July, one thousand nine hundred ninety-seven, to allow for the completion of a preliminary performance review pursuant to article ten, chapter four of this code.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.

(a) The office of miners' health, safety and training is continued and is a separate office within the department of commerce, labor and environmental resources. The office shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director of the office of miners' health,
safety and training.

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


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

(a) General.

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

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

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

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

(5) Imminent danger: The term “imminent danger” means the existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.
(6) Mine: The term "mine" includes the shafts, slopes, drifts or inclines connected with, or intended in the future to be connected with, excavations penetrating coal seams or strata, which excavations are ventilated by one general air current or divisions thereof, and connected by one general system of mine haulage over which coal may be delivered to one or more points outside the mine, and the surface structures or equipment connected or associated therewith which contribute directly or indirectly to the mining, preparation or handling of coal, or construction thereof.

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

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

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

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

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

(b) Office of miners' health, safety and training.

(1) Board of appeals: The term "board of appeals" means as provided for in article five of this chapter.

(2) Director: The term "director" means the director of the office of miners' health, safety and training.
provided for in section three of this article.

(3) Mine inspector: The term "mine inspector" means a state mine inspector provided for in section eight of this article.

(4) Mine inspectors' examining board: The term "mine inspectors' examining board" shall mean the mine inspectors' examining board provided for in article nine of this chapter.

(5) Office: The term "office" means, when referring to a specific office, the office of miners' health, safety and training provided for in this article. The term "office," when used generically, includes any office, board, agency, unit, organizational entity or component thereof.

(c) Mine areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Mine personnel.

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

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

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

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

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

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

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

(8) Superintendent: The term "superintendent" means the person who has, on behalf of the operator, immediate supervision of one or more mines.
Supervisor: The term “supervisor” means a superintendent, mine foreman, assistant mine foreman, or any person specifically designated by the superintendent or mine foreman to supervise work or employees and who is acting pursuant to such specific designation and instructions.

(e) Electrical.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(17) Neutral point: The term “neutral point” means the connection point of transformer or generator windings from which the voltage to ground is nominally zero, and is the point generally used for system groundings in wye-connected a.c. power system.
Portable (trailing) cable: The term "portable (trailing) cable" means a flexible cable or cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or other external source of electric energy where permanent mine wiring is prohibited or is impracticable.

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

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

§22A-1-3. Director of the office of miners' health, safety and training.

(a) The director of the office of miners' health, safety and training is responsible for surface and underground safety inspections of coal mines, the administration of the office of miners' health, safety and training and of such other matters as are delegated or assigned to the director by the secretary of the department of commerce, labor and environmental resources.

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into such offices, sections, agencies and other units of activity as may be found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint such other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated therefor.

(c) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the governor:
Provided, That, in lieu of appointing a director, the governor may order the secretary to directly exercise the powers of the director. The secretary shall designate the order in which other officials of the office shall act for and perform the functions of the secretary or the director during the absence or disability of both the secretary or the director or in the event of vacancies in both of those offices.

(d) The director of the office of miners’ health, safety and training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years’ experience in underground coal mining and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(e) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article four of the constitution of West Virginia and shall execute a bond, with surety approved by the governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the secretary of
§22A-1-4. Powers and duties of the director of the office of miners' health, safety and training.

(a) The director of the office of miners' health, safety and training is hereby empowered and it is his or her duty to administer and enforce such provisions of this chapter relating to health and safety inspections and enforcement and training in surface and underground coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines.

(b) The director of the office of miners' health, safety and training has full charge of the division. The director has the power and duty to:

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

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

(3) Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

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

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

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

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

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

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

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

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

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

§22A-1-5. Offices continued in the office of miners' health, safety and training.

(a) There are hereby continued in the office of miners' health, safety and training the following offices:

(1) The board of coal mine health and safety established pursuant to article six of this chapter;

(2) The coal mine safety and technical review committee established pursuant to article six of this chapter;

(3) The board of miner training, education and certification established pursuant to article seven of this chapter;

(4) The mine inspectors' examining board established pursuant to article nine of this chapter; and

(5) The board of appeals provided for pursuant to the provisions of article five of this chapter.

(b) Nothing in this article may authorize the director or the secretary of the department of commerce, labor and environmental resources to alter, discontinue or abolish any office, board or commission or the functions thereof, which are established by statute.
§22A-1-6. Director's authority to promulgate rules.

1 The director has the power and authority to propose
2 or promulgate rules to organize the office and to carry
3 out and implement the provisions of this chapter
4 relating to health and safety inspections and enforce-
5 ment. All rules in effect on the effective date of this
6 article which pertain to the provisions of this chapter
7 as they relate to health and safety inspection and
8 enforcement shall remain in effect until changed or
9 superseded by the director, or as appropriate. Except
10 when specifically exempted by the provisions of this
11 chapter, all rules or changes thereto shall be proposed
12 or promulgated by the director in accordance with the
13 provisions of chapter twenty-nine-a of this code.


1 All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses and privileges which
3 have been issued, made, granted, or allowed to become
4 effective by the governor, any state department or
5 agency or official thereof, or by a court of competent
6 jurisdiction, in the performance of functions which were
7 transferred from the division of energy to the secretary
8 of the department of commerce, labor and environmen-
9 tal resources, to the director, or to the office, and which
10 were in effect on the date such transfer occurred, shall
11 continue in effect according to their terms until
12 modified, terminated, superseded, set aside or revoked
13 in accordance with law by the governor, the secretary,
14 the director, or other authorized official, a court of
15 competent jurisdiction or by operation of law.

§22A-1-8. Mine inspectors; districts and divisions; employ-
1 ment; tenure; oath; bond.

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

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

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

The director shall make each appointment from
among the three qualified eligible candidates on the
register having the highest grades: Provided, That the
director may, for good cause, at least thirty days prior
to making an appointment, strike any name from the
register. Upon striking any name from the register, the
director shall immediately notify in writing each
member of the mine inspectors' examining board of the
action, together with a detailed statement of the reasons
therefor. Thereafter, the mine inspectors' examining
board, after hearing, if it finds that the action of the
director was arbitrary or unreasonable, may order the
name of any candidate so stricken from the register to
be reinstated thereon. Such reinstatement is effective
from the date of removal from the register.

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

After having served for a probationary period of one
year to the satisfaction of the director, a mine inspector
has permanent tenure, subject only to dismissal for
cause in accordance with the provisions of section twelve
of this article. No mine inspector, while in office, shall
be directly or indirectly interested as owner, lessor,
operator, stockholder, superintendent or engineer of any coal mine. Before entering upon the discharge of the duties as a mine inspector, he or she shall take the oath of office prescribed by section five, article IV of the constitution of West Virginia and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director, conditioned upon the faithful discharge of his or her duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The district inspectors, inspectors-at-large and assistant inspectors-at-large, together with the director, shall make all inspections authorized by this article and article two of this chapter and shall perform such other duties as are imposed upon mine inspectors by this article and articles two, four and eight of this chapter.

§22A-1-9. Mine safety instructors; qualifications; employment; compensation; tenure; oath; bond.

The office shall employ eleven or more mine safety instructors. To be eligible for employment as a mine safety instructor, the applicant shall be (1) a citizen of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and temperate habits, and (2) a person who has had at least five years' experience in first aid and mine rescue work and who has had practical experience with dangerous gases found in coal mines, and who has a practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to a written and oral examination, given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by a safety instructor and may, subject to the approval of the mine inspectors' examining board, be prepared by the director.

If the board finds after investigation and examination that the applicant (1) is eligible for appointment, and (2) has passed all oral and written examinations with a
grade of at least eighty percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director. The director may then appoint one of the candidates from the three having the highest grades.

The salary for a mine safety instructor shall be not less than twenty-one thousand six hundred seventy-two dollars per year, and shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Such instructor shall devote all of his or her time to the duties of the office. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expenses submitted by the instructor, who shall verify upon oath that such expenses were actually incurred in the discharge of his or her official duties.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of mine inspectors are applicable to mine safety instructors.

§22A-1-10. Mine inspectors may be appointed to fill vacancy in division.

Notwithstanding any other provisions of law, if a vacancy occurs in any appointive position within the office, any mine inspector having permanent tenure, if qualified, may be appointed to such appointive position by the director.

§22A-1-11. Employment of electrical inspectors; qualifications; salary and expenses; tenure; oath; bond.

The office shall employ five or more electrical inspectors. To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen and resident of West Virginia, in good health, not less than twenty-five years of age, and of good character, reputation and of temperate habits; and (2) a person who has had seven years' practical electrical experience in coal mines, or a degree in electrical engineering from
an accredited electrical engineering school and one year's practical experience in underground coal mining.

In order to qualify for appointment as a mine electrical inspector, an eligible applicant shall submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed by an electrical inspector. If the board finds after investigation and examination that the applicant (1) is eligible for appointment and (2) has passed all oral and written examinations with a grade of at least ninety percent, the board shall add such applicant's name and grade to a register of qualified eligible candidates and certify its action to the director. The director may then appoint one of the candidates from the three having the highest grade.

The salary of a mine electrical inspector shall be not less than thirty thousand four hundred eighty dollars per year, and shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized accounting for such expense submitted by the electrical inspector, who shall verify upon oath that such expenses were actually incurred in the discharge of his or her official duties.

Mine electrical inspectors, before entering upon the discharge of their duties, shall take and subscribe to the oath and shall execute a bond in the same penal sum, with surety approved by the director, all as is required by this article in the case of mine inspectors.

Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualifications, appointment, tenure and removal of mine inspectors are applicable to mine electrical inspectors.

§22A-1-12. Eligibility for appointment as mine inspector; qualifications; salary and expenses; removal.

(a) No person is eligible for appointment as a mine
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inspector unless, at the time of his or her probationary appointment, he or she (1) is a citizen of West Virginia, in good health, not less than twenty-four years of age, and of good character, reputation and temperate habits; (2) has had at least six years' practical experience in coal mines, at least three years of which, immediately preceding his or her original appointment, shall have been in mines of this state: Provided, That graduation from any accredited college of mining engineering shall be considered the equivalent of two years' practical experience; (3) has had practical experience with dangerous gases found in coal mines; and (4) has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as a mine inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least eighty percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director. No candidate's name shall remain in the register for more than three years without requalifying.

(c) Salaries of district inspectors shall not be less than twenty-eight thousand fifty-six dollars per year; assistant inspector-at-large, not less than thirty thousand one hundred eight dollars per year; inspectors-at-large, not less than thirty-one thousand five hundred seventy-two dollars per year, and they shall receive mileage at the rate of not less than twenty cents for each mile actually traveled in the discharge of their official duties in a privately owned vehicle. Within the limits provided by law, the salary of each inspector shall be fixed by the director, subject to the approval of the mine inspectors' examining board. In fixing salaries of mine inspectors,
the director shall consider ability, performance of duty and experience. No reimbursement for traveling expenses shall be made except on an itemized account of such expenses submitted by the inspector, who shall verify upon oath, that such expenses were actually incurred in the discharge of his or her official duties. Every inspector shall be afforded compensatory time or compensation of at least his or her regular rate for all time in excess of forty-two hours per week.

(d) Any mine inspector who has fulfilled the requirements of this section with respect to employment and who has served satisfactorily as a mine inspector for a minimum period of one year and who has terminated his or her employment as a mine inspector, upon successfully passing a physical examination, may be reinstated as a mine inspector within two years after terminating his or her employment with the approval of the examining board and the director.

(e) A mine inspector, after having received a permanent appointment, shall be removed from office only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office or other good cause.

Proceedings for the removal of a mine inspector may be initiated by the director whenever there is reasonable cause to believe that adequate cause exists, warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the board by the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens, who are operators or employees in mines in the state, may petition the director for the removal of a mine inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant and alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the facts to be made. If, after such investigation, the director finds that there is substantial evidence, which, if true, warrants removal of the inspector, the director shall file a petition with the board requesting removal of the inspector.
On receipt of a petition by the director seeking removal of a mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in said notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in said notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings had at any such hearing. No continuance shall be granted except for good cause shown. The chair of the board and the director have power to administer oaths and subpoena witnesses.

Any mine inspector who willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the ground that the testimony or answer might incriminate him or her or refuses to waive immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at any such hearing before the board, shall forfeit his or her position.

If, after hearing, the board finds that the inspector should be removed, it shall enter an order to that effect. The decision of the board is final and is not subject to judicial review.

§22A-1-13. Eligibility for appointment as surface mine inspector; qualifications; salary and expenses; removal.

In order to qualify for an appointment as a surface mine inspector, under the provisions of this article, an eligible applicant shall have had at least five years' practical experience in surface mines, at least one year of which, immediately preceding his or her original appointment, shall have been in surface mines in this state, and submit to a written and oral examination given by the mine inspectors' examining board. The examination shall relate to the duties to be performed
by a surface mine inspector and may, subject to the
approval of the mine inspectors' examining board, be
prepared by the director.

If the board finds after investigation and examination
that the applicant (1) is eligible for appointment, and (2)
has passed all oral and written examinations with a
grade of at least eighty percent, the board shall add such
applicant's name and grade to a register of qualified
eligible candidates and certify its action to the director.
The director may then appoint one of the candidates
from the three having the highest grades.

All such appointees shall be citizens of West Virginia,
in good health, not less than twenty-five years of age,
of good character and reputation and temperate in
habits. No person is eligible for permanent appointment
as a surface mine inspector until he or she has served
in a probationary status for a period of one year to the
satisfaction of the director.

In the performance of duties devolving upon surface
mine inspectors, they shall be responsible to the
director.

The salary of the surface mine inspector supervisor
shall be not less than twenty-four thousand four hundred
eighty dollars per year. Salaries of surface mine
inspectors shall be not less than twenty-one thousand
seven hundred eighty dollars per year. In the discharge
of their official duties in privately owned vehicles,
surface mine inspectors and the surface mine inspector
supervisor shall receive mileage at the rate of not less
than twenty cents per mile.

A surface mine inspector, after having received a
permanent appointment, shall be removed from office
only for physical or mental impairment, incompetency,
neglect of duty, drunkenness, malfeasance in office, or
other good cause.

§22A-1-14. Director and inspectors authorized to enter
mines; duties of inspectors to examine
mines; no advance notice; reports after
fatal accidents.
The director, or his or her authorized representative, has authority to visit, enter, and examine any mine, whether underground or on the surface, and may call for the assistance of any district mine inspector or inspectors whenever such assistance is necessary in the examination of any mine. The operator of every coal mine shall furnish the director or his or her authorized representative proper facilities for entering such mine and making examination or obtaining information.

If miners or one of their authorized representatives, have reason to believe, at any time, that dangerous conditions are existing or that the law is not being complied with, they may request the director to have an immediate investigation made.

Mine inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall examine all of the mines in their respective districts at least four times annually, and as often, in addition thereto, as the director may direct, or the necessities of the case or the condition of the mine or mines may require, with no advance notice of inspection provided to any person, and they shall make a personal examination of each working face and all entrances to abandoned parts of the mine where gas is known to liberate, for the purpose of determining whether an imminent danger, referred to in section fifteen of this article, exists in any such mine, or whether any provision of article two of this chapter is being violated or has been violated within the past forty-eight hours in any such mine.

In addition to the other duties imposed by this article and article two of this chapter, it is the duty of each inspector to note each violation he or she finds and issue a finding, order, or notice, as appropriate for each violation so noted. During the investigation of any accident, any violation may be noted whether or not the inspector actually observes the violation and whether or not the violation exists at the time the inspector notes the violation, so long as the inspector has clear and convincing evidence the violation has occurred or is occurring.
The mine inspector shall visit the scene of each fatal accident occurring in any mine within his or her district and shall make an examination into the particular facts of such accident; make a report to the director, setting forth the results of such examination, including the condition of the mine and the cause or causes of such fatal accident, if known, and all such reports shall be made available to the interested parties, upon written requests.

At the commencement of any inspection of a coal mine by an authorized representative of the director, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the authorized representative of the director on such inspection.


(a) If, upon any inspection of a coal mine, an authorized representative of the director finds that an imminent danger exists, such representative shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (c) of this section, to be withdrawn from and to be prohibited from entering such area until an authorized representative of the director determines that such imminent danger no longer exists.

All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of such shift. If such order is not terminated prior to the next working shift, all such employees on that shift who are idled by such order are entitled to full compensation by the operator at their regular rates of pay for the period they are idled, but for not more than four hours of such shift.

(b) If, upon any inspection of a coal mine, an authorized representative of the director finds that there has
been a violation of the law, but the violation has not
created an imminent danger, he or she shall issue a
notice to the operator or the operator's agent, fixing a
reasonable time for the abatement of the violation. If,
upon the expiration of the period of time, as originally
fixed or subsequently extended, an authorized representa-
tive of the director finds that the violation has not been
totally abated, and if the director also finds that the
period of time should not be further extended, the
director shall find the extent of the area affected by the
violation and shall promptly issue an order requiring
the operator of such mine or the operator's agent to
cause immediately all persons, except those referred to
in subdivisions (1), (2), (3) and (4), subsection (c) of this
section, to be withdrawn from, and to be prohibited
from entering such area until an authorized representa-
tive of the director determines that the violation has
been abated.

(c) The following persons are not required to be
withdrawn from or prohibited from entering any area
of the coal mine subject to an order issued under this
section:

(1) Any person whose presence in such area is
necessary, in the judgment of the operator or an
authorized representative of the director, to eliminate
the condition described in the order;

(2) Any public official whose official duties require
him or her to enter such area;

(3) Any representative of the miners in such mine who
is, in the judgment of the operator or an authorized
representative of the director, qualified to make coal
mine examinations or who is accompanied by such a
person and whose presence in such area is necessary for
the investigation of the conditions described in the
order; and

(4) Any consultant to any of the foregoing.

(d) Notices and orders issued pursuant to this section
shall contain a detailed description of the conditions or
practices which cause and constitute an imminent
danger or a violation of any mandatory health or safety
standard and, where appropriate, a description of the
area of the coal mine from which persons must be
withdrawn and prohibited from entering.

(e) Each notice or order issued under this section shall
be given promptly to the operator of the coal mine or
the operator's agent by an authorized representative of
the director issuing such notice or order, and all such
notices and orders shall be in writing and shall be
signed by such representative and posted on the bulletin
board at the mine.

(f) A notice or order issued pursuant to this section
may be modified or terminated by an authorized
representative of the director.

(g) Each finding, order and notice made under this
section shall promptly be given to the operator of the
mine to which it pertains by the person making such
finding, order or notice.

§22A-1-16. Powers and duties of electrical inspectors as
to inspections, findings and orders; reports
of electrical inspectors.

In order that the electrical inspector may properly
perform the duties required of him or her, he or she
shall devote his or her whole time and attention to the
duties of the office, and the inspector has the right to
enter any coal mine for the purpose of inspecting
electrical equipment, and if he or she finds during an
inspection any defects in the electrical equipment which
are covered by law and may be detrimental to the lives
or health of the workmen, the inspector has the
authority to order the operator, in writing, to remedy
such defects within a prescribed time, and to prohibit
the continued operation of such electrical equipment
after such time, unless such defects have been corrected.

The electrical inspector shall examine each mine in
his or her division at least once each year or as often
as the director may deem necessary.

It is the duty of the electrical inspector, after
completing the examination of a mine, to prepare a
report describing his or her findings in said mine in a
manner and form designated by the director. The
original report shall be forwarded to the operator or the
operator's representative whose duty it is to post it in
some conspicuous place open to examination by any
interested person or persons. The report shall show the
date of inspection, a list of equipment, and any other
information that the director may deem necessary.

§22A-1-17. Review of orders and notices by the director.

(a) (1) An operator, issued an order pursuant to the
provisions of section fifteen of this article, or any
representative of miners in any mine affected by such
order or by any modification or termination of such
order, may apply to the director for review of the order
within thirty days of receipt thereof or within thirty
days of its modification or termination. An operator,
issued a notice pursuant to subsection (b), section fifteen
of this article, or any representative of miners in any
mine affected by such notice, may, if the operator
believes that the period of the time fixed in such notice
for the abatement of the violation is unreasonable, apply
to the director for review of the notice within thirty days
of the receipt thereof. The applicant shall send a copy
of such application to the representative of miners in the
affected mine, or the operator, as appropriate. Upon
receipt of such application, the director shall cause such
investigation to be made as the director deems appro-
riate. Such investigation shall provide an opportunity
for a public hearing, at the request of the operator or
the representative of miners in such mine, to enable the
operator and the representative of miners in such mine
to present information relating to the issuance and
continuance of such order or the modification or
termination thereof or to the time fixed in such notice.
The filing of an application for review under this law
does not operate as a stay of any order or notice.

(2) The operator and the representative of the miners
shall be given written notice of the time and place of
the hearing at least five days prior to the hearing.

(b) Upon receiving the report of such investigation,
the director shall make findings of fact, and issue a
written decision, incorporating therein an order vacat-
ing, affirming, modifying or terminating the order, or
the modification or termination of such order, or the
notice complained of and incorporate findings therein.

(c) In view of the urgent need for prompt decision of
matters submitted to the director under this law, all
actions which the director takes under this section shall
be taken as promptly as practicable, consistent with
adequate consideration of the issues involved.

(d) Pending completion of the investigation required
by this section, the applicant may file with the director
a written request that the director grant temporary
relief from any modification or termination of any order,
or from any order issued under section fifteen of this
article, except an order issued under section sixteen of
this article, together with a detailed statement giving
reasons for granting such relief. The director may grant
such relief, under such conditions as he or she may
prescribe, if:

(1) A hearing has been held in which all parties were
given an opportunity to be heard;

(2) The applicant shows that there is substantial
likelihood that the findings of the director will be
favorable to the applicant; and

(3) Such relief will not adversely affect the health and
safety of miners in the coal mine.

No temporary relief shall be granted in the case of a
notice issued under section fifteen of this article.

§22A-1-18. Posting of notices, orders and decisions;
delivery to agent of operator; names and
addresses to be filed by operators.

(a) At each coal mine there shall be maintained an
office with a conspicuous sign designating it as the office
of the mine, and a bulletin board at such office or at
some conspicuous place near an entrance of the mine,
in such manner that notices, orders and decisions
required by this law or rule to be posted on the mine
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7 bulletin board may be posted thereon, be easily visible
8 to all persons desiring to read them, and be protected
9 against damage by weather and against unauthorized
10 removal. A copy of any notice, order or decision required
11 by this law to be given to an operator shall be delivered
12 to the office of the affected mine, and a copy shall be
13 immediately posted on the bulletin board of such mine
14 by the operator or the operator's agent.

(b) The director shall cause a copy of any notice, order
16 or decision required by this law to be given to an
17 operator to be mailed immediately to a representative
18 of the miners. Such notice, order or decision shall be
19 available for public inspection.

(c) In order to ensure prompt compliance with any
20 notice, order or decision issued under this law, the
21 authorized representative of the director may deliver
22 such notice, order or decision to an agent of the operator
23 and such agent shall immediately take appropriate
24 measures to ensure compliance with such notice, order
25 or decision.

(d) Each operator of a coal mine shall file with the
28 director the name and address of such mine and the
29 name and address of the person who controls or operates
30 the mine. Any revisions in such names or addresses shall
31 be promptly filed with the director. Each operator of a
32 coal mine shall designate a responsible official at such
33 mine as the principal officer in charge of health and
34 safety at such mine, and such official shall receive a
35 copy of any notice, order or decision issued under this
36 law affecting such mine. In any case, where the coal
37 mine is subject to the control of any person not directly
38 involved in the daily operations of the coal mine, there
39 shall be filed with the director the name and address
40 of such person and the name and address of a principal
41 official of such person who has overall responsibility for
42 the conduct of an effective health and safety program
43 at any coal mine subject to the control of such person
44 and such official shall receive a copy of any notice, order
45 or decision issued affecting any such mine. The mere
46 designation of a health and safety official under this
47 subsection does not make such official subject to any

(a) Any order or decision issued by the director under this law, except an order or decision under section fifteen of this article is subject to judicial review by the circuit court of the county in which the mine affected is located or the circuit court of Kanawha County upon the filing in such court or with the judge thereof in vacation of a petition by any person aggrieved by the order or decision praying that the order or decision be modified or set aside, in whole or in part, except that the court shall not consider such petition unless such person has exhausted the administrative remedies available under this law and files within thirty days from date of such order or decision.

(b) The party making such appeal shall forthwith send a copy of such petition for appeal, by registered mail, to the other party. Upon receipt of such petition for appeal, the director shall promptly certify and file in such court a complete transcript of the record upon which the order or decision complained of was issued. The court shall hear such petition on the record made before the director. The findings of the director, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The court may affirm, vacate or modify any order or decision or may remand the proceedings to the director for such further action as it may direct.

(c) In the case of a proceeding to review any order or decision issued by the director under this law, except an order or decision pertaining to an order issued under subsection (a), section fifteen of this article or an order or decision pertaining to a notice issued under subsection (b), section fifteen of this article, the court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

(A) All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
(B) The person requesting such relief shows that there is a substantial likelihood that the person will prevail on the merits of the final determination of the proceeding; and

(C) Such relief will not adversely affect the health and safety of miners in the coal mine.

(d) The judgment of the court is subject to review only by the supreme court of appeals of West Virginia upon a writ of certiorari filed in such court within sixty days from the entry of the order and decision of the circuit court upon such appeal from the director.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the director.

(f) Subject to the direction and control of the attorney general, attorneys appointed for the director may appear for and represent the director in any proceeding instituted under this section.


The director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the circuit court of the county in which the mine is located or the circuit court of Kanawha County, whenever the operator or the operator's agent (a) violates or fails or refuses to comply with any order or decision issued under this law, or (b) interferes with, hinders or delays the director or his or her authorized representative in carrying out the provisions of this law, or (c) refuses to admit such representatives to the mine, or (d) refuses to permit the inspection of the mine, or the investigation of an accident or occupational disease occurring in, or connected with, such mine, or (e) refuses to furnish any information or report requested by the director in furtherance of the provisions of this law, or (f) refuses to permit access to, and copying of, such records as the director determines necessary in carrying out the provisions of this law. Each court shall have jurisdiction
to provide such relief as may be appropriate. Except as
otherwise provided herein, any relief granted by the
court to enforce an order under clause (a) of this section
shall continue in effect until the completion or final
termination of all proceedings for review of such order
under this law, unless, prior thereto, the circuit court
granting such relief sets it aside or modifies it. In any
action instituted under this section to enforce an order
or decision issued by the director after a public hearing,
the findings of the director, if supported by substantial
evidence on the record considered as a whole, shall be
conclusive.


(a)(1) Any operator of a coal mine in which a violation
occurs of any health or safety rule or who violates any
other provisions of this law shall be assessed a civil
penalty by the director under subdivision (3) of this
subsection, which penalty shall be not more than three
thousand dollars, for each such violation. Each such
violation shall constitute a separate offense. In determin-
ing the amount of the penalty, the director shall consider
the operator's history of previous violations, the appro-
priateness of such penalty to the size of the business of
the operator charged, the gravity of the violation and the
demonstrated good faith of the operator charged in
attempting to achieve rapid compliance after notifica-
tion of a violation. Not later than the thirtieth day of
June, one thousand nine hundred ninety-three, the
director shall promulgate as a rule the procedure for
assessing such civil penalties in effect as of the fifteenth
day of January, one thousand nine hundred ninety-three,
without regard to the provisions of chapter twenty-nine-
a of this code: Provided, That any revisions to such rules
after this date shall be promulgated as in the case of
legislative rules in accordance with the provisions of
chapter twenty-nine-a of this code.

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

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

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

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

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

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

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

125 (f) There is hereby created under the treasury of the
126 state of West Virginia a special health, safety and
127 training fund. All civil penalty assessments collected
128 under section twenty-one of this article shall be collected
129 by the director and deposited with the treasurer of the
130 state of West Virginia to the credit of the special health,
131 safety and training fund. The fund shall be used by the
132 director and who is authorized to expend the moneys in
133 the fund for the administration of this chapter.


1 (a) No person shall discharge or in any other way
2 discriminate against or cause to be discharged or
3 discriminated against any miner or any authorized
4 representative of miners by reason of the fact that the
5 person believes or knows that such miner or represen-
6 tative (1) has notified the director, his or her authorized
7 representative, or an operator, directly or indirectly, of
8 any alleged violation or danger, (2) has filed, instituted
9 or caused to be filed or instituted any proceeding under
10 this law, (3) has testified or is about to testify in any
11 proceeding resulting from the administration or en-
12 forcement of the provisions of this law. No miner or
13 representative shall be discharged or in any other way
14 discriminated against or caused to be discriminated
15 against because a miner or representative has done (1),
16 (2) or (3) above.
(b) Any miner or a representative of miners who believes that he or she has been discharged or otherwise discriminated against, or any miner who has not been compensated by an operator for lost time due to the posting of a withdrawal order, may, within thirty days after such violation occurs, apply to the appeals board for a review of such alleged discharge, discrimination or failure to compensate. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the appeals board shall cause such investigation to be made as it deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to enable the parties to present information relating to such violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Mailing of the notice of hearing to the charged party at the party's last address of record as reflected in the records of the office is adequate notice to the charged party. Such notice shall be by certified mail, return receipt requested. Any such hearing shall be of record. Upon receiving the report of such investigation, the board shall make findings of fact. If it finds that such violation did occur, it shall issue a decision within forty-five days, incorporating an order therein, requiring the person committing such violation to take such affirmative action to abate the violation as the board deems appropriate, including, but not limited to, the rehiring or reinstatement of the miner or representative of miners to his or her former position with back pay, and also pay compensation for the idle time as a result of a withdrawal order. If it finds that there was no such violation, it shall issue an order denying the application. Such order shall incorporate the board's finding therein. If the proceedings under this section relative to discharge are not completed within forty-five days of the date of discharge due to delay caused by the operator, the miner shall be automatically reinstated until the final determination. If such proceedings are not completed within forty-five days of the date of discharge due to delay caused by the board, then the board may, at its option, reinstate the miner until the
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final determination. If such proceedings are not com-
pleted within forty-five days of the date of discharge due
to delay caused by the miner the board shall not
reinstate the miner until the final determination.

(c) Whenever an order is issued under this section, at
the request of the applicant, a sum equal to the
aggregate amount of all costs and expenses including
the attorney's fees as determined by the board to have
been reasonably incurred by the applicant for, or in
connection with, the institution and prosecution of such
proceedings, shall be assessed against the person
committing such violation.

§22A-1-23. Records and reports.

In addition to such records as are specifically required
by this law, every operator of a coal mine shall establish
and maintain such records, make such reports, and
provide such information, as the director may reason-
ably require from time to time to enable the director to
perform his or her functions under this law. The
director is authorized to compile, analyze, and publish,
either in summary or detailed form, such reports or
information so obtained. Except to the extent otherwise
specifically provided by this law, all records, informa-
tion, reports, findings, notices, orders, or decisions
required or issued pursuant to or under this law may
be published from time to time, may be released to any
interested person and shall be made available for public
inspection.

§22A-1-24. Mine foreman examiner for mine foremen-
fire bosses and assistant mine foremen-fire
bosses; salary.

The director shall appoint a mine foreman examiner
to examine and certify mine foremen-fire bosses,
assistant mine foremen-fire bosses and mine examiners
or fire bosses. Such mine foremen examiners shall be
paid a minimum salary of thirty-one thousand thirty-
two dollars per year.


The duties of the mine foreman examiner are to:
(a) Prepare and conduct examinations of mine foremen, assistant mine foremen and fire bosses;

(b) Prepare and certify to the director a register of all persons who successfully completed the examination with a passing grade of eighty percent.

§22A-1-26. Place and time for examinations.

The director shall determine the location where the mine foreman examiner shall meet for the purpose of holding examinations, and at least two weeks' notice of the time and place where the examinations are to be held shall be given.

The examinations shall be given at any location where there are at least five men to be tested, and adequate facilities to conduct such examination. The office of the secretary to the mine foreman examiner shall be located in the capitol complex in Charleston. All records pertaining to the examinations shall be kept at such office.

§22A-1-27. Preparation of examinations; notice of intention to take examination; investigation of applicants.

The mine foreman examiner shall, with the approval of the director, prepare, and from time to time, modify examinations to be administered applicants for certification as mine foremen and fire bosses.

All persons who desire to appear for examination shall notify the mine foreman examiner of their intentions to appear, if possible, not less than ten days prior to the date set for the examination. The mine foreman examiner shall inquire into the character and qualifications of the applicants who present themselves for examination.


Certificates of qualification of service heretofore granted shall have equal value with certificates of qualifications granted under this law.
§22A-1-29. Mine foreman examiner to certify successful applicants to director.

1 The mine foreman examiner shall certify to the director, on a form furnished by the director, every person whose examination shall disclose the person's fitness for the duties of mine foreman, assistant mine foreman, and fire boss, as above classified, and the director shall prepare certificates of qualification for the successful applicants and send them to the mine foreman examiner for distribution.

§22A-1-30. Record of examination.

1 The mine foreman examiner shall send to the director the answers and all other papers of the applicants, together with the tally sheets and a list of the questions and answers as prepared by the mine foreman examiner which shall be filed in the office as public documents.


1 (a) Charge of breach of duty. — A mine inspector or the director may charge a mine foreman, assistant mine foreman, fire boss or any other certified person with neglect or failure to perform any duty mandated pursuant to this article or article two of this chapter. The charge shall state the name of the person charged, the duty or duties he or she is alleged to have violated, the approximate date and place so far as is known of the violation of duty, the capacity of the person making the charge, and shall be verified on the basis of information and belief or personal knowledge. The charge is initiated by filing it with the director or with the board of appeals. A copy of any charge filed with the board of appeals or any member thereof, shall be transmitted promptly to the director. The director shall maintain a file of each charge and of all related documents which shall be open to the public.

1 (b) Evaluation of charge by board of appeals. — Within twenty days after receipt of the charge the board shall evaluate the charge and determine whether or not a violation of duty has been stated. In making such a determination the board shall evaluate all documents...
submitted to it by all persons to determine as nearly as possible the substance of the charge and if the board of appeals is unable to determine the substance of the charge it may request the director to investigate the charge. Upon request, the director shall cause the charge to be investigated and report the results of the investigation to the board of appeals within ten days of the director's receipt of the charge. If the board determines that probable cause exists to support the allegation that the person charged has violated his or her duty, the board by the end of the twenty-day period shall set a date for hearing which date shall be within eighty days of the filing of the charge. Notice of the hearing or notice of denial of the hearing for failure to state a charge and a copy of the charge shall be mailed by certified mail, return receipt requested, to the charging party, the charged party, the commissioner, the director, the representative of the miner or miners affected and to any interested person of record. Thereafter the board shall maintain the file of the charge which shall contain all documents, testimony and other matters filed which shall be open for public inspection.

(c) Hearing. — The board of appeals shall hold a hearing, may appoint a hearing examiner to take evidence and report to the board of appeals within the time allotted, may direct or authorize taking of oral depositions under oath by any participant, or adopt any other method for the gathering of sworn evidence which affords the charging party, the charged party, the director and any interested party of record due process of law and a fair opportunity to present and make a record of evidence. Any member of the board shall have the power to administer oaths. The board may subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the inquiry. The board shall consider all evidence offered in support of the charge and on behalf of the persons so charged at the time and place designated in the notice. Each witness shall be sworn and a transcript shall be made of all evidence presented in any such hearing. No continuance shall be granted except for good cause shown.
At the conclusion of the hearing the board shall proceed to determine the case upon consideration of all the evidence offered and shall render a decision containing its findings of fact and conclusions of law. If the board finds by a preponderance of the evidence that the certificate or certificates of the charged person should be suspended or revoked, as hereinafter provided, it shall enter an order to that effect. No renewal of the certificate shall be granted except as herein provided.

(d) Failure to cooperate. — Any person charged who without just cause refuses or fails to appear before the board or cooperate in the investigation or gathering of evidence shall forfeit his or her certificate or certificates for a period to be determined by the board, not to exceed five years, and such certificate or certificates may not be renewed except upon a successful completion of the examination prescribed by the law for mine foremen, assistant mine foremen, fire bosses or other certified persons.

(e) Penalties. — The board may suspend or revoke the certificate or certificates of a charged party for a minimum of thirty days or more including an indefinite period or may revoke permanently the certificate or certificates of the charged party, as it sees fit, subject to the prescribed penalties and monetary fines imposed elsewhere in this chapter.

(f) Integrity of penalties imposed. — No person whose certification is suspended or revoked under this provision can perform any duties under any other certification issued under this chapter, during the period of the suspension imposed herein.

(g) Any party adversely affected by a final order or decision issued by the board hereunder is entitled to judicial review thereof pursuant to section four, article five, chapter twenty-nine-a of this code.

§22A-1-32. Certification of mine foreman or assistant mine foreman whose license to engage in similar activities suspended in another state.
Any person whose license, certificate or similar authority to perform any supervisory or fire boss duties in another state has been suspended or revoked by that state cannot be certified under any provision of this chapter during the period of such suspension or revocation in the other state.

§22A-1-33. Mine rescue stations; equipment.

The director is hereby authorized to purchase, equip and operate for the use of said office such mine rescue stations and equipment as he or she may deem necessary.

§22A-1-34. Mine rescue crews.

The director is hereby authorized to have trained and employed at the rescue stations, operated by the office within the state, such rescue crews as he or she may deem necessary. Each member of a rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work at explosions and mine fires. Regular members shall receive for such services the sum of thirty-two dollars per month, and captains shall receive thirty-five dollars per month, payable on requisition approved by the director. The director may remove any member of a rescue crew at any time.

§22A-1-35. Mine rescue teams.

(a) It is the responsibility of the operator to provide mine rescue coverage at each active underground mine.

(b) Mine rescue coverage may be provided by:

(1) Establishing at least two mine rescue teams which are available at all times when miners are underground; or

(2) Entering into an arrangement for mine rescue services which assures that at least two mine rescue teams are available at all times when miners are underground.

(c) As used in this section, mine rescue teams shall be considered available where teams are capable of
presenting themselves at the mine site(s) within a reasonable time after notification of an occurrence which might require their services. Rescue team members will be considered available even though performing regular work duties or while in an off-duty capacity. The requirement that mine rescue teams be available does not apply when teams are participating in mine rescue contests or providing rescue services to another mine.

(d) In the event of a fire, explosion or recovery operations in or about any mine, the director is hereby authorized to assign any mine rescue team to said mine to protect and preserve life and property. The director may also assign mine rescue and recovery work to inspectors, instructors or other qualified employees of the office as he or she deems necessary.

(e) The ground travel time between any mine rescue station and any mine served by that station shall not exceed two hours. To ensure adequate rescue coverage for all underground mines, no mine rescue station may provide coverage for more than seventy mines within the two-hour ground travel limit as defined in this subsection.

(f) Each mine rescue team shall consist of five members and one alternate, who are fully qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue team shall be trained by a state certified mine rescue instructor.

(g) Each member of a mine rescue team must have been employed in a underground mine for a minimum of one year. For the purpose of mine rescue work only, miners who are employed on the surface but work regularly underground meet the experience requirement. The underground experience requirement is waived for those members of a mine rescue team on the effective date of this statute.

(h) An applicant for initial mine rescue training must not have reached his or her fiftieth birthday, and shall pass, on at least an annual basis, a physical examination by a licensed physician certifying his or her fitness to
perform mine rescue work. A record that such exam-
ination was taken, together with pertinent data relating
thereto, shall be kept on file by the operator and a copy
shall be furnished to the director.

(i) Upon completion of the initial training, all mine
rescue team members shall receive at least forty hours
of refresher training annually. This training shall be
given at least four hours each month, or for a period of
eight hours every two months, and shall include:

(1) Sessions underground at least once every six
months;

(2) The wearing and use of a breathing apparatus by
team members for a period of at least two hours, while
under oxygen, once every two months;

(3) Where applicable, the use, care, capabilities and
limitations of auxiliary mine rescue equipment, or a
different breathing apparatus;

(4) Mine map training and ventilation procedures.

(j) When engaged in rescue work required by an
explosion, fire or other emergency at a mine, all
members of mine rescue teams assigned to rescue
operations shall, during the period of their rescue work,
be employees of the operator of the mine where the
emergency exists, and shall be compensated by the
operator at the rate established in the area for such
work. In no case shall this rate be less than the
prevailing wage rate in the industry for the most skilled
class of inside mine labor. During the period of their
emergency employment, members of mine rescue teams
shall be protected by the workers' compensation
subscription of such emergency employer.

(k) During the recovery work and prior to entering
any mine at the start of each shift, all rescue or recovery
teams shall be properly informed of existing conditions
and work to be performed by the designated company
official in charge.

(1) For every two teams performing rescue or recov-
ery work underground, one six-member team shall be
stationed at the mine portal.

(2) Each rescue or recovery team performing work with a breathing apparatus shall be provided with a backup team of equal number, stationed at each fresh air base.

(3) Two-way communication and a lifeline or its equivalent shall be provided at each fresh air base for all mine rescue or recovery teams and no mine rescue team member shall advance more than one thousand feet in by the fresh air base: Provided, That if a life may possibly be saved and existing conditions do not create an unreasonable hazard to mine rescue team members, the rescue team may advance a distance agreed upon by those persons directing the mine rescue or recovery operations: Provided, however, That a lifeline or its equivalent shall be provided in each fresh air base for all mine rescue or recovery teams.

(4) A rescue or recovery team shall immediately return to the fresh air base when the atmospheric pressure of any member’s breathing apparatus depletes to sixty atmospheres, or its equivalent.

(l) Mine rescue stations shall provide a centralized storage location for rescue equipment. This storage location may be either at the mine site, affiliated mines or a separate mine rescue structure. All mine rescue teams shall be guided by the mine rescue apparatus and auxiliary equipment manual. Each mine rescue station shall be provided with at least the following equipment:

(1) Twelve self-contained oxygen breathing apparatuses, each with a minimum of two hours capacity, and any necessary equipment for testing such breathing apparatuses;

(2) A portable supply of liquid air, liquid oxygen, pressurized oxygen, oxygen generating or carbon dioxide absorbent chemicals, as applicable to the supplied breathing apparatuses and sufficient to sustain each team for six hours while using the breathing apparatuses during rescue operations;

(3) One extra, fully charged, oxygen bottle for each
self-contained compressed oxygen breathing apparatus,
as required under subdivision (1) of this subsection;

(4) One oxygen pump or a cascading system, compatible with the supplied breathing apparatuses;

(5) Twelve permissible cap lamps and a charging rack;

(6) Two gas detectors appropriate for each type of gas which may be encountered at the mines served;

(7) Two oxygen indicators or two flame safety lamps;

(8) One portable mine rescue communication system or a sound-powered communication system. The wires or cable to the communication system shall be of sufficient tensile strength to be used as a manual communication system. The communication system shall be at least one thousand feet in length; and

(9) Necessary spare parts and tools for repairing the breathing apparatuses and communication system, as presently prescribed by the manufacturer.

(m) Mine rescue apparatuses and equipment shall be maintained in a manner that will ensure readiness for immediate use. A person trained in the use and care of breathing apparatuses shall inspect and test the apparatuses at intervals not exceeding thirty days and shall certify by signature and date that the inspections and tests were done. When the inspection indicates that a corrective action is necessary, the corrective action shall be made and recorded by said person. The certification and corrective action records shall be maintained at the mine rescue station for a period of one year and made available on request to an authorized representative of the director.

(n) Authorized representatives of the director have the right of entry to inspect any designated mine rescue station.

(o) When an authorized representative finds a violation of any of the mine rescue requirements, the representative shall take appropriate corrective action in accordance with section fifteen of this article.
(p) Operators affiliated with a station issued an order by an authorized representative will be notified of that order and that their mine rescue program is invalid. The operators shall have twenty-four hours to submit to the director a revised mine rescue program.

(q) Every operator of an underground mine shall develop and adopt a mine rescue program for submission to the director within thirty days of the effective date of this statute: Provided, That a new program need only be submitted when conditions exist as defined in subsection (p) of this section, or when information contained within the program has changed.

(r) A copy of the mine rescue program shall be posted at the mine and kept on file at the operator’s mine rescue station or rescue station affiliate and the state regional office where the mine is located. A copy of the mine emergency notification plan filed pursuant to 30 CFR §49.9(a) will satisfy the requirements of subsection (q) of this section if submitted to the director.

(s) The operator shall immediately notify the director of any changed conditions materially affecting the information submitted in the mine rescue program.

§22A-1-36. Mandatory safety programs; penalties.

(a) The director, in consultation with the state board of coal mine health and safety, shall promulgate rules in accordance with chapter twenty-nine-a of this code, detailing the requirements for mine safety programs to be established by coal operators, as provided in subsection (b) of this section. The rules may require different types of safety programs to be developed, depending upon the output of the particular mine, the number of employees of the particular mine, the location of the particular mine, the physical features of the particular mine or any other factor deemed relevant by the director.

(b) Within six months of the date when the rules required in subsection (a), above, become final, each operator shall develop and submit to the director a comprehensive mine safety program for each mine, in
accordance with such rules. Each employee of the mine shall be afforded an opportunity to review and submit comments to the director regarding the modification or revision of such program, prior to submission of such program to the director. Upon submission of such program the director has ninety days to approve, reject or modify such program. If the program is rejected, the director shall give the operator a reasonable time to correct and resubmit such program. Each program which is approved shall be reviewed, at least annually, by the director. An up-to-date copy of each program shall be placed on file in the office and further copies shall be made available to the miners of each mine and their representatives. Each operator shall undertake all efforts necessary to assure total compliance with the appropriate safety program at each mine and shall fully implement all portions of such program.

(c) Any person violating any provision of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or imprisoned in the county jail for not more than six months, or both fined and imprisoned.


(a) In every surface mine, regulated under the provisions of article three or four, chapter twenty-two of this code, where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this chapter as a mine foreman. Each applicant for certification as a mine foreman shall, at the time of issuance of a certificate of competency: (1) Be a resident or employed in a mine in this state; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months' experience on or at a working section of a surface mine, or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had at least two years' practical experience in a surface mine, which shall include at least eighteen months' experience on or
(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one person, one or more assistant mine foreman may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article seven of this chapter. Each applicant for certification as assistant mine foreman shall, at the time of issuance of a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, That at the time of certification the person is required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall promulgate such rules as may be necessary to carry out the provisions of this section.
of those employed in and around surface mines. The enforcement of all laws and rules relating to the safety of those employed in and around surface mines is hereby vested in the director and shall be enforced according to the provisions of this chapter.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-1. Supervision by professional engineer or licensed land surveyor; seal and certification; contents; extensions; repository; availability; traversing; copies; archive; final survey and map; penalties.

The mapping of all coal mines shall be supervised by a competent engineer or land surveyor. The work of such engineer or land surveyor shall be supervised by either a civil engineer or a mining engineer certified by the board of registration for professional engineers, which exists by authority of section four, article thirteen, chapter thirty of this code, or a licensed land surveyor approved by the board of examiners of land surveyors as provided by section three, article thirteen-a of said chapter thirty. To each map supervised by the engineer or land surveyor there shall be affixed thereto the seal of a certified or professional engineer or licensed land surveyor, which shall be identical to the design authorized by the board of registration for professional engineers, as provided in section sixteen, article thirteen of said chapter thirty or board of examiners of land surveyors as provided by section eleven, article thirteen-a of said chapter thirty. Every map certified shall have the professional engineer's or land surveyor's signature and certificate, in addition to his or her seal, in the following form:

“I, the undersigned, hereby certify that this map is correct and shows all the information, to the best of my knowledge and belief, required by the laws of this State, and covers the period ending ...................................................

................................................... P. E.

(Either Civil Or Mining Engineer Or Land Surveyor).”
The operator of every underground coal mine shall make, or cause to be made, an accurate map of such mine, on a scale of not less than one hundred, and not more than five hundred feet to the inch. The map of such mine shall show:

1. Name and address of the mine;
2. The scale and orientation of the map;
3. The property or boundary lines of the mine;
4. The shafts, slopes, drifts, tunnels, entries, rooms, crosscuts and all other excavations and auger and strip mined areas of the coalbed being mined;
5. All drill holes that penetrate the coalbed being mined;
6. Dip of the coalbed;
7. The outcrop of the coalbed within the bounds of the property assigned to the mine;
8. The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;
9. The elevation of the floor at intervals of not more than two hundred feet in:
   a. At least one entry of each working section, and main and cross entries;
   b. The last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries are abandoned; and
   c. Rooms advancing toward or adjacent to property or boundary lines or adjacent mines;
10. Contour lines passing through whole number elevations of the coalbed being mined, the spacing of such lines not to exceed ten-foot elevation levels, except that a broader spacing of contour lines may be approved for steeply pitching coalbeds by the person authorized so to do under the federal act; and contour lines may be placed on overlays or tracings attached to mine maps;
(11) As far as practicable the outline of existing and extracted pillars;
(12) Entries and air courses with the direction of airflow indicated by arrows;
(13) The location of all surface mine ventilation fans, which location may be designated on the mine map by symbols;
(14) Escapeways;
(15) The known underground workings in the same coalbed on the adjoining properties within one thousand feet of such mine workings and projections;
(16) The location of any body of water dammed in the mine or held back in any portion of the mine, but such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines, as provided under subdivision (10) of this section;
(17) The elevation of any body of water dammed in the mine or held back in any portion of the mine;
(18) The abandoned portion or portions of the mine;
(19) The location and description of at least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;
(20) Mines above or below;
(21) Water pools above;
(22) The location of the principal streams and bodies of water on the surface;
(23) Either producing or abandoned oil and gas wells located within five hundred feet of such mine and any underground area of such mine;
(24) The location of all high pressure pipelines, high voltage power lines and principal roads;
(25) The location of railroad tracks and public
highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

(26) Where the overburden is less than one hundred feet, occupied dwellings; and

(27) Such other information as may be required under the federal act or by the office of miners' health, safety and training.

The operator of every underground coal mine shall extend, or cause to be extended, on or before the first day of March and on or before the first day of September of each year, such mine map thereof to accurately show the progress of the workings as of the first day of July and the first day of January of each year. Such map shall be kept up to date by temporary notations, which shall include:

(1) The location of each working face of each working place;

(2) Pillars mined or other such second mining;

(3) Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators and permanent stoppings, and the direction of air currents indicated; and

(4) Escapeways designated by means of symbols.

Such map shall be revised and supplemented at intervals prescribed under the federal act on the basis of a survey made or certified by such engineer or surveyor, and shall be kept by the operator in a fireproof repository located in an area on the surface chosen by the operator to minimize the danger of destruction by fire or other hazard.

Such map and any revision and supplement thereof shall be available for inspection by a federal mine inspector, by mine health and safety instructors, by miners in the mine and their representatives and by operators of adjacent coal mines and by persons owning, leasing or residing on surface areas of such mines or areas adjacent to such mines, and a copy of such map and any revision and supplement thereof shall be
promptly filed with the office of miners' health, safety
and training. The operator shall also furnish to persons
expressly entitled thereto under the federal act, upon
request, one or more copies of such maps and any
revision and supplement thereof. Such map or revision
and supplement thereof shall be kept confidential and
its contents shall not be divulged to any other person,
except to the extent necessary to carry out the provisions
of the federal act and this chapter and in connection
with the functions and responsibilities of the secretary
of housing and urban development.

Surveying calculations and mapping of underground
coal mines which were or are opened or reopened after
the first of July, one thousand nine hundred sixty-nine,
shall be done by the rectangular coordinate traversing
method and meridians carried through and tied between
at least two parallel entries of each development panel
and panels or workings adjacent to mine boundaries or
abandoned workings. These surveys shall originate from
at least three permanent survey monuments on the
surface of the mine property. The monuments shall be
clearly referenced and described in the operator's
records. Elevations shall be tied to either the United
States geological survey or the United States coast and
geodetic survey bench mark system, be clearly refer-
enced and described on such map.

Underground coal mines operating on the first of July,
one thousand nine hundred sixty-nine, and not using the
rectangular coordinate traversing method shall, within
two years of such date, convert to this procedure for
surveying calculations and mapping. Meridians shall be
carried through and tied between at least two parallel
entries of each development panel and panels or
workings adjacent to mine boundaries or abandoned
workings. These surveys shall originate from at least
three permanent survey monuments on the surface of
the mine property. The monuments shall be clearly
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174 referenced and described in the coal mine operator's
175 records. Elevations shall be tied to either the United
176 States geological survey or the United States coast and
177 geodetic survey bench mark system, be clearly refer-
178 enced and described on such map.
179
180 The operator of such underground coal mine shall, by
181 reasonable proof, demonstrate to the director or to any
182 federal mine inspector concerned, at any time, that a
183 diligent search was made for all existing and available
184 maps and survey data for the workings on the adjoining
185 properties. The operator shall further be able to show
186 proof to the director or to any federal mine inspector
187 concerned, that a suitable method was used to insure
188 accuracy in the methods used in transposing other
189 workings to the map of such mine.
190
191 There shall be an archive of underground coal mine
192 maps maintained at the office of the director. The
193 archive shall:
194
195 (1) Be secured in a fireproof and burglarproof vault;
196
197 (2) Have an appropriate map identification system;
198 and
199
200 (3) Have adequate map microfilming facilities.
201
202 Whenever an operator permanently closes or aban-
203 dons an underground coal mine, or temporarily closes
204 an underground coal mine for a period of more than
205 ninety days, he or she shall promptly notify the office
206 of miners' health, safety and training and the federal
207 mine inspector of the district in which such mine is
208 located of such closure. Within sixty days of the
209 permanent closure or abandonment of an underground
210 coal mine, or, when an underground coal mine is
211 temporarily closed, upon the expiration of a period of
212 ninety days from the date of closure, the operator shall
213 file with the office of miners' health, safety and training
214 and such federal mine inspector a copy of the mine map
215 revised and supplemented to the date of the closure.
216 Such copy of the mine map shall be certified by a
217 certified or professional engineer or licensed surveyor as
218 aforesaid and shall be available for public inspection.
Any person having a map or surveying data of any worked out or abandoned underground coal mine shall make such map or data available to the office of miners' health, safety and training to copy or reproduce such material.

Any person who fails or refuses to discharge any duty imposed upon him or her by this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

VENTILATION

§22A-2-2. Plan of ventilation; approval by director of the office of miners' health, safety and training.

Every operator of a coal mine, before making any new or additional openings, shall submit to the director, for his or her information and approval, a general plan showing the proposed system of ventilation and ventilating equipment of the openings, with their location and relative positions to adjacent developments; no such new or additional openings shall be made until approved by the director. The operator shall deliver to the miners' representative employed by the operator at the mine a copy of the operator's proposed annual ventilation plan at least ten days prior to the date of submission. The miners' representative shall be afforded the opportunity to submit written comments to the operator prior to such submission; in addition the miners' representative may submit written comments to the director. The director shall promptly approve any such plans submitted, if the proposed system of ventilation and ventilating equipment meet the requirements of this article.


(a) The ventilation of mines, the systems for which extend for more than two hundred feet underground and which are opened after the effective date of this article, shall be produced by a mechanically operated fan or mechanically operated fans. Ventilation by means of a furnace is prohibited in any mine. The fan or fans shall be kept in continuous operation, unless written permission to do otherwise be granted by the director.
In case of interruption to a ventilating fan or its machinery whereby the ventilation of the mine is interrupted, immediate action shall be taken by the mine operator or the operator's management personnel, in all mines, to cut off the power and withdraw the men from the face regions or other areas of the mine affected. If ventilation is restored in fifteen minutes, the face regions and other places in the affected areas where gas (methane) is likely to accumulate, shall be reexamined by a certified person; and if found free of explosive gas, power may be restored and work resumed. If ventilation is not restored in fifteen minutes, all underground employees shall be removed from the mine, all power shall be cut off in a timely manner, and the underground employees shall not return until ventilation is restored and the mine examined by certified persons, mine examiners or other persons holding a certificate to make preshift examination.

(b) All main fans installed after the effective date of this article shall be located on the surface in fireproof housings offset not less than fifteen feet from the nearest side of the mine opening, equipped with fireproof air ducts, provided with explosion doors or a weak wall, and operated from an independent power circuit. In lieu of the requirements for the location of fans and pressure-relief facilities, a fan may be directly in front of, or over a mine opening: Provided, That such opening is not in direct line with possible forces coming out of the mine if an explosion occurs: Provided, however, That there is another opening having a weak-wall stopping or explosion doors that would be in direct line with forces coming out of the mine. All main fans shall be provided with pressure-recording gauges or water gauges. A daily inspection shall be made of all main fans and machinery connected therewith by a certified electrician and a record kept of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fans and to give warning of an interruption to a fan.

(c) Auxiliary fans and tubing shall be permitted to be used in lieu of or in conjunction with line brattice to
provide adequate ventilation to the working faces:

Provided, That auxiliary fans be so located and operated to avoid recirculation of air at any time. Auxiliary fans shall be approved and maintained as permissible.

(d) If the auxiliary fan is stopped or fails, the electrical equipment in the place shall be stopped and the power disconnected at the power source until ventilation in the working place is restored. During such stoppage, the ventilation shall be by means of the primary air current conducted into the place in a manner to prevent accumulation of methane.

(e) In places where auxiliary fans and tubing are used, the ventilation between shifts, weekends and idle shifts shall be provided to face areas with line brattice or the equivalent to prevent accumulation of methane.

(f) The director may require that when continuous mine equipment is being used, all face ventilating systems using auxiliary fans and tubing shall be provided with machine-mounted diffuser fans, and such fans shall be continuously operated during mining operations.

(g) In the event of a fire or explosion in any coal mine, the ventilating fan or fans shall not intentionally be started, stopped, speed increased or decreased or the direction of the air current changed without the approval of the general mine foreman, and, if he or she is not immediately available, a representative of the office of miners' health, safety and training. A duly authorized representative of the employees should be consulted if practical under the circumstances.

MINE FOREMAN

§22A-2-7. When underground mine foreman-fire boss required; assistants; certification.

(a) In every underground mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article seven of this,
chapter as a mine foreman-fire boss. Each applicant for
 certification as a mine foreman-fire boss shall, at the
time he or she is issued a certificate of competency: (1)
Be a resident or employed in a mine in this state; (2)
have had at least five years' experience in the under-
ground working, ventilation and drainage of a coal
mine, which shall include at least eighteen months'
experience on or at a working section of an underground
mine or be a graduate of the school of mines at West
Virginia University or of another accredited mining
engineering school or be a graduate of an accredited
engineering school with a bachelor's degree in mining
engineering technology, electrical, mechanical or civil
engineering; and have had at least two years' practical
experience in an underground mine, which shall include
at least eighteen months' experience on or at a working
section of an underground mine; or be a graduate of an
accredited college or university with an associate degree
in mining, electrical, mining engineering technology,
mechanical engineering or civil engineering and have
had at least four years' practical experience in an
underground mine, which shall include at least eighteen
months' experience on or at a working section of an
underground mine; and (3) have demonstrated his or her
knowledge of dangerous mine gases and their detection,
mine safety, first aid, safety appliances, state and
federal mining laws and regulations and other subjects
by completing such training, education and examina-
tions as may be required of him or her under article
seven of this chapter.

(b) In mines in which the operations are so extensive
that the duties devolving upon the mine foreman-fire
boss cannot be discharged by one man, one or more
assistant mine foremen-fire bosses may be designated.
Such persons shall act under the instruction of the mine
foreman-fire boss, who shall be responsible for their
conduct in the discharge of their duties. Each assistant
so designated shall be certified under the provisions of
article seven of this chapter. Each applicant for
certification as assistant mine foreman-fire boss shall, at
the time he or she is issued a certificate of competency,
possess all of the qualifications required of a mine
foreman-fire boss: Provided, That he or she shall at the time he or she is certified be required to have at least three years' experience in the underground working, ventilation and drainage of coal mines, which shall include eighteen months on or at a working section of an underground mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school or be a graduate of an accredited engineering school with a bachelor's degree in mining engineering technology, electrical, mechanical or civil engineering; and have had twelve months' practical experience in an underground mine, all of which shall have been on or at a working section or be a graduate of an accredited college or university with an associate degree in mining, electrical, mining engineering technology, mechanical or civil engineering and have had at least two years' practical experience in an underground mine, which shall include at least eighteen months' experience on or at a working section of an underground mine.

(c) Until the first day of January, one thousand nine hundred seventy-seven, in mines in which the operations are so extensive that all the duties devolving upon the mine foreman-fire boss cannot be discharged by one person, competent persons having had at least three years' experience in coal mines may be designated as assistants, who shall act under the mine foreman-fire boss' instructions and the mine foreman-fire boss is responsible for their conduct in the discharge of their duties under such designation.

(d) Any person holding a mine foreman's certificate issued by any other state may act in the capacity of mine foreman-fire boss in any mine in this state until the next regular mine foreman-fire boss' examination held by the office of miners' health, safety and training, but not to exceed a maximum of ninety days.

(e) After the first day of July, one thousand nine hundred seventy-four, all duties heretofore performed by persons certified as mine foreman, assistant mine foreman or fire boss shall be performed by persons certified as underground mine foreman-fire boss or an
assistant underground mine foreman-fire boss. After the first day of July, one thousand nine hundred seventy-four, every certificate heretofore issued to an assistant mine foreman or fire boss shall be deemed to be of equal value to a certificate issued hereafter to an assistant mine foreman-fire boss, and every certificate heretofore issued to a mine foreman shall be deemed to be of equal value to a certificate issued hereafter to a mine foreman-fire boss.

§22A-2-12. Instruction of employees and supervision of apprentices; annual examination of persons using flame safety lamps; records of examination; maintenance of methane detectors, etc.

The office of miners' health, safety and training shall prescribe and establish a course of instruction in mine safety and particularly in dangers incident to such employment in mines and in mining laws and rules, which course of instruction shall be successfully completed within twelve weeks after any person is first employed as a miner. It is further the duty and responsibility of the office of miners' health, safety and training to see that such course is given to all persons as above provided after their first being employed in any mine in this state.

It is the duty of the mine foreman or the assistant mine foreman of every coal mine in this state to see that every person employed to work in such mine is, before beginning work therein, instructed in the particular danger incident to his or her work in such mine, and furnished a copy of the mining laws and rules of such mine. It is the duty of every mine operator who employs apprentices, as that term is used in sections three and four, article eight of this chapter to ensure that the apprentices are effectively supervised with regard to safety practices and to instruct apprentices in safe mining practices. Every apprentice shall work under the direction of the mine foreman or his or her assistant mine foreman and they are responsible for his or her safety. The mine foreman or assistant mine foreman
may delegate the supervision of an apprentice to an
experienced miner, but the foreman and his or her
assistant mine foreman remain responsible for the
apprentice. During the first ninety days of employment
in a mine, the apprentice shall work within sight and
sound of the mine foreman, assistant mine foreman, or
an experienced miner, and in such a location that the
mine foreman, assistant mine foreman or experienced
miner can effectively respond to cries for help of the
apprentice. Such location shall be on the same side of
any belt, conveyor or mining equipment.

Persons whose duties require them to use a flame
safety lamp or other approved methane detectors shall
be examined at least annually as to their competence by
a qualified official from the office of miners’ health,
safety and training and a record of such examination
shall be kept by the operator and the office. Flame
safety lamps and other approved methane detectors
shall be given proper maintenance and shall be tested
before each working shift. Each operator shall provide
for the proper maintenance and care of the permissible
flame safety lamp or any other approved device for
detecting methane and oxygen deficiency by a person
trained in such maintenance, and, before each shift, care
shall be taken to ensure that such lamp or other device
is in a permissible condition.

§22A-2-23. Authority of fire boss to perform other duties.

Notwithstanding any other provision in this article
contained, any person who holds a certificate issued by
the office of miners’ health, safety and training certify-
ing his or her competency to act as fire boss may
perform the duties of a fire boss and any other duties,
statutory or otherwise, for which he or she is qualified,
in the same mine or section and on the same day or shift.

§22A-2-25. Roof control programs and plans; refusal to
work under unsupported roof.

(a) Each operator shall undertake to carry out on a
continuing basis a program to improve the roof control
system of each coal mine and the means and measures
to accomplish such system. The roof and ribs of all
active underground roadways, travelways and working
places shall be supported or otherwise controlled
adequately to protect persons from falls of the roof or
ribs. A roof control plan and revisions thereof suitable
to the roof conditions and mining systems of each coal
mine and approved by the director shall be adopted and
set out in printed form before new operations. The safety
committee of the miners of each mine where such
committee exists shall be afforded the opportunity to
review and submit comments and recommendations to
the director and operator concerning the development,
modification or revision of such roof control plans. The
plan shall show the type of support and spacing
approved by the director. Such plan shall be reviewed
periodically, at least every six months by the director,
taking into consideration any falls of roof or rib or
inadequacy of support of roof or ribs. A copy of the plan
shall be furnished to the director or his or her autho-
rized representative and shall be available to the miners
and their representatives.

(b) The operator, in accordance with the approved
plan, shall provide at or near each working face and at
such other locations in the coal mine, as the director may
prescribe, an ample supply of suitable materials of
proper size with which to secure the roof thereof of all
working places in a safe manner. Safety posts, jacks, or
other approved devices shall be used to protect the
workmen when roof material is being taken down,
crossbars are being installed, roof bolt holes are being
drilled, roof bolts are being installed and in such other
circumstances as may be appropriate. Loose roof and
overhanging or loose faces and ribs shall be taken down
or supported. When overhangs or brows occur along rib
lines they shall be promptly removed. All sections shall
be maintained as near as possible on center. Except in
the case of recovery work, supports knocked out shall
be replaced promptly. Apprentice miners shall not be
permitted to set temporary supports on a working
section without the direct immediate supervision of a
certified miner.
(c) The operator of a mine has primary responsibility
to prevent injuries and deaths resulting from working
under unsupported roof. Every operator shall require
that no person may proceed beyond the last permanent
support unless adequate temporary support is provided
or temporary support is not required under an approved
roof control plan and absence of such support will not
pose a hazard to the miners.

(d) The immediate supervisor of any area in which
unsupported roof is located shall not direct or knowingly
permit any person to proceed beyond the last permanent
support unless adequate temporary support is provided
or temporary support is not required under an approved
roof control plan and absence of such support will not
pose a hazard to the miners.

(e) No miner shall proceed beyond the last permanent
support in violation of a direct or standing order of an
operator, a foreman or an assistant foreman, unless
adequate temporary support is provided or temporary
support is not required under an approved roof control
plan and absence of such support will not pose a hazard
to the miner.

(f) The immediate supervisor of each miner who will
be engaged in any activity involving the securing of roof
or rib during a shift shall, at the onset of any such shift,
orally review those parts of the roof control plan
relevant to the type of mining and roof control to be
pursued by such miner. The time and parts of the plan
reviewed shall be recorded in a log book kept for such
purpose. Each log book entry so recorded shall be signed
by such immediate supervisor making such entry.

(g) Any action taken against a miner due, in whole or
in part, to his or her refusal to work under unsupported
roof, where such work would constitute a violation of
this section, is prohibited as an act of discrimination
pursuant to section twenty-two, article one of this
chapter. Upon a finding of discrimination by the appeals
board pursuant to subsection (b), section twenty-two,
article one of this chapter, the miner shall be awarded
by the appeals board all reliefs available pursuant to
subsection (b) and (c), section twenty-two article one of this chapter.

§22A-2-33. Preparation of shots; blasting practices.

(a) Only a certified "shot firer" designated by mine management shall be permitted to handle explosives and do blasting. Only electric detonators of proper strength fired with permissible shot firing units shall be used except under special permits as hereinafter provided, and drillholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one half of the length of the hole shall be stemmed if the hole is less than four feet in depth, unless other permissible stemming devices or methods are used. Drillholes shall not be drilled beyond the limits of the cut, and as far as practicable, cuttings and dust shall be cleaned from the holes before the charge is inserted. Charges of explosives exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if drillholes are six feet or more in depth. Ample warning shall be given before shots are fired, and care shall be taken to determine that all persons are in the clear before firing. Miners shall be removed from adjoining places and other places when there is danger of shots blowing through. No shots shall be fired in any place known to liberate explosive gas, until such place has been properly examined by a competent person who is designated by mine management for that purpose, and no shots shall be fired in any place where gas is detected with a permissible flame safety lamp until such gas has been removed by means of ventilation. After firing any shot, or shots, the person firing the same shall not return to the working face until the smoke has been cleared away and then he shall make a careful examination of the working face before leaving the place or before performing any other work in the place.

(b) Multiple shooting in coal or rock or both is authorized only under permit issued by the director. Permission to shoot more than ten shots simultaneously may be granted by the director only after consultation with interested persons, and such shooting will be performed by special methods and under precautions
prescribed by the director. All multiple shooting in
bottom or roof rock shall be performed in intake air,
except by special permit from the director, after
consultation with interested persons, as heretofore
provided. Multiple blasting of more than ten shots
performed under any permit granted by the director
under this section shall be done only on noncoal-
producing shifts or idle days, except as may be provided
as a condition of the permit granted.

(c) Regular or short-interval delay detonators may be
used for blasting purposes with written permission from
the director. Regular delay detonators shall not be used
for blasting coal, but may be used for grading above or
below coal seams and during shaft, slope, tunnel work
and in faults or wants. Where short-interval delay
detonators are permitted by said director to be used, the
shot firing circuit must be tested with a blasting
galvanometer before firing, and the leg wires connected
in series. No instantaneous, regular, or zero-delay
detonators are to be fired in conjunction with short-
timeinterval delay detonators. The delay interval between
dependent rows must not be less than twenty-five
milliseconds or more than one hundred milliseconds,
and the entire series of any one round shall not provide
a delay of more than five hundred milliseconds between
the first and last shot. The total number of charged holes
to be fired during any one round must not exceed the
limit permitted by the director. Misfires must be tested
with a blasting galvanometer before removing.

(d) Electrical equipment shall not be operated in the
face areas, and only work in connection with timbering
and general safety shall be performed while boreholes
are being charged. Shots shall be fired promptly after
charging. Mudcaps (adobes) or any other unconfined
shots shall not be permitted in any coal mine. No solid
shooting shall be permitted without written permission
of the office.

(e) Blasting cables shall be well insulated and shall be
as long as may be necessary to permit persons autho-
rized to fire shots to get in a safe place out of the line
of fire. The cable, when new, shall be at least one
hundred twenty-five feet in length and never less than one hundred feet. Shooting cables shall be kept away from power wires and all other sources of electric current, connected to the leg wires by the person who fires the shot, staggered as to length or well separated at the detonator leg wires, and shunted at the battery until ready to connect to the blasting unit.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

(a) The operator of every coal mine worked by shaft shall provide and maintain a metal tube, telephone or other approved means of communication from the top to the bottom and intermediate landings of such shafts, suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and at the bottom of the shaft; a standard means of signaling; an approved safety catch, bridle chains, automatic stopping device, or automatic overwind; a sufficient cover overhead on every cage used for lowering or hoisting persons; an approved safety gate at the top of the shaft; and an adequate brake on the drum of every machine used to lower or hoist persons in such shaft. Such operator shall have the machinery used for lowering and hoisting persons into or out of the mine kept in safe condition, equipped with a reliable indicator, and inspected once in each twenty-four hours by a qualified electrician. Where a hoisting engineer is required, he or she shall be readily available at all times when men are in the mine. He or she shall operate the empty cage up and down the shaft at least one round trip at the beginning of each shift, and after the hoist has been idle for one hour or more before hoisting or lowering men; there shall be cut out around the side of the hoisting shaft or driven through the solid strata at the bottom thereof, a traveling way, not less than five feet high and three feet wide to enable a person to pass the shaft in going from one side of it to the other without passing over or under the cage or other hoisting apparatus. Positive stop blocks or derails shall be placed near the top and at all intermediate landings of slopes...
and surface inclines and at approaches to all shaft
landings. A waiting station with sufficient room, ample
clearance from moving equipment, and adequate
seating facilities shall be provided where men are
required to wait for man trips or man cages, and the
miners shall remain in such station until the man trip
or man cage is available.

(b) No operator of any coal mine worked by shaft,
slope or incline, shall place in charge of any engine or
drum used for lowering or hoisting persons employed in
such mine any but competent and sober engineers or
drum runners; and no engineer or drum runner in
charge of such machinery shall allow any person, except
such as may be designated for this purpose by the
operator, to interfere with any part of the machinery;
and no person shall interfere with any part of the
machinery; and no person shall interfere with or
intimidate the engineer or drum runner in the discharge
of his or her duties. Where the mine is operated or
worked by shaft or slope, a minimum space of two and
one-half square feet per person shall be available for
each person on any cage or car where men are trans-
ported. In no instance shall more than twenty miners be
transported on a cage or car without the approval of the
director. No person shall ride on a loaded cage or car
in any shaft, slope, or incline: Provided, That this does
not prevent any trip rider from riding in the perfor-
mance of his or her authorized duties. No engineer is
required for automatically operated cages, elevators, or
platforms. Cages and elevators shall have an emergency
power source unless provided with other escapeway
facilities.

(c) Each automatic elevator shall be provided with a
telephone or other effective communication system by
which aid or assistance can be obtained promptly.

(d) A "stop" switch shall be provided in the automatic
elevator compartment that will permit the elevator to
be stopped at any location in the shaft.

§22A-2-53c. Ramps; tipples; cleaning plants; other sur-
face areas.
(1) Surface installations generally — Surface installations, all general mine structures, enclosures and other facilities, including custom coal preparation facilities shall be maintained in good condition. In unusually dusty locations, electric motors, switches and controls shall be of dust-tight construction, or enclosed with reasonable dust-tight housings or enclosures. Openings in surface installations through which men or material may fall shall be protected by railings, barriers, covers or other protective devices. Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, switch panels, loading and dumping sites, working areas and parking areas. Materials shall be stored and/or stacked in a manner to prevent stumbling or falling. Compressed and liquid gas cylinders shall be secured in a safe manner. Adequate ventilation shall be provided in tipples and preparation plants. Coal dust in or around tipples or cleaning plants shall not be permitted to exist or accumulate in dangerous amounts.

(2) Machinery guards — Gears, sprockets, chains, drive head, tail and takeup pulleys, flywheels, couplings, shafts, sawblades, fan inlets and similar exposed moving machine parts with which persons may come in contact shall be guarded adequately. Except when testing is necessary, machinery guards shall be secured in place while being operated. Belt rollers shall not be cleaned while belts are in motion.

(3) Fire protection — Where cutting or welding is performed at any location, a means of prompt extinguishment of any fire accidentally started shall be provided. Adequate fire-fighting facilities, required by the office of miners' health, safety and training, shall be provided on all floors. At least two exits shall be provided for every floor of tipples and cleaning plants constructed after the effective date of this section. Signs warning against smoking and open flames shall be posted so they can be readily seen in areas or places where fire or explosion hazards exist. Smoking or an open flame in or about surface structures shall be restricted to locations where it will not cause fire or an
explosion.

(4) Repairs of machinery — Machinery shall not be lubricated or repaired while in motion, except where safe remote lubricating devices are used. Machinery shall not be started until the person lubricating or repairing it has given a clear signal. Means and methods shall be provided to assure that structures and the immediate area surrounding the same shall be reasonably free of coal dust accumulations. Where repairs are made to tipples, or cleaning plants, proper scaffolding and proper overhead protection shall be provided for workmen when necessary. Where overhead repair work is being performed at surface installations, adequate protection shall be provided for all persons working or passing below.

(5) Stairs, platforms, etc. — Stairways, elevated platforms and runways shall be equipped with handrails. Railroad car trimmer platforms are exempted from such requirements. Where required, elevated platforms and stairways shall be provided with toe-boards. They shall be kept clear of refuse and ice and maintained in good condition.

(6) Belts, etc. — Drive belts shall not be shifted while in motion unless such machines are provided with mechanical shifters. Belt dressing shall not be applied while in motion. Belts, chains and ropes shall not be guided into power-driven moving pulleys, sprockets or drums with the hand except with equipment especially designed for hand feeding.

(7) Conveyors and crossovers — When the entire length of a conveyor is visible from the starting switch, the operator shall visually check to make certain that all persons are in the clear before starting the conveyor. When the entire length of the conveyor is not visible from the starting switch, a positive audible or visible warning system shall be installed and operated to warn persons when the conveyor will be started. Crossovers shall be provided where necessary to cross conveyors. All crossovers shall be of substantial construction, with rails, and maintained in good condition. Moving convey-
ors shall be crossed only at designated crossover points. A positive audible or visible warning system shall be installed and operated to warn persons that a conveyor or other tipple equipment is to be started. Pulleys of conveyors shall not be cleaned manually while the conveyor is in operation. Guards, nets or other suitable protection shall be provided where tramways pass over roadways, walkways or buildings. Where it is required to cross under a belt, adequate means shall be taken to prohibit a person from making contact with a moving part.

(8) Ladders — All ladders shall be securely fastened. Permanent ladders more than ten feet in height shall be provided with backguards. Ladders shall be of substantial construction and maintained in good condition. Wooden ladders shall not be painted. Fixed ladders shall not incline backward at any point unless equipped with backguards. Fixed ladders shall be anchored securely and installed with at least three inches of toe clearance. Side rails of fixed ladders shall project at least three feet above landings, or substantial handholds shall be provided above the landing. No person shall be permitted to work off of the top step of any ladder. Metal ladders shall not be used with electrical work, where there is danger of the ladder coming into contact with power lines or an electrical conductor. The maximum length of a step ladder shall be twenty feet and an extension ladder sixty feet.

(9) Hoisting — Hitches and slings used to hoist materials shall be suitable for handling the type of material being hoisted. Persons shall stay clear of hoisted loads. Tag lines shall be attached to hoisted materials that require steadying or guidance. A hoist shall not lift loads greater than the rated capacity of the hoist being used.

(10) Railroad track construction and maintenance—

(a) All parts of the track haulage road under the ownership or control of the operator shall be strictly constructed and maintained. Rails shall be secured at all
points by means of plates or welds. When plates are used, plates conforming with the weight of the rail shall be installed and broken plates shall be replaced immediately. Appropriate bolts shall be inserted and maintained in all bolt holes. The appropriate number of bolts conforming with the appropriate rail plate for the weight of the rail shall be inserted, tightly secured, and maintained.

(b) All points shall be installed and maintained so as to prevent bad connections. Varying weights of rail shall not be joined without proper adapters. Tracks shall be blocked and leveled and so maintained so as to prevent high and low joints.

(c) Tracks shall be gauged so as to conform with the track mounted equipment. Curves shall not be constructed so sharp as to put significant pressure on the tracks of the track mounted equipment.

(d) Severely worn or damaged rails and ties shall be replaced immediately.

(e) When mining operations are performed within any twenty-four hour period, operations shall be inspected at least every twenty-four hours to assure safe operation and compliance with the law and rules. The results of which inspection shall be recorded.

(f) Personnel who are required frequently and regularly to travel on belts or chain conveyors extended to heights of more than ten feet shall be provided with adequate space and protection in order that they may work safely. Permanent ladders extending more than ten feet shall be provided with back guards. Walkways around thickeners that are less than four feet above the walkway shall be adequately guarded. Employees required to work over thickener shall wear a safety harness adequately secured, unless walkways or other suitable safety devices are provided.
comply with and to see that others comply with the provisions of this article.

(b) It shall be the duty of all employees and checkweighmen to comply with this article and to cooperate with management and the office of miners' health, safety and training in carrying out the provisions hereof.

c) Reasonable rules of an operator for the protection of employees and preservation of property that are in harmony with the provisions of this article and other applicable laws shall be complied with. They shall be printed on cardboard or in book form in the English language and posted at some conspicuous place about the mine or mines, and given to each employee upon request.

§22A-2-66. Explosion or accident; notice; investigation by office of miners' health, safety and training.

Whenever, by reason of any explosion or other accident in or about any coal mine or the machinery connected therewith, loss of life, or serious personal injury occurs, it is the duty of the superintendent of the mine, and in his or her absence, the mine foreman in charge of the mine, to give immediate notice to the director and the inspector of the district, stating the particulars of such accident. If anyone is killed, the inspector shall immediately go to the scene of such accident and make such recommendations and render such assistance as he or she may deem necessary for the future safety of the men, and investigate the cause of such explosion or accident and make a record thereof which he or she shall preserve with the other records in his or her office, the cost of such records to be paid by the office of miners' health, safety and training, and a copy shall be furnished to the operator and other interested parties. To enable him or her to make such investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.
§22A-2-68. Preservation of evidence following accident or disaster.

Following a mine accident resulting in the death of one or more persons and following any mine disaster, the evidence surrounding such occurrence shall not be disturbed after recovery of bodies or injured persons until an investigation by the office of miners' health, safety and training has been completed.

§22A-2-70. Shafts and slopes.

(a) When mine examiner to be employed; qualifications. — During the sinking of a shaft or the driving of a slope to a coal bed or while engaged in underground construction work, or relating thereto, the operator shall assign a mine examiner to such project areas. Such mine examiner shall have a certificate of competency valid only for the type of work stipulated thereon and issued to him or her by the office of miners' health, safety and training after he or she has passed an examination given by the office of miners' health, safety and training. He or she shall, at the time he or she takes the examination, have a minimum of five years' experience in shaft sinking, slope driving and underground construction; moreover, he or she shall be able to detect methane with a flame safety lamp and have a thorough knowledge of the ventilation of shafts, slopes, and mines, and the machinery connected therewith, and finally, he or she shall be a person of good moral character with temperate habits.

(b) Mine examiner or certified person acting as such; duties generally; records open for inspection. — In all shafts and slopes within three hours immediately preceding the beginning of a work shift and before any workmen in such shift, other than those who may be designated to make the examinations, enter the underground areas of such shafts or slopes, a certified foreman or mine examiner, designated by the operator of such shaft or slope to do so, shall make an examination of such areas. Each person designated to make such examinations shall make tests with a permissible flame safety lamp for accumulations of methane and oxygen.
deficiency, and examine sides of shafts and ribs and roof
of all slopes. Should he or she find a condition which he
or she considers dangerous to persons, he or she shall
place a conspicuous danger sign at all entrances to such
places. He or she shall record the results of his or her
examination with ink or indelible pencil in a book
prescribed by the director, kept at a place on the surface
designated by mine management. All records as
prescribed herein shall be open for inspection by
interested persons.

(c) Approvals and permits. — An approval shall be
obtained from the office before work is started. A
permit shall be obtained from the office (1) to stop fan
when miners are in shafts or slopes; (2) to use electrical
machinery in shafts or slopes; (3) to use electric lights
in shafts or slopes; (4) to use welders, torches and like
equipment in shafts or slopes; (5) to hoist more than four
miners at one time in buckets or cars; (6) to shoot more
than fifteen shots in one series.

(d) Records. — The foreman in charge on each shift
shall keep a daily report of conditions and practices. The
foreman in charge on each shift shall read and counter-
sign the reports of the previous shift. Unsatisfactory
conditions and practices reported shall be repeated on
daily reports until corrected. Hoists, buckets, cars, ropes
and appliances thereto shall be examined by a qualified
person before the start of each shift and a written record
kept. Deaths from accidents or previous injuries shall be
reported immediately by wire to the office of the
director and to the district mine inspector or the
inspector-at-large. A written report of all injuries and
deaths shall be mailed to the office of miners' health,
safety and training and district mine inspector
promptly. Immediate notice shall be given the office of
the director, the district mine inspector and the
inspector-at-large in the event of an ignition of gas, or
serious accident to miners or equipment. All permits
and approvals must be available for inspection by all
interested persons.

(e) General. — The foreman on shift shall have at least
five years' experience in shafts or slopes. New employees
shall be instructed in the dangers and rules incident to
their work. Conspicuous bulletin boards and warning
signs shall be maintained. Unauthorized persons shall
not be permitted around shafts or slopes. First-aid
material shall be maintained at the operation as
required by section fifty-nine of this article. The scene
of a fatal accident shall be left unchanged until an
investigation is made by all interested persons. All
employees and others around the operation shall wear
hard-toe shoes and hard-top hats. Goggles or other eye
protection shall be worn when cutting, welding or
striking where particles may fly. Gears, belts and
revolving parts of machinery shall be properly guarded.
Hand tools shall be in good condition. Sides of shafts,
ribs and roof of all slopes shall be closely observed for
loose and dangerous conditions. Loose brows, ribs and
top in slopes shall be taken down or supported; loose ribs
in shafts shall be scaled. Miners shall be hoisted and
lowered under power in shafts and slopes. All hoists
must have two positive breaking devices. At least three
wraps of rope shall remain on the hoist drum at all
times. Wire ropes shall not be less than three-fourths
inches in diameter, and of a design to prevent excessive
spinning or turning when hoisting.

When heavy materials are hoisted, a large rope shall
be used if necessary. A hoisting engineer shall be in
constant attendance while men are in shaft. Head
frames shall be constructed substantially. Noise from
machinery shall not interfere with signals. The standard
signal code, whistle or bell shall be used for hoisting:

One signal ..........................................................Hoist
One signal ..........................................................Stop
Two signals .........................................................Lower
Three signals .....................................................Man cage
One signal from hoisting engineer  Miners board cage
Hoist signals shall be posted in front of the hoisting
engineer. The shaft opening shall be enclosed by a fence
five feet high. Buckets shall not be loaded within six
inches of the top rim. Buckets shall have a positive lock
on the handle or bale to prevent bucket from crumpling
while being hoisted. Positive coupling devices shall be
used on buckets or cars (hooks with safety catches or
threaded clevis). Emergency devices for escape shall be
provided while shafts are under construction. Miners
shall not ride on or work from rims of buckets. Buckets
or cars shall not be lowered without a signal from
working area. Only sober and competent engineers shall
be permitted to operate hoists. No intoxicating liquors
or intoxicated persons shall be permitted in or around
any shaft, slope or machinery. Lattice type platforms
shall be used.

(f) Explosives. — Explosives and blasting caps being
taken into or removed from the operation shall be
transported and kept in approved nonconducting
receptacles (unopened cartons or cases are permissible).
Explosives shall not be primed until ready to be inserted
into holes. Handling of explosives and loading of holes
shall be under the strict supervision of a qualified
person or shotfirer. No more explosives or caps than are
required to shoot one round shall be taken into shafts.
Adobe, mudcapped or unconfined shots shall not be
fired. Holes shall be stemmed tightly and full into the
mouth. Blasting caps shall be inserted in line with the
explosive. Leg wires of blasting caps and buss wires
shall be kept shunted until connected. Shooting cables
shall be shunted at firing devices and before connecting
to leg wires. Only approved shooting devices shall be
used. Shots shall be fired promptly after the round of
holes are charged. Warnings shall be given before shots
are fired by shouting "Fire" three times slowly after
those notified have withdrawn. The blasting circuit shall
be wired in series or parallel series. All shooting circuits
shall be tested with a galvanometer by a qualified
person before shooting. A careful examination for
misfires shall be made after each shot. Persons shall not
return to the face until smoke and dust have cleared
away. The shooting cable shall be adequately insulated
and have a substantial covering; be connected by the
person firing the shot; and be kept away from power
circuits. Misfires shall be removed by firing separate
holes or by washing; shall not be drilled out; and shall
be removed under supervision of a foreman or qualified person. Separate magazines for the storage of explosives and detonators shall be located not less than three hundred feet from openings or other structures. Magazines for the storage of explosives and detonators shall be separated at least fifty feet. Magazines shall be located behind barricades. The outside of magazines shall be constructed of incombustible material. Rubbish and combustible material shall not be permitted to accumulate around or in magazine. Warning signs, to be seen in all directions, shall be posted near magazines.

(g) Electrical. — Power cables installed in slopes shall be placed in conduit away from the belt as far as possible. Surface transformers shall be elevated at least eight feet from the ground or enclosed by a fence six feet high, grounded if metal; shall be properly grounded; shall be installed so that they will not present a fire hazard; and shall be guarded by sufficient danger signs.

Electric equipment shall be in good condition, clean and orderly; shall be equipped with guards around moving parts; and shall be grounded with effective frame grounds on motors and control boxes.

All electric wires shall be installed and supported on insulators. All electric equipment shall be protected by dual element fuse or circuit breakers.

(h) Ventilation. — Ventilating fans shall be offset from portal at least fifteen feet; shall be installed so that the ventilating current is not contaminated by dust, smoke or gases; shall be effectively frame grounded; and shall be provided with fire extinguishers.

All shafts and slopes shall be ventilated adequately and continuously with fresh air. Air tubing shall deliver not less than nine thousand feet per minute at the working area or as much more as the inspector may require.

(i) Gases. — A foreman shall be in attendance at all times in shafts and slopes who has passed an examination given by the office as to his or her competency in
193 the use of flame safety lamps.
194 An examination shall be made before and after
195 shooting by the foreman on shift. The foreman shall
196 have no superior in the performance of his or her duties.
197 A lighted flame safety lamp or other approved detector
198 shall be carried at all times by the foreman when in the
199 working area and weekly gas analysis made. In all
200 shafts and slopes within three hours immediately
201 preceding the beginning of a work shift and before any
202 workmen in such shift, other than those who may be
203 designated to make the examinations, enter the under-
204 ground areas of such shafts or slopes, a certified mine
205 foreman or mine examiner designated by the operator
206 of such shaft or slope to do so, shall make an examina-
207 tion of such area. Evidence of official examination shall
208 be left at the face by marking date and initials.
209 Gases should be removed under the supervision of the
210 foreman in charge. Smoking shall not be permitted
211 inside of shafts or slopes.
212 (j) Drilling. — Dust allaying or dust collecting devices
213 shall be used while drilling.
214 (k) Lights to be used in shafts. — Only approved
215 electric cap lights shall be used in shafts. Other lights
216 shall be of explosive-proof type. Lights shall be sus-
217 pended in shafts by cable or chain other than the power
218 conductor. In slopes, lights must be substantially
219 installed. Power cables shall be of an approved type.
220 Power cables shall not be taut from shaft collar to light.
221 Power cables shall be in good condition and free of
222 improper splices. Lights shall be suspended not less than
223 twenty feet above where miners are working. Lights
224 shall be removed from shaft and power cut off when
225 shooting. In slopes, lights must be removed a safe
226 distance when shots are fired. Lights shall not be
227 replaced in shafts or slopes until examination has been
228 made for gas by the mine examiner and found clear.
229 Front of light shall be protected by a substantial metal
230 type guard. Lights shall be protected from falling
231 objects from above by a metal hood. The lighting circuit
232 shall be properly fused. Electric lights shall not be used
in gaseous atmospheres. A lighted flame safety lamp or approved detector shall be kept for use at the face while miners are at work.

§22A-2-72. Long wall and short wall mining.

(a) The Legislature finds that new methods of extracting coal known as long wall or short wall mining is being used in this state. The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in such mining methods and shall promulgate by the first day of January, one thousand nine hundred eighty-one, and continuously update the same, rules governing long wall and short wall mining, which rules shall have as their paramount objective, the health and safety of the persons involved in such operations, and which said rules shall include, but not be limited to, the certification of personnel involved in such operation.

(b) The director may modify the application of any provision of this section to a mine if the director determines that an alternative method of achieving the result of such provision exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such provision, or that the application of such provision to such mine will result in a diminution of the health of, or safety to, the miners in such mine. The director shall give notice to the operator and the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he or she deems appropriate. Such investigation shall provide an opportunity for a hearing, at the request of such operator or representative or other interested party, to enable the operator and the representative of miners in such mine or other interested party to present information relating to the modification of such provision. The director shall issue a decision incorporating his or her findings of fact therein, and send a copy thereof to the operator and the representative of the miners, as appropriate. Any such hearing shall be of record.

§22A-2-73. Construction of shafts, slopes, surface facili-
ties and the safety hazards attendant therewith; duties of board of coal mine health and safety to promulgate rules; time limits therefor.

1 The board of coal mine health and safety shall investigate or cause to be investigated the technology, procedures and techniques used in the construction of shafts, slopes, surface facilities, and the safety hazards, attendant therewith, and shall promulgate rules governing the construction of shafts and slopes; and shall promulgate by the first day of January, one thousand nine hundred eighty-one, rules governing the construction of surface facilities.

10 The board of coal mine health and safety shall continuously update such rules governing the construction of shafts, slopes and surface facilities, which rules shall have as their paramount concern, the health and safety of the persons involved in such operations, and such rules shall include, but not be limited to, the certification of all supervisors, the certification and training of hoist operators and shaft workers, the certification of blasters and approval of plans. The provisions of such rules may be enforced against operators and construction companies in accord with the provisions of article one of this chapter. For purposes of this chapter, a construction company is an operator.

§22A-2-74. Control of respirable dust.

1 Each operator shall maintain the concentration of respirable dust in the mine atmosphere during each shift to which miners in active workings of such mine are exposed below such level as the board may establish. The board may promulgate rules governing respirable dust, including, but not limited to, dust standards, sampling procedures, sampling devices, equipment and sample analysis by using the data gathered by the federal mine safety and health administration and, or the federal bureau of mines.

11 Any operator found to be in violation of such standards shall bring itself into compliance with such standards and rules of the board or the director may
thereafter order such operator to discontinue such
operation.

§22A-2-75. Coal operators — Procedure before operating
near oil and gas wells.

(a) Before a coal operator conducts underground
mining operations within five hundred feet of any well,
including the driving of an entry or passageway, or the
removal of coal or other material, the coal operator shall
file with the office of miners' health, safety and training
and forward to the well operator by certified mail,
return receipt requested, its mining maps and plans
(which it is required to prepare, file and update to and
with the regulatory authority) for the area within five
hundred feet of the well, together with a notice, on a
form furnished by the director, informing them that the
mining maps and plans are being filed or mailed
pursuant to the requirements of this section.

Once these mining maps and plans are filed with the
office, the coal operator may proceed with its under-
ground mining operations in the manner and as
projected on such plans or maps, but shall not remove,
without the consent of the director, any coal or other
material or cut any passageway nearer than two
hundred feet of any completed well or well that is being
drilled. The coal operator shall, at least every six months
while mining within the five hundred foot area, update
its mining maps and plans and file the same with the
director and the well operator.

(b) Application may be made at any time to the
director by a coal operator for leave to conduct under-
ground mining operations within two hundred feet of
any well or to mine through any well, by petition, duly
verified, showing the location of the well, the workings
adjacent to the well and the mining operations contem-
plated within two hundred feet of the well or through
such well, and praying the approval of the same by the
director and naming the well operator as a respondent.
The coal operator shall file such petition with the
director and mail a true copy to the well operator by
certified mail, return receipt requested.
The petition shall notify the well operator that it may answer the petition within five days after receipt, and that in default of an answer the director may approve the proposed operations as requested if it be shown by the petitioner or otherwise to the satisfaction of the director that such operations are in accordance with the law and with the provisions of this article. If the well operator files an answer which requests a hearing, one shall be held within ten days of such answer and the director shall fix a time and date and give both the coal operator and well operator five days' written notice of the same by certified mail, return receipt requested. At the hearing, the well operator and coal operator, as well as the director, shall be permitted to offer any competent and relevant evidence. Upon conclusion of the hearing, the director shall grant the request of the coal operator or refuse to grant the same, or make such other decision with respect to such proposed underground operation as in its judgment is just and reasonable under all circumstances and in accordance with law and the provisions of this article: Provided, That a grant by the director of a request to mine through a well shall require an acceptable test to be conducted by the coal operator establishing that such mining through can be done safely.

If a hearing is not requested by the well operator or if the well operator gives, in writing, its consent to the coal operator to mine within closer than two hundred feet of the specified well, the director shall grant the request of the coal operator within five days after the petition's original five day answer period if the director determines that such operations are just, reasonable and in accordance with law and the provisions of this article.

The director shall docket and keep a record of all such proceedings. From any such final decision or order of the director, either the well operator or coal operator, or both, may, within ten days, appeal to the circuit court of the county in which the well subject to said petition is located. The procedure in the circuit court shall be substantially as provided in section four, article five, chapter twenty-nine-a of this code, with the director
being named as a respondent. From any final order or
decree of the circuit court, an appeal may be taken to
the supreme court of appeals as heretofore provided.

A copy of the document or documents evidencing the
action of the director with respect to such petition shall
promptly be filed with the chief of the office of oil and
gas of the division of environmental protection.

(c) Before a coal operator conducts surface or strip
mining operations as defined in this chapter, within two
hundred feet of any well, including the removal of coal
and other material, the operator shall file with the
director and furnish to the well operator by certified
mail, return receipt requested, its mining maps and
plans (which it is required to prepare, file and update
to and with the regulatory authority) for the area within
two hundred feet of the well, together with a notice, on
a form furnished by the director, informing them that
the mining maps and plans are being filed or mailed
pursuant to the requirements of this section, and
representing that the planned operations will not
unreasonably interfere with access to or operation of the
well and will not damage the well. In addition, the coal
operator shall furnish the well operator with evidence
that it has in force public liability insurance, with at
least the minimum coverage required by article three,
chapter twenty-two of this code, and the rules promul-
gated thereto and thereunder.

Once these mining maps and plans are filed with the
director, the coal operator may proceed with its surface
or strip mining operations in the manner and as
projected on such plans or maps, so long as such surface
mining operations do not unreasonably interfere with
access to, or operation of, the well or do not damage the
well.

(d) The filing of petitions and notices with the director
as herein provided may be complied with by mailing
such petition or notice to the director by certified mail,
return receipt requested.

§22A-2-76. Reopening old or abandoned mines.
No person, without first giving to the director ten
days' written notice thereof, shall reopen for any
purposes any old or abandoned mine wherein water or
mine seepage has collected or become impounded or
exists in such manner or quantity that upon the opening
of such mine, such water or seepage may drain into any
stream or watercourse.

Such notice shall state clearly the name or names of
the owner or owners of the mine proposed to be opened,
its exact location, and the time of the proposed opening
thereof.

Upon receipt of such notice, the director shall have his
or her representative present at the mine at the time
designated in the notice for such opening, who has full
supervision of the work of opening such mine with full
authority to direct the work in such manner as to him
or her seems proper and necessary to prevent the flow
of mine water or seepage from such mine in such
manner or quantity as will kill or be harmful to the fish
in any stream or watercourse into which such mine
water seepage may flow directly or indirectly.

§22A-2-77. Monthly report by operator of mine; excep-
tion as to certain inactive mines.

On or before the end of each calendar month, the
operator of each mine, regulated under the provisions
of this chapter or article three or four, chapter twenty-
two of this code, shall file with the director a report with
respect thereto covering the next preceding calendar
month which shall reflect the number of accidents
which have occurred at each such mine, the number of
persons employed, the days worked and the actual raw
tonnage mined. Such report shall be made upon forms
furnished by the director. Other provisions of this
section to the contrary notwithstanding, no such report
shall be required with respect to any mine on approved
inactive status if no employees were present at such
mine at any time during the next preceding calendar
month.

§22A-2-78. Examinations to determine compliance with
permits.
Whenever permits are issued by the office of miners' health, safety and training, frequent examinations shall be made by the mine inspector during the tenure of the permit to determine that the requirements and limitations of the permit are complied with.

ARTICLE 3. UNDERGROUND CLAY MINE.

§22A-3-1. Definition.

In this article the term "mine" includes the shafts, slopes, drifts or inclines connected with excavations penetrating clay seams or strata, which excavations are ventilated by one general air current or division thereof, and the surface structures or equipment connected therewith which contribute directly or indirectly to the underground mining of clay.

§22A-3-2. Clay mine foreman; when to be employed; qualifications; assistants.

In every underground clay mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ a mine foreman who shall be a competent and practical person holding a certificate of competence for said position issued to him or her by the office of miners' health, safety and training after an examination by such office. In order to receive a certificate of competence qualifying a foreman in an underground clay mine, the applicant shall take an examination prescribed by the director of the office of miners' health, safety and training, be a citizen of this state, of good moral character and temperate habits, having had at least three years' experience in the underground working of clay mines.

§22A-3-3. Rules for protection of health and safety of employees.

The director of the office of miners' health, safety and training may from time to time promulgate reasonable rules for the protection of the health and safety of the persons working in or about underground clay mines, to the extent the same are not more onerous or restrictive than the laws of this state intended to safeguard the life and health of persons working in underground coal.
ARTICLE 4. OPEN-PIT MINES, CEMENT MANUFACTURING PLANTS AND UNDERGROUND LIMESTONE AND SANDSTONE MINES.

§22A-4-1. Definitions.

Unless the context in which used clearly requires a different meaning as used in this article:

(a) "Open-pit mine" means an excavation worked from the surface and open to daylight.

(b) "Underground mine" means subterranean workings for the purpose of obtaining a desired material or materials.

(c) "Sand" means waterworn sandstone fragments transported and deposited by water.

(d) "Gravel" means an occurrence of waterworn pebbles.

(e) "Sandstone" means a compacted or cemented sediment composed chiefly of quartz grains.

(f) "Limestone" means a sedimentary rock composed mostly of calcium carbonate.

(g) "Clay" means a natural material of mostly small fragments of hydrous aluminum silicates and possessing plastic properties.

(h) "Shale" means a laminated sedimentary rock composed chiefly of small particles of a clay grade.

(i) "Iron ore" means a mineral or minerals, and gangue which when treated will yield iron at a profit.

(j) "Manganese ore" means a metalliferous mineral which when treated will yield manganese at a profit.

§22A-4-2. Applicability of mining laws.

All provisions of the mining laws of this state intended for the protection of the health and safety of persons employed within or at any coal mine and for the protection of any coal mining property extend to all open-pit mines and any property used in connection
§22A-4-3. Rules.

The director of the office of miners' health, safety and training shall promulgate reasonable rules, in accordance with and confined to the provisions of chapter twenty-nine-a of this code, for the effective administration of this article.

§22A-4-4. Monthly report by operator.

The operator of such mine shall, on or before the end of each calendar month, file with the director of the office of miners' health, safety and training a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined.

§22A-4-5. Inspectors.

The director of the office of miners' health, safety and training shall divide the state into not more than two mining districts and assign one inspector to each district. Such inspector shall be a citizen of West Virginia, in good health, of good character and reputation, temperate in habits, having a minimum of five years of practical experience in such mining operations and who at the time of appointment is not more than fifty-five years of age. To qualify for appointment as such an inspector, an eligible applicant shall submit to a written and oral examination by the mine inspectors' examining board and furnish such evidence of good health, character and other facts establishing eligibility as the board may require. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment and (2) has passed all written and oral examinations, with a grade of at least ninety percent, the board shall add such applicant's name and grade to the register of qualified eligible candidates and certify its action to the director of the office of miners'
health, safety and training. No candidate's name shall remain in the register for more than three years without requalifying.

Such inspector shall have the same tenure accorded a mine inspector, as provided in subsection (e), section twelve, article one of this chapter and shall be paid not less than fifteen thousand dollars per year. Such inspector shall also receive reimbursement for traveling expenses at the rate of not less than fifteen cents for each mile actually traveled in the discharge of their duties in a privately owned vehicle. Such inspector shall also be reimbursed for any expense incurred in maintaining an office in his or her home, which office is used in the discharge of official duties: Provided, That such reimbursement shall not exceed two hundred forty dollars per annum.

§22A-4-6. Penalties.

Any person who fails or refuses to discharge any provision of this article, rule promulgated or order issued pursuant to the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both.

ARTICLE 5. BOARD OF APPEALS.

§22A-5-1. Board of appeals.

There is hereby continued a board of appeals, consisting of three members. Two members of the board shall be appointed by the governor, one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of miners, and one person who by reason of previous training and experience may reasonably be said to represent the viewpoint of the operators. The third person, who is chair of the board and who must not have had any connection at any time with the coal industry or an organization representing miners, is selected by the two members appointed by the governor. The term of office of members of the board is five years.
The function and duties of the board is to hear appeals, make determinations on questions of miners' entitlements due to withdrawal orders and appeals from discharge or discrimination, and suspension of certification certificates.

The chair of the board has the power to administer oaths and subpoena witnesses and require production of any books, papers, records or other documents relevant or material to the appeal inquiry.

The chair shall subpoena any witness requested by a party to a hearing to testify or produce books, records or documents. Any witness responding to a subpoena so issued shall receive a daily witness fee to be paid out of the state treasury upon a requisition of the state auditor equivalent to the rate of pay under the wage agreement currently in effect plus all reasonable expenses for meals, lodging and travel at the rate applicable to state employees. Any full payments as hereinbefore specified shall be in full and exclusive payment for meals, lodging, actual travel and similar expenses and shall be made in lieu of any lost wages occasioned by such appearance in connection with any hearing conducted by the board.

Each member of the board shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. No reimbursement for expenses shall be made except upon an itemized account, properly certified by such members of the board. All reimbursement for expenses shall be paid out of the state treasury upon a requisition upon the state auditor.

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


(a) There are hereby transferred to the board of
appeals all functions of the director of the office of
miners' health, safety and training relating to the
review of orders and notices as set forth in section
seventeen, article one of this chapter.

(b) There are hereby transferred to the board of
appeals all functions of the director of the office of
miners' health, safety and training relating to the
review of penalty assessments as set forth in subdivision
(3), subsection (a), section twenty-one, article one of this
chapter.

(c) Judicial review of decisions by the board of appeals
shall be available and conducted in the same fashion as
set forth in section nineteen, article one of this chapter.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

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

(a) The Legislature hereby finds and declares that:

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

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

(3) During each session of the Legislature, coal mine
health and safety standards are proposed which require
knowledge and comprehension of scientific and techni-
cal data related to coal mining;

(4) The formulation of appropriate rules and practices
to improve health and safety and provide increased
protection of miners can be accomplished more effec-
tively by persons who have experience and competence
in coal mining and coal mine health and safety.

(b) In view of the foregoing findings, it is the purpose
of this article to:
(1) Continue the board of coal mine health and safety;
(2) Require such board to continue as standard rules
the coal mine health and safety provisions of this code;
(3) Compel the board to review such standard rules
and, when deemed appropriate to improve or enhance
coal mine health and safety, to revise the same or
develop and promulgate new rules dealing with coal
mine health and safety; and
(4) Authorize such board to conduct such other
activities as it deems necessary to implement the
provisions of this chapter.

§22A-6-2. Definitions.

Unless the context in which a word or phrase appears
clearly requires a different meaning, the words and
phrases defined in section two, article one of this chapter
have, when used in this article, the meaning therein
assigned to them. For the purpose of this article “board”
means the board of coal mine health and safety
continued by section three of this article.

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

(a) The board of coal mine health and safety, heretofore established, is continued as provided by this
article. The board consists of seven members who are
residents of this state, and who are appointed as
hereinafter specified in this section:

(1) The governor shall appoint one member to repres-
ent the viewpoint of those operators in this state whose
individual aggregate production exceeds one million
tons annually and one member to represent the view-
point of those operators in this state whose individual
aggregate production is less than one million tons
annually, which tonnage includes tonnage produced by
affiliated, parent and subsidiary companies and tonnage
produced by companies which have a common director
or directors, shareholder or shareholders, owner or
owners. When such members are to be appointed, the
governor may request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make the appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in coal mine health and safety, and shall at the time of their appointment be employed in a position which involves the protection of health and safety of miners. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provi-
sions of this subdivision, the governor shall make
appointments from the persons so nominated.

(3) The governor shall appoint one public member who
is professionally qualified in the field of occupational
health and safety and who is (A) an employee of the
institute of labor studies at West Virginia University or
(B) a person who is engaged in or who has broad
experience in occupational health and safety from the
perspective of the worker. Such nominee shall have
technical experience in occupational health and safety
or education and experience in such field: Provided,
That the nominee shall not have been, prior to appoint-
ment to the board, employed by a mining or industrial
business entity in a managerial or supervisory position,
or shall not have been employed by the major employee
organization representing coal miners in this state, or
shall not have been a miner.

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

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

(6) The seventh member of the board is the secretary
of the department of commerce, labor and environmen-
tal resources, or his or her designee, who serves as chair
of the board. The director shall furnish to the board such
secretarial, clerical, technical, research and other
services as are necessary to the conduct of the business
of the board, not otherwise furnished by the board.
(b) Members serving on the board on the effective date of this article may continue to serve until the expiration of their terms. Thereafter, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members are eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section six of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the health and safety administrator shall prepare an agenda for each board meeting giving priority to the promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the
agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chair, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chair: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

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

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(f) A quorum of the board is five members which shall include the secretary of the department of commerce,
labor and environmental resources, at least one member representing the viewpoint of operators and at least one member representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the "coal mine health and safety provisions of this chapter." Such standard rules and any other rules shall be adopted by the board without regard to the provisions of chapter twenty-nine-a of this code. The board of coal mine health and safety shall devote its time toward promulgating rules in those areas specifically directed by this chapter and those necessary to prevent fatal accidents and injuries.

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

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

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any
coal operator has the power to petition the circuit court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules to which objections have been filed and a hearing requested.

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

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

(d) To carry out its duties and responsibilities, the
board is authorized to employ such personnel, including
legal counsel, experts and consultants, as it deems
necessary. In addition, the board, within the appropri-
ations provided for by the Legislature, may conduct or
contract for research and studies and is entitled to the
use of the services, facilities and personnel of any
agency, institution, school, college or university of this
state.

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

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

Further, the board shall, on or before the tenth day
of January of each year, submit a report to the governor,
-president of the Senate and speaker of the House, which
(1) The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the office of miners' health, safety and training and the action, if any, taken by the board to prevent such fatality;

(2) Any rules promulgated by the board during the last year;

(3) What rules the board intends to promulgate during the current calendar year;

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

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

(6) Any other information the board deems appropriate;

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

§22A-6-5. Preliminary procedures for promulgation of rules.

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

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

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

(3) The board shall by majority vote of those members who are present determine whether the health and safety administrator shall prepare a draft rule concerning the suggested subject matter;

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

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

(6) The board shall direct the health and safety administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

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

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

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

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will
promote the orderly and efficient consideration of
proposed rules in accordance with the provisions of this
section.

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

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

(b) The health and safety administrator shall work at
the direction of the board, independently of the director
of the office of miners' health, safety and training and
has such authority and shall perform such duties as may
be required or necessary to effectuate this article.

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

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

(e) Appropriations for the salaries of the health and
safety administrator and any other employees of the board and for necessary office and operating expenses shall be made to a budget account hereby established for those purposes in the general revenue fund. Such account shall be separate from any accounts or appropriations for the office of miners' health, safety and training.

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

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

§22A-6-7. Coal mine safety and technical review committee; membership; method of nomination and appointment; meetings; quorum; powers and duties of the committee; powers and duties of the board of coal mine health and safety.

(a) There is hereby continued the state coal mine safety and technical review committee. The purposes of this committee are to:

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

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

(3) Accept and consider petitions submitted by individual mine operators or miners seeking site-specific rule-making pertaining to individual mines and make recommendations to the board concerning such rule-
making; and

(4) Provide a forum for the resolution of technical issues encountered by the board.

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

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

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

(3) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection shall be initially appointed to serve a term of three years. The members serving on the effective date of this article may continue to serve until their terms expire.

(4) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection may be, but are not required to be, members of the board of coal mine health and safety, and shall be compensated on a per diem basis in the same amount as provided in section ten of this article, plus all reasonable expenses.

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

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

(e) The committee may review any matter relative to mine safety and mining technology, and may pursue
development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule-making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: Provided, That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f)(1) Upon application of a coal mine operator, or on its own motion, the committee has the authority to accept requests for site-specific rule-making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee has authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule-making, the committee may conduct an investigation of the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the committee shall provide the results of its investigation to the board of coal mine health and safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.
(3) Within thirty days of receipt of the committee's recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee's recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

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

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

(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the board of coal mine health and safety to act in accordance with sections one through six and eight through ten of this article.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the general revenue fund. Such account shall be separate from any accounts or appropriations for the office of miners' health, safety and training.

1. The standard rules and any rules promulgated by the board have the same force and effect of law as if enacted by the Legislature as a part of article two of this chapter and any violation of any such rule is a violation of law or of a health or safety standard within the meaning of this chapter.

§22A-6-9. Reports.

1. Prior to each regular session of the Legislature, the board shall submit to the Legislature an annual report upon the subject matter of this article, the progress concerning the achievement of its purpose and any other relevant information, including any recommendations it deems appropriate.

§22A-6-10. Compensation and expenses of board members.

1. Each member of the board not otherwise employed by the state shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the office of miners' health, safety and training. No employer shall prohibit a member of the board from exercising leave of absence from his or her place of employment in order to attend a meeting of the board or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to the contrary notwithstanding.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-1. Short title.

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

§22A-7-2. Declaration of legislative findings and policy.

(a) The Legislature hereby finds and declares that:

(b) The highest priority and concern of this Legislature and all in the coal mining industry must be the health and safety of the industry’s most valuable resource — the miner;

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

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

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

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

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

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

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

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

(3) Authorize a stipend for prospective miners enrolled in this state’s miner training, education and certification program;
(4) Direct the director of the office of miners' health, safety and training to apply and implement the standards set by the board of miner training, education and certification by establishing programs for miner and prospective miner education and training; and

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

§22A-7-3. Definitions.

Unless the context in which a word or phrase appears clearly requires a different meaning, the words defined in section two, article one of this chapter have when used in this article the meaning therein assigned to them. These words include, but are not limited to, the following: office, director, mine inspector, operator, miner, shotfirer and certified electrician.

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

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

§22A-7-4. Board of miner training, education and certification continued; membership; method of appointment; terms.

(a) There is hereby continued a board of miner training, education and certification, which consists of seven members, who are selected in the following manner:

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

(2) Two members shall be appointed by the governor to represent the interests of the underground operators of this state. When said members are to be appointed, the governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) The seventh member of the board, who serves as chair, shall be the director of the office of miners' health, safety and training.
(5) All appointments made by the governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

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

(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

(e) A quorum of the board is four members. The board may act officially by a majority of those members who are present.

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

(g) The director of the office of miners' health, safety and training shall select a member of the office's staff to serve as the secretary to the board and the secretary shall be present or send an authorized representative to all meetings of the board.

§22A-7-5. Board powers and duties.

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

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

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

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

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

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

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the director of the office of miners' health, safety and training.

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

### §22A-7-6. Duties of the director and office.

1 The director shall be empowered to promulgate, pursuant to chapter twenty-nine-a of this code, such reasonable rules as are necessary to establish a program to implement the provisions of this article. Such program shall include, but not be limited to, implementation of a program of instruction in each of the miner occupational specialties and the conduct of examinations to test each applicant's knowledge and understanding of the training and instruction which he or she is required to have prior to the receipt of a certificate.

The director is authorized and directed to utilize state mine inspectors, mine safety instructors, the state mine foreman examiner, private and public institutions of education and such other persons as may be available in implementing the program of instruction and examinations.
The director may, at any time, make such recommendations or supply such information to the board as he or she may deem appropriate.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of this article.

ARTICLE 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-1. Certificate of competency and qualification or permit of apprenticeship required of all surface and underground miners.

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

§22A-8-2. Definitions.

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

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

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

§22A-8-3. Permit of apprenticeship-underground miner.

A permit of apprenticeship-underground miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in underground mines, including, but not limited to, general
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safety, first aid, miner and operator rights and responsibilities, general principles of electricity, general mining hazards, roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least eighty hours, which shall be determined by the board of miner training, education and certification and provided for and implemented by the director: Provided, however, That if a sufficient number of qualified applicants having successfully completed the state training program provided by the office of miners' health, safety and training are not available, the operator may request approval from the director to conduct the operator's own preemployment training program so long as such training adequately covers the minimum criteria determined by the board and such trainees shall be eligible for the same certification as provided for trainees undergoing training provided by the state.

§22A-8-4. Permit of apprenticeship-surface miner.

A permit of apprenticeship-surface miner shall be issued by the director to any person who has demonstrated by examination a knowledge of the subjects and skills pertaining to employment in the surface mining industry, including, but not limited to, general safety, first aid, miner and operator rights and responsibilities, general principles of electricity, health and sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tipple safety, state and federal mining laws and regulations and such other subjects as may be required by the board of miner training, education and certification: Provided, That each applicant for said permit shall complete a program of education and training of at least forty hours, which program shall be determined by the board of miner training, education and certification and provided for and implemented by the director: Provided, however, That if a sufficient number of qualified applicants
having successfully completed the state training pro-
vided by the office of miners' health, safety and training
are not available, the operator may request approval
from the director to conduct the operator's own preem-
ployment training program so long as such training
adequately covers the minimum criteria determined by
the board and such trainees shall be eligible for the
same certification as provided for trainees undergoing
training provided by the state.

§22A-8-5. Supervision of apprentices.

Each holder of a permit of apprenticeship shall be
known as an apprentice. Any miner holding a certificate
of competency and qualification may have one person
working with him or her, and under his or her super-
vision and direction, as an apprentice, for the purpose
of learning and being instructed in the duties and
calling of mining. Any mine foreman or fire boss or
assistant mine foreman or fire boss may have three
persons working with him or her under his or her
supervision and direction, as apprentices, for the
purpose of learning and being instructed in the duties
and calling of mining: Provided, That a mine foreman,
assistant mine foreman or fire boss supervising apprent-
ices in an area where no coal is being produced or which
is outby the working section may have as many as five
apprentices under his or her supervision and direction,
as apprentices, for the purpose of learning and being
instructed in the duties and calling of mining or where
the operator is using a production section under
program for training of apprentice miners, approved by
the board of miner training, education and certification.

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

In all cases, it is the duty of every mine operator who
employs apprentices to ensure that such persons are
effectively supervised and to instruct such persons in
safe mining practices. Each apprentice shall wear a red
hat which identifies the apprentice as such while
employed at or near a mine. No person shall be employed as an apprentice for a period in excess of eight months, except that in the event of illness or injury, time extensions shall be permitted as established by the director of the office of miners' health, safety and training.

§22A-8-6. Certificate of competency and qualification — Underground or surface miner.

A certificate of competency and qualification as an underground miner or as surface miner shall be issued by the director to any person who has at least six months' total experience as an apprentice and demonstrated his or her competence as a miner by successful completion of an examination given by the director or his or her representative in a manner and place to be determined by the board of miner training, education and certification: Provided, That all examinations shall be conducted in the English language and shall be of a practical nature, so as to determine the competency and qualifications of the applicant to engage in the mining of coal with reasonable safety to the applicant and fellow employees: Provided, however, That notice of the time and place of such examination shall be given to management at the mine, to the local union thereat if there is a local union, and notice shall also be posted at the place or places in the vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be held at such times and places, and after such notice, as the board finds necessary to enable all applicants for certificates to have an opportunity to qualify for certification.

§22A-8-7. Refusal to issue certificate; appeal.

If the director or the director's representative finds that an applicant is not qualified and competent, the director shall so notify the applicant not more than ten days after the date of examination.

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

§22A-8-8. Limitations of article.

All persons possessing certificates of qualification
heretofore issued by the department of mines of this
state, or by the division of mines and minerals, or
hereafter by the office of miners’ health, safety and
training entitling them to act as mine foreman-fire
bosses, or assistant mine foreman-fire bosses, are
eligible to engage at any time as miners in the mines
of this state. Supervisory and technically trained
employees of the operator, whose work contributes only
indirectly to mine operations, are not required to possess
a miners’ certificate.

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

§22A-8-9. Violations; penalties.

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

ARTICLE 9. MINE INSPECTORS’ EXAMINING BOARD.

§22A-9-1. Mine inspectors’ examining board.

The mine inspectors’ examining board is continued. It
consists of five members who, except for the public
representative on such board, shall be appointed by the
governor, by and with the advice and consent of the
Senate. Members so appointed may be removed only for
the same causes and in like manner as elective state
officers. One of the members of the board shall be a representative of the public, who shall be the director of the school of mines at West Virginia University. Two members of the board shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine operators and two members shall be persons who by reason of previous training and experience may reasonably be said to represent the viewpoint of coal mine workers.

The director of the office of miners' health, safety and training is an ex officio member of the board and shall serve as secretary of the board, without additional compensation; but the director has no right to vote with respect to any matter before the board.

The members of the board, except the public representative, shall be appointed for overlapping terms of eight years, except that the original appointments shall be for terms of two, four, six and eight years, respectively. Any member whose term expires may be reappointed by the governor. Members serving on the effective date of this article may continue to serve until their terms expire.

Each member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Any such amounts shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such members of the board.

The public member is chair of the board. Members of the board, before performing any duty, shall take and subscribe to the oath required by section five, article IV of the constitution of West Virginia.

The mine inspectors' examining board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of three members or the
director of the office of miners' health, safety and training. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. Three members is a quorum for the transaction of business.

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

1. Establish, and from time to time revise, forms of application for employment as mine inspectors and forms for written examinations to test the qualifications of candidates for that position;

2. Adopt and promulgate reasonable rules relating to the examination, qualification and certification of candidates for appointment as mine inspectors, and hearing for removal of inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall be printed and a copy thereof furnished by the secretary of the board to any person upon request;

3. Conduct, after public notice of the time and place thereof, examinations of candidates for appointment as mine inspector. By unanimous agreement of all members of the board, one or more members of the board or an employee of the office of miners' health, safety and training may be designated to give a candidate the written portion of the examination;

4. Prepare and certify to the director of the office of miners' health, safety and training a register of qualified eligible candidates for appointment as mine inspectors. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates, and at least annually, the board shall prepare and submit to the director of the office of miners' health, safety and training a revised and corrected register of qualified eligible candidates for appointment as mine inspector, deleting from such revised register all persons (a) who are no longer residents of West Virginia, (b) who have allowed a calendar year to expire without, in writing, indicating
their continued availability for such appointment, (c) who have been passed over for appointment for three years, (d) who have become ineligible for appointment since the board originally certified that such person was qualified and eligible for appointment as mine inspector, or (e) who, in the judgment of at least four members of the board, should be removed from the register for good cause;

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

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

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

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

(9) Make an annual report to the governor and the director concerning the administration of mine inspection personnel in the state service, making such recommendations as the board considers to be in the public interest.

ARTICLE 10. EMERGENCY MEDICAL PERSONNEL.

§22A-10-1. Emergency personnel in coal mines.
(a) Emergency medical services personnel shall be employed on each shift at every mine that: (1) Employs more than ten employees and (2) more than eight persons are present on the shift. Said emergency medical services personnel shall be employed at their regular duties at a central location, or when more than one such person is required pursuant to subsection (b) or (c) at locations, convenient from quick response to emergencies; and further shall have available to them at all times such equipment as shall be prescribed by the director of the office of miners' health, safety and training, in consultation with the commissioner of the bureau of public health.

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

(c) A training course designed specifically for certification of emergency medical technician-mining, shall be developed at the earliest practicable time by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification. The training course for initial certification as an emergency medical technician-mining shall not be less than sixty hours, which shall include, but is not limited to, mast trouser application, basic life support skills and emergency room observation or other equivalent practical exposure to emergencies as prescribed by the commissioner of the bureau of public health.

(d) The maintenance of a valid emergency medical
technician-mining certificate may be accomplished without taking a three year recertification examination: Provided, That such emergency medical technician-mining personnel completes an eight hour annual retraining and testing program prescribed by the commissioner of the bureau of public health in consultation with the board of miner training, education and certification.

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

§22A-10-2. First-aid training of coal mine employees.

Each coal mine operator shall provide every new employee within six months of the date of employment with the opportunity for first-aid training as prescribed by the director of the office of miners' health, safety and training unless such employee has previously received such training. Each coal mine employee shall be required to take refresher first-aid training of not less than five hours within each twenty-four months of employment. The employee shall be paid regular wages, or overtime pay if applicable, for all periods of first-aid training.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 1. GENERAL POLICY AND PURPOSE.

§22B-1-1. Declaration of policy and purpose.

It is hereby declared to be the policy of this state and the purpose of this chapter to provide fair, efficient and equitable treatment of appeals of environmental enforcement and permit actions to the boards set forth herein.
It is also the intent of the Legislature to consolidate and combine the legal, technical and support personnel of the three boards, to provide for consistent appellate processes and to maintain continuity of the boards' functions and membership. The boards shall share physical facilities, hearing rooms, technical and support staff and general overhead. In addition, it is the policy of this state to retain and maintain adequate funding and sufficient support personnel to ensure knowledgeable and informed decisions.

It is the policy of this state that administrative hearings and appeals be conducted in a quasi-judicial manner providing for discovery and case management. The appellate functions of the several environmental boards should be accomplished with similar procedural rules designed to assure expeditious and equitable hearings and decisions. Further, there shall be a central depository for appellate information and the filing of appeals. It is also the policy of this state that the rule-making authority set forth in this chapter be implemented in an efficient manner consistent with the public policy of this state.

Furthermore, it is the intent of the Legislature that all actions taken pursuant to this chapter assure implementation of the policies set forth in this chapter and chapter twenty-two of this code.

§22B-1-2. Definitions.

Unless the context clearly requires a different meaning, as used in this chapter the following terms have the meanings ascribed to them:

(1) "Board" or "boards" means the applicable board continued pursuant to the provisions of this chapter, including the air quality board, the environmental quality board and the surface mine board;

(2) "Chief" means the chief of the office of water resources or the chief of the office of waste management or the chief of the office of air quality or the chief of the office of oil and gas or the chief of the office of mining and reclamation or any other person who has
been delegated authority by the director, all of the
division of environmental protection, as the case may be;
(3) "Director" means the director of the division of
environmental protection or the director's designated
representative;
(4) "Division" means the division of environmental
protection of the department of commerce, labor and
environmental resources;
(5) "Member" means an individual appointed to one of
the boards or the ex officio members of the air quality
board; and,
(6) "Person" or "persons" means any public or private
corporation, institution, association, firm or company
organized or existing under the laws of this or any other
state or country; the state of West Virginia; governmen-
tal agency; political subdivision; county commission;
municipal corporation; industry; sanitary district;
public service district; drainage district; soil conserva-
tion district; watershed improvement district; partner-
ship; trust; estate; person or individual; group of persons
or individuals acting individually or as a group; or any
other legal entity whatever.
§22B-1-3. General administration.
(a) The chairs of the boards shall exercise the
following powers, authorities and duties:
(1) To provide for the management of facilities and
personnel of the boards;
(2) To employ, terminate and compensate support staff
for the boards and to fix the compensation of that staff,
which shall be paid out of the state treasury, upon the
requisition of moneys appropriated for such purposes, or
from joint funds as the chairs may expend;
(3) To the extent permitted by and consistent with
federal or state law, to consolidate, combine or contrib-
ute funds of the boards to maintain the central physical
facilities and technical and support personnel;
(4) To the extent permitted by and consistent with
federal or state law, to consolidate or combine any
functions of the boards;

(5) To secure funding with the assistance of the chairs from whatever source permissible by law;

(6) To secure office space, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this chapter;

(7) To expend funds in the name of any of the boards;

(8) To consult with the secretary of the department of commerce, labor and environmental resources, or the successor agency or office, or the director of the division of environmental protection who shall cooperate with the chairs in order to effectuate the powers, authorities and duties set forth in this section;

(9) To hire individuals, as may be necessary, to serve as hearing examiners for the boards; and

(10) To provide for an individual to serve as the clerk to the boards.

(b) The clerk to the boards has the following duties, to be exercised in consultation with the chairs:

(1) To schedule meetings and hearings and enter all orders properly acted upon;

(2) To receive and send all papers, proceedings, notices, motions and filings;

(3) To the maximum extent practicable, and with the cooperation of the staff and hearing examiners, to assist the boards in the case management of appeals and proceedings;

(4) To maintain records of all proceedings of the boards which shall be entered in a permanent record, properly indexed, and the same shall be carefully preserved for each board. Copies of orders entered by the boards, as well as copies of papers or documents filed with it, shall be maintained in a central location;

(5) To direct and fulfill information requests subject to chapter twenty-nine-b of this code and subject to
applicable confidentiality rules set forth in the statutes and rules; and

(6) To perform such other duty or function as may be directed by the chairs to carry out the purpose of this chapter.

(c) The boards shall establish procedural rules in accordance with the provisions of chapter twenty-nine-a of this code for the regulation of the conduct of all proceedings before the boards. To the maximum extent practicable, the procedural rules will be identical for each board. The procedural rules of the boards shall be contained in a single set of rules for filing with the secretary of state.

§22B-1-4. General provisions applicable to all boards and board members.

(a) Each member of a board, other than an ex officio member, shall be paid the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties.

(b) At its first meeting in each fiscal year each board shall elect from its membership a chair and vice chair to act during such fiscal year. The chair shall preside over the meetings and hearings of the board. The vice chair shall assume the chair's duties in the absence of the chair. All of the meetings shall be general meetings for the consideration of any and all matters which may properly come before the board.

(c) For the environmental quality board and the air quality board, a majority of each board is a quorum for the transaction of business and an affirmative vote of a majority of the board members present is required for any motion to carry or decision of the board to be effective. For the surface mine board four members is a quorum and no action of the board is valid unless it has the concurrence of at least four members. For all boards, in the event of a tie vote on the ultimate decision
which is the subject of an appeal before the board, the
decision of the chief or the director, as the case may be,
shall be affirmed. Each board shall meet at such times
and places as it may determine and shall meet on call
of its chair. It is the duty of the chair to call a meeting
of the board within thirty days on the written request
of three members thereof.

(d) In all cases where the filing of documents, papers,
motions and notices with the board is required or a
condition precedent to board action, filing with the clerk
constitutes filing with the board.

§22B-1-5. General powers and duties of boards.

In addition to all other powers and duties of the air
quality board, environmental quality board and surface
mine board as prescribed in this chapter or elsewhere
by law, the boards created or continued pursuant to the
provisions of this chapter have and may exercise the
following powers and authority and shall perform the
following duties:

(1) To consider appeals, subpoena witnesses, adminis-
ter oaths, make investigations and hold hearings
relevant to matters properly pending before a board;

(2) On any matter properly pending before it when-
ever the parties achieve agreement that a person will
cease and desist in any act resulting in the discharge
or emission of pollutants or do any act to reduce or
eliminate such discharge or emission, or do any act to
achieve compliance with this chapter or chapter twenty-
two or rules promulgated thereunder or do any act to
resolve an issue pending before a board, such agree-
ment, upon approval of the board, shall be embodied in
an order and entered as, and has the same effect as, an
order entered after a hearing as provided in section
seven of this article;

(3) To enter and inspect any property, premise or
place on or at which a source or activity is located or
is being constructed, installed or established at any
reasonable time for the purpose of ascertaining the state
of compliance with this chapter or chapter twenty-two
and the rules promulgated thereunder: Provided, That nothing contained in this section eliminates any obligation to follow any process that may be required by law; and,

(4) To perform any and all acts within the appropriate jurisdiction of each board to secure for the benefit of the state participation in appropriate federally delegated programs.

§22B-1-6. General procedural provisions applicable to all boards.

(a) Any appeal hearing brought pursuant to this chapter shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before any one or more members of the board or a hearing examiner employed by the board. For the purpose of conducting such appeal hearing, any member of a board and the clerk has the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a, and all of the provisions of said section one dealing with subpoenas and subpoenas duces tecum apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(b) In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the disobedience, neglect or refusal occurs, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the court of a refusal to testify therein.

(c) In accordance with the provisions of section one,
article five of said chapter twenty-nine-a, all of the
32 testimony at any hearing held by a board shall be
33 recorded by stenographic notes and characters or by
34 mechanical or electronic means. If requested by any
35 party to an appeal, the hearing and any testimony
offered shall be transcribed in which event the cost of
37 transcribing shall be paid by the party requesting the
38 transcript. The record shall include all of the testimony
39 and other evidence and the rulings on the admissibility
of evidence, but any party may at the time object to the
admission of any evidence and except to the rulings of
the board thereon, and if the board refuses to admit
evidence the party offering the same may make a
proffer thereof, and the proffer shall be made a part of
the record of the hearing.

(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code, apply to and govern
the hearing on appeal authorized by the provisions of
this section and the administrative procedures in
connection with and following such hearing, with like
effect as if the provisions of said article five were set
forth in extenso in this section, except as specifically
provided herein.

§22B-1-7. Appeals to boards.

(a) The provisions of this section are applicable to all
appeals to the boards, with the modifications or
exceptions set forth in this section.

(b) Any person authorized by statute to seek review
of an order, permit or official action of the chief of air
quality, the chief of water resources, the chief of waste
management, the chief of mining and reclamation, the
chief of oil and gas, or the director may appeal to the
air quality board, the environmental quality board or
the surface mine board, as appropriate, in accordance
with this section. The person so appealing shall be
known as the appellant and the appropriate chief or the
director shall be known as the appellee.

(c) An appeal filed with a board by a person subject
to an order, permit or official action shall be perfected
by filing a notice of appeal with the board within thirty
days after the date upon which such order, permit or official action was received by such person as demonstrated by the date of receipt of registered or certified mail or of personal service. For parties entitled to appeal other than the person subject to such order, permit or official action, an appeal shall be perfected by filing a notice of appeal with the board within thirty days after the date upon which service was complete. For purposes of this subsection, service is complete upon tendering a copy to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge of the facility or activity involved, or to the permittee; or by tendering a copy by registered or certified mail, return receipt requested to the last known address of the person on record with the agency. Service is not incomplete by refusal to accept. Notice of appeal must be filed in a form prescribed by the rule of the board for such purpose. Persons entitled to appeal may also file a notice of appeal related to the failure or refusal of the appropriate chief or the director to act within a specified time on an application for a permit; such notice of appeal shall be filed within a reasonable time.

(d) The filing of the notice of appeal does not stay or suspend the effectiveness or execution of the order, permit or official action appealed from, except that the filing of a notice of appeal regarding a notice of intent to suspend, modify or revoke and reissue a permit, issued pursuant to the provisions of section five, article five, chapter twenty-two of this code, does stay the notice of intent from the date of issuance pending a final decision of the board. If it appears to the appropriate chief, the director or the board that an unjust hardship to the appellant will result from the execution or implementation of a chief's or director's order, permit or official action pending determination of the appeal, the appropriate chief, the director or the board, as the case may be, may grant a stay or suspension of such order, permit or official action and fix its terms. A decision shall be made on any request for a stay within five days of the date of receipt of the request for stay. The notice of appeal shall set forth the terms and
conditions of the order, permit or official action complained of and the grounds upon which the appeal is based. A copy of the notice of appeal shall be filed by the board with the appropriate chief or director within seven days after the notice of appeal is filed with the board.

(e) Within fourteen days after receipt of a copy of the notice of appeal, the appropriate chief or the director as the case may be, shall prepare and certify to the board a complete record of the proceedings out of which the appeal arises including all documents and correspondence in the applicable files relating to the matter in question. With the consent of the board and upon such terms and conditions as the board may prescribe, any person affected by the matter pending before the board may by petition intervene as a party appellant or appellee. In any appeal brought by a third party, the permittee or regulated entity shall be granted intervener status as a matter of right where issuance of a permit or permit status is the subject of the appeal. The board shall hear the appeal de novo, and evidence may be offered on behalf of the appellant, appellee and by any intervenors. The board may visit the site of the activity or proposed activity which is the subject of the hearing and take such additional evidence as it considers necessary: Provided, That all parties and intervenors are given notice of the visit and are given an opportunity to accompany the board. The appeal hearing shall be held at such location as may be approved by the board including Kanawha county, the county wherein the source, activity or facility involved is located or such other location as may be agreed to among the parties.

(f) Any such hearing shall be held within thirty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenors for good cause shown. The chief or the director, as appropriate, may be represented by counsel. If so represented they shall be represented by the attorney general or with the prior
written approval of the attorney general may employ counsel who shall be a special assistant attorney general. At any such hearing the appellant and any intervenor may represent themselves or be represented by an attorney-at-law admitted to practice before the supreme court of appeals.

(g) After such hearing and consideration of all the testimony, evidence and record in the case:

(1) The environmental quality board or the air quality board, as the case may be, shall make and enter a written order affirming, modifying or vacating the order, permit or official action of the chief or director, or shall make and enter such order as the chief or director should have entered, or shall make and enter an order approving or modifying the terms and conditions of any permit issued; and

(2) The surface mine board shall make and enter a written order affirming the decision appealed from if the board finds that the decision was lawful and reasonable, or if the board finds that the decision was not supported by substantial evidence in the record considered as a whole, it shall make and enter a written order reversing or modifying the decision of the director.

(h) In appeals of an order, permit or official action taken pursuant to articles three, six, eleven, twelve, thirteen, fifteen, chapter twenty-two of this code, the environmental quality board established in article three of this chapter, shall take into consideration, in determining its course of action in accordance with subsection (g) of this section, not only the factors which the appropriate chief or the director was authorized to consider in issuing an order, in granting or denying a permit, in fixing the terms and conditions of any permit, or in taking other official action, but also the economic feasibility of treating or controlling, or both, the discharge of solid waste, sewage, industrial wastes or other wastes involved.

(i) An order of a board shall be accompanied by
findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and any intervenors, and their attorneys of record, if any, and upon the appellee in person or by registered or certified mail.

(j) The board shall also cause a notice to be served with the copy of such order, which notice shall advise the appellant, the appellee and any intervenors of their right to judicial review, in accordance with the provisions of this chapter. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of this chapter.


(a) Parties to a hearing may petition a board to obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending hearing, subject to the procedural rules of the boards and the limitations contained herein.

(b) The following limited discovery may be commenced and obtained by any party to the hearing without leave of a board:

(1) Requests for disclosure of the identity of each person expected to be called as a witness at the hearing and, at a minimum, a statement setting forth with specificity the facts alleged, the anticipated testimony and the identity of any documents relied upon in support of the anticipated testimony of each witness and whether that witness will be called as an expert; and

(2) Requests to identify with reasonable particularity the issues which are the subject of the hearing.

(c) Any party may object to a request or manner of discovery authorized by this section provided the objection sets forth with particularity the grounds for the objection. A party may move the board to rule on
the propriety of the discovery or objection and request
the board to enter an order as the board deems
appropriate.

(d) Any party may seek, by motion, a protective order
from the discovery sought by another party and, if
required, the board may protect a party from unwar-
ranted discovery. Upon motion of a party or upon a
board's own motion, the board may enter such protective
order limiting discovery, which order shall not be
inconsistent with the standards for protective orders set
forth in the West Virginia rules of civil procedure.

(e) Upon motion of a party or upon a board's own
motion, the board may authorize or order any additional
discovery as may be appropriate or necessary to identify
or refine the issues which are the subject of the hearing.
Upon agreement of the parties, or upon order of a board,
the board may authorize or order the taking of the
deposition of any witness with information or knowledge
relevant to the subject matter of the hearing which
deposition may be noticed by subpoena or subpoena
duces tecum.

(f) Upon motion of a party or upon a board's own
motion, a board may hold a prehearing conference, as
soon as practicable after the commencement of an
appeal, which conference shall be for purposes of
promoting a fair, efficient and expeditious hearing
process. Following the conference, the board may enter
an order or take such other action as may be appropriate
with respect to discovery issues.

(g) For purposes of this section, in all cases where the
board is authorized or empowered to issue orders, a
member of the board, with the concurrence of a majority
of the board, may act on behalf of the board, the board
may act itself or through its clerk or hearing examiner,
as such person is authorized to do so by the board.

(h) Every request for discovery or response or
objection thereto made by a party shall be signed in the

(a) Any person or a chief or the director, as the case may be, adversely affected by an order made and entered by a board after an appeal hearing, held in accordance with the provisions of this chapter, is entitled to judicial review thereof. All of the provisions of section four, article five, chapter twenty-nine-a of this code apply to and govern the review with like effect as if the provisions of said section four were set forth in extenso in this section, with the modifications or exceptions set forth in this chapter.

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

(c) Legal counsel and services for a chief or the director in all appeal proceedings in the circuit court and in the supreme court of appeals of this state shall be provided by the attorney general or his or her assistants or by the prosecuting attorney of the county in which the appeal is taken, all without additional compensation, or with the prior written approval of the attorney general, a chief or the director may employ legal counsel.

§22B-1-10. Confidentiality.

With respect to any information obtained in the course of an appeal, all members of boards and all personnel employed thereby shall maintain confidentiality to the same extent required of the chief or director.
§22B-1-11. Conflict of interest.

In addition to the specific conflict of interest provisions set forth in this chapter, any member who has any financial interest in the outcome of a decision of the board shall not vote or act on any matter which shall directly affect the member's personal interests.

§22B-1-12. Savings provisions.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by a board in the performance of functions which are affected by the enactment of this chapter, and which are in effect on the date this chapter becomes effective, shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law.

(b) The provisions of this chapter do not affect any appeals, proceedings, including notices of proposed rule-making, or any application for any license, permit, certificate or financial assistance pending on the effective date of this chapter, before any of the boards. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded or revoked by the board within which jurisdiction to do so is vested, by a court of competent jurisdiction or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that the proceeding could have been discontinued or modified if this chapter had not been enacted.

(c) Orders and actions of a board in the exercise of functions amended by under this chapter are subject to
ARTICLE 2. AIR QUALITY BOARD.

§22B-2-1. Air quality board; composition; appointment and terms of members; vacancies.

(a) On and after the effective date of this article, the "air pollution control commission," heretofore created, shall continue in existence and hereafter shall be known as the "air quality board."

(b) The board shall be composed of seven members, including the commissioner of the bureau of public health and the commissioner of agriculture, or their designees, both of whom are members ex officio, and five other members, who shall be appointed by the governor with the advice and consent of the Senate. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each such member's terms ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. Two of the members shall be representative of industries engaged in business in this state, and three of the members shall be representative of the public at large.

(c) The appointed members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to
this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-2-2. Authority to receive money.

In addition to all other powers and duties of the air quality board, as prescribed in this chapter or elsewhere by law, the board has and may exercise the power and authority to receive any money as a result of the resolution of any case on appeal which shall be deposited in the state treasury to the credit of the office of air pollution education and environment fund provided for in section four, article five, chapter twenty-two of this code.


All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition for review shall be filed in the circuit court of Kanawha county; and

(2) As to all other cases, the petition shall be filed, in the circuit court of the county wherein the alleged statutory air pollution complained of originated or in Kanawha county upon agreement between the parties.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-1. Environmental quality board; composition and organization; appointment, qualifications, terms, vacancies.

(a) On and after the effective date of this article, the “water resources board,” heretofore created, shall continue in existence and hereafter shall be known as
the "environmental quality board."

(b) The board shall be composed of five members who shall be appointed by the governor with the advice and consent of the Senate. Not more than three members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. Individuals appointed to the board shall be persons who by reason of previous training and experience are knowledgeable in the husbandry of the state's water resources and with at least one member with experience in industrial pollution control.

(c) No member of the board shall receive or, during the two years next preceding the member of the board's appointment, shall have received a significant portion of the member of the board's income directly or indirectly from a national pollutant discharge elimination system permit holder or an applicant for a permit issued under any of the provisions of article eleven, chapter twenty-two of this code. For the purposes of this subsection: (1) the term "significant portion of the member of the board's income" means ten percent of gross personal income for a calendar year, except that it means fifty percent of gross personal income for a calendar year if the recipient is over sixty years of age and is receiving such portion pursuant to retirement, a pension or similar arrangement; (2) the term "income" includes retirement benefits, consultant fees and stock dividends; (3) income is not received "directly or indirectly" from "permit holders" or "applicants for a permit" where it is derived from mutual-fund payments or from other diversified investments with respect to which the recipient does not know the identity of the primary
sources of income; and (4) the terms "permit holders" and "applicants for a permit" do not include any university or college operated by this state or political subdivision of this state.

(d) The members of the board shall be appointed for overlapping terms of five years, except that the original appointments shall be for terms of one, two, three, four and five years, respectively. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-3-2. Authority of board; additional definitions.

(a) In addition to all other powers and duties of the environmental quality board, as prescribed in this chapter or elsewhere by law, the board has and may exercise the powers and authorities:

(1) To receive any money as a result of the resolution of any case on appeal which shall be deposited in the state treasury to the credit of the water quality management fund created pursuant to section ten, article eleven, chapter twenty-two of this code;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries and with affected groups and take such other action as may be appropriate in regard to its rule-making authority; and

(3) To encourage and conduct such studies and research relating to pollution control and abatement as a board may deem advisable and necessary in regard
(b) All the terms defined in section two, article eleven, chapter twenty-two of this code, are applicable to this article and have the meanings ascribed to them therein.

§22B-3-3. Judicial review.

All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, with the following modifications or exceptions:

(1) As to cases involving an order denying an application for a permit, or approving or modifying the terms and conditions of a permit, the petition shall be filed in the circuit court of Kanawha county;

(2) As to cases involving an order revoking or suspending a permit, the petition shall be filed in the circuit court of Kanawha county; and

(3) As to cases involving an order directing that any and all discharges or deposits of solid waste, sewage, industrial wastes or other wastes, or the effluent therefrom, determined to be causing pollution be stopped or prevented or else that remedial action be taken, the petition shall be filed in the circuit court of the county in which the establishment is located or in which the pollution occurs.

§22B-3-4. Environmental quality board rule-making authority.

(a) In order to carry out the purposes of this chapter and chapter twenty-two of this code, the board shall promulgate legislative rules setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall be such as to protect the public health and welfare, wildlife, fish and aquatic life, and the present and prospective future uses of such waters for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.
(b) No rule of the board may specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant.

(c) The board shall promulgate such legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code and the declaration of policy set forth in section two, article eleven, chapter twenty-two of this code.

ARTICLE 4. SURFACE MINE BOARD.

§22B-4-1. Appointment and organization of surface mine board.

(a) On and after the effective date of this article, the "reclamation board of review," heretofore created, shall continue in existence and hereafter shall be known as the "surface mine board."

(b) The board shall be composed of seven members who shall be appointed by the governor with the advice and consent of the Senate. Not more than four members of the board shall be of the same political party. Each appointed member of the board who is serving in such capacity on the effective date of this article shall continue to serve on the board until his or her term ends or he or she resigns or is otherwise unable to serve. As each member's term ends, or that member is unable to serve, a qualified successor shall be appointed by the governor with the advice and consent of the Senate. One of the appointees to such board shall be a person who, by reason of previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who by reason of training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of training and experience, can be classed as one capable and experienced in engineering. One of the appointees to such board shall be a person who, by
reason of training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person with significant experience in the advocacy of environmental protection. One of the appointees to such board shall be a person who represents the general public interest.

(c) During his or her tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member's appointment, a permit to conduct activity regulated by the division, under the provisions of article three or four, chapter twenty-two of this code, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, and the member classed as experienced in water pollution control or water conservation problems may receive significant financial compensation from regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received, within the preceding two years direct or indirect financial compensation. For purposes of this section, "significant direct or indirect financial compensation" means twenty percent of gross income for a calendar year received by the member, any member of his or her immediate family or the member's primary employer.

(d) The members of the board shall be appointed for terms of the same duration as their predecessor under the original appointment of two members appointed to serve a term of two years; two members appointed to serve a term of three years; two members to serve a term of four years; and, one member to serve a term of five years. Any member whose term expires may be reappointed by the governor. In the event a board member is unable to complete the term, the governor
shall appoint a person with similar qualification to complete the term. The successor of any board member appointed pursuant to this article must possess the qualification as prescribed herein. Each vacancy occurring in the office of a member of the board shall be filled by appointment within sixty days after such vacancy occurs.

§22B-4-2. Authority to receive money.

In addition to all other powers and duties of the surface mine board, as prescribed in this chapter or elsewhere by law, the board shall have and may exercise the power and authority to receive any money as a result of the resolution of any case on appeal which shall be deposited to the credit of the special reclamation fund created pursuant to section eleven, article three, chapter twenty-two of this code.

§22B-4-3. Judicial review.

All of the provisions of section nine, article one of this chapter apply to and govern such review with like effect as if the provisions of said section nine were set forth in extenso in this section, except the petition shall be filed in the circuit court of Kanawha county or the county in which the surface-mining operation is located.

CHAPTER 22C.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-1. Short title.

This article shall be known and cited as the “Water Development Authority Act.”

§22C-1-2. Declaration of policy and responsibility; purpose and intent of article; findings.

It is hereby declared to be the public policy of the state of West Virginia and a responsibility of the state of West Virginia, through the establishment, funding, operation and maintenance of water development projects, to maintain, preserve, protect, conserve and in all instances possible to improve the purity and quality of water within the state in order to (1) protect and
improve public health; (2) assure the fullest use and
enjoyment of such water by the public; (3) provide
suitable environment for the propagation and protection
of animal, bird, fish, aquatic and plant life, all of which
are essential to the health and well-being of the public;
and (4) provide water of the necessary quality and in the
amount needed for the development, maintenance and
expansion of, and to attract service industries and
businesses, agriculture, mining, manufacturing and
other types of businesses and industries.

To assist in the preservation, protection, improvement
and management of the purity and quality of the waters
of this state, to prevent or abate pollution of water
resources and to promote the health and welfare of
citizens of this state, it is the purpose and intent of the
Legislature in enacting this article to provide for the
necessary, dependable, effective and efficient purifica-
tion of water; the disposal of liquid and solid wastes
harmful to the public health and safety removed from
such water; to improve water and stream quality; and
to assist and cooperate with governmental agencies in
achieving all of the purposes set forth in this section.

The Legislature finds and hereby declares that the
responsibility of the state as outlined above cannot be
effectively met without the establishment, funding,
operation and maintenance of water development
projects as provided for in this article.

§22C-1-3. Definitions.

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

(1) "Authority" means the water development author-
ity provided for in section four of this article, the duties,
powers, responsibilities and functions of which are
specified in this article.

(2) "Beneficial use" means a use of water by a person
or by the general public that is consistent with the
public interest, health and welfare in utilizing the water
resources of this state, including, but not limited to,
domestic, agricultural, irrigation, industrial, manufac-
(3) "Board" means the water development authority board provided for in section four of this article, which shall manage and control the water development authority.

(4) "Bond" or "water development revenue bond" means a revenue bond or note issued by the water development authority to effect the intents and purposes of this article.

(5) "Construction" includes reconstruction, enlargement, improvement and providing furnishings or equipment.

(6) "Cost" means, as applied to water development projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights and interests required by the authority for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways; access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings, and equipment; all financing charges, and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to public water or wastewater facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the
acquisition or construction of the project; the financing
of such acquisition or construction, including the
amount authorized in the resolution of the authority
providing for the issuance of water development revenue
bonds to be paid into any special funds from the
proceeds of such bonds; and the financing of the placing
of any such project in operation. Any obligation or
expenses incurred by any governmental agency, with
the approval of the authority, for surveys, borings,
preparation of plans and specifications and other
engineering services in connection with the acquisition
or construction of a project are a part of the cost of such
project and shall be reimbursed out of the proceeds of
loans or water development revenue bonds as authorized
by the provisions of this article.

(7) “Establishment” means an industrial establish-
ment, mill, factory, tannery, paper or pulp mill, mine,
colliery, breaker or mineral processing operation,
quarry, refinery, well and each and every industry or
plant or works or activity in the operation or process of
which industrial wastes or other wastes are produced.

(8) “Governmental agency” means the state govern-
ment or any agency, department, division or unit
thereof; counties; municipalities; watershed improve-
ment districts; soil conservation districts; sanitary
districts; public service districts; drainage districts;
regional governmental authorities and any other
governmental agency, entity, political subdivision,
public corporation or agency having the authority to
acquire, construct or operate public water or waste-
water facilities; the United States government or any
agency, department, division or unit thereof; and any
agency, commission or authority established pursuant to
an interstate compact or agreement.

(9) “Industrial wastes” means any liquid, gaseous,
solid or other waste substance, or any combination
thereof, resulting from or incidental to any process of
industry, manufacturing, trade or business, or from or
incidental to the development, processing or recovery of
any natural resources; and the admixture with such
industrial wastes of sewage or other wastes, as defined
in this section, are also industrial wastes.

(10) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark and other wood debris and residues, sand, lime, cinders, ashes, offal, night soil, silt, oil, tar, dyestuffs, acids, chemicals, and all other materials or substances not sewage or industrial wastes which may cause or might reasonably be expected to cause or to contribute to the pollution of any of the waters of this state.

(11) "Owner" includes all persons, copartnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group or any other legal entity whatever.

(13) "Pollution" means (a) the discharge, release, escape, deposit or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes, or other wastes, of whatever kind or character, in or near any waters of the state, in such condition, manner or quantity, as does, will, or is likely to (1) contaminate or substantially contribute to the contamination of any of such waters, or (2) alter or substantially contribute to the alteration of the physical, chemical or biological properties of any of such waters, if such contamination or alteration, or the resulting contamination or alteration where a person only contributes thereto, is to such an extent as to make any of such waters (i) directly or indirectly harmful, detrimental or injurious to the public health, safety and welfare, or (ii) directly or
indirectly detrimental to existing animal, bird, fish, aquatic or plant life, or (iii) unsuitable for present or future domestic, commercial, industrial, agricultural, recreational, scenic or other legitimate uses; and also means (b) the discharge, release, escape, deposit, or disposition, directly or indirectly, of treated or untreated sewage, industrial wastes or other wastes, of whatever kind or character, in or near any waters of the state in such condition, manner or quantity, as does, will, or is likely to reduce the quality of the waters of the state below the standards established therefor by the United States or any department, agency, board or commission of this state authorized to establish such standards.

(14) “Project” or “water development project” means any public water or waste water facility, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the water development authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant or loan by, or through, the authority as provided in this article, including all buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interest which may be required for the operation of the project, but excluding all buildings and facilities used to produce electricity other than electricity for consumption by the authority in the operation and maintenance of the project.

(15) “Public roads” mean all public highways, roads and streets in this state, whether maintained by the state, county, municipality or other political subdivision.

(16) “Public utility facilities” means public utility plants or installations and includes tracks, pipes, mains, conduits, cables, wires, towers, poles and other equipment and appliances of any public utility.
(17) "Revenue" means any money or thing of value collected by, or paid to, the water development authority as rent, use or service fee or charge for use of, or in connection with, any water development project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the water development authority to governmental agencies to finance, in whole or in part, the acquisition or construction of any water development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(18) "Sewage" means water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface waters as may be present.

(19) "Water resources," "water" or "waters" means any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and includes, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells and watercourses.

(20) "Wastewater" means any water containing sewage, industrial wastes, or other wastes or contaminants derived from the prior use of such water, and includes, without limiting the generality of the foregoing, surface water of the type storm sewers are designed to collect and dispose of.

(21) "Wastewater facilities" means facilities for the purpose of treating, neutralizing, disposing of, stabilizing, cooling, segregating or holding wastewater, including, without limiting the generality of the foregoing, facilities for the treatment and disposal of sewage, industrial wastes, or other wastes, waste water, and the residue thereof; facilities for the temporary or permanent impoundment of wastewater, both surface and
underground; and sanitary sewers or other collection systems, whether on the surface or underground, designed to transport wastewater together with the equipment and furnishings thereof and their appurtenances and systems, whether on the surface or underground, including force mains and pumping facilities therefor.

(22) "Water facility" means all facilities, land and equipment used for the collection of water, both surface and underground, transportation of water, treatment of water and distribution of water all for the purpose of providing potable, sanitary water suitable for human consumption and use.

§22C-1-4. Water development authority; water development board; organization of authority and board; appointment of board members; their term of office, compensation and expenses; director of authority.

The water development authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority is controlled, managed and operated by the seven-member board known as the water development board. The director of the division of environmental protection, and the commissioner of the bureau of public health and the state officer or employee who in the judgment of the governor is most responsible for economic or community development are members ex officio of the board. The governor shall designate annually the member who is the state officer or employee most responsible for economic or community development. The other four members of the board are appointed by the governor, by and with the advice and consent of the Senate, for terms of two, three, four and six years, respectively. The successor of each such appointed member shall be appointed for a term of six
22 years in the same manner the original appointments
23 were made, except that any person appointed to fill a
24 vacancy occurring prior to the expiration of the term for
25 which his or her predecessor was appointed shall be
26 appointed only for the remainder of such term. Each
27 board member serves until the appointment and
28 qualification of his or her successor. No more than two
29 of the appointed board members shall at any one time
30 belong to the same political party. Appointed board
31 members may be reappointed to serve additional terms.
32
33 All members of the board shall be citizens of the state.
34 Each appointed member of the board, before entering
35 upon his or her duties, shall comply with the require-
36 ments of article one, chapter six of this code and give
37 bond in the sum of twenty-five thousand dollars in the
38 manner provided in article two, chapter six of this code.
39 The governor may remove any board member for cause
40 as provided in article six, chapter six of this code.
41
42 Annually the board shall elect one of its appointed
43 members as chair and another as vice-chair, and shall
44 appoint a secretary-treasurer, who need not be a
45 member of the board. Four members of the board is a
46 quorum and the affirmative vote of four members is
47 necessary for any action taken by vote of the board. No
48 vacancy in the membership of the board impairs the
49 rights of a quorum by such vote to exercise all the rights
50 and perform all the duties of the board and the
51 authority. The person appointed as secretary-treasurer,
52 including a board member if he or she is so appointed,
53 shall give bond in the sum of fifty thousand dollars in
54 the manner provided in article two, chapter six of this
55 code.
56
57 The director of the division of environmental protec-
58 tion, the commissioner of the bureau of public health
59 and the state officer or employee most responsible for
60 economic or community development shall not receive
61 any compensation for serving as board members. Each
62 of the four appointed members of the board shall be paid the expense reimbursement as is paid to members of the
63 the same compensation, and each
64 member of the board shall be paid
Legislature for their interim duties as recommended by
the citizens legislative compensation commission and
authorized by law for each day or portion thereof
engaged in the discharge of official duties. All such
expenses incurred by the board are payable solely from
funds of the authority or from funds appropriated for
such purpose by the Legislature and no liability or
obligation shall be incurred by the authority beyond the
extent to which moneys are available from funds of the
authority or from such appropriations.

There shall also be a director of the authority
appointed by the board.

§22C-1-5. Authority may construct, finance, maintain,
etc., water development projects; loans to
governmental agencies are subject to terms of loan agreements.

To accomplish the public policies and purposes and to
meet the responsibility of the state as set forth in this
article, the water development authority may initiate,
acquire, construct, maintain, repair and operate water
development projects or cause the same to be operated
pursuant to a lease, sublease or agreement with any
person or governmental agency; may make loans and
grants to governmental agencies for the acquisition or
construction of water development projects by such
governmental agencies, which loans may include
amounts to refinance debt issued for existing water
development projects of the governmental agency when
such refinancing is in conjunction with a loan for a new
water development project: Provided, That the amount
of the refinancing may not exceed fifty percent of the
loan to the governmental agency; and may issue water
development revenue bonds of this state, payable solely
from revenues, to pay the cost of, or finance, in whole
or in part, by loans to governmental agencies, such
projects. A water development project shall not be
undertaken unless it has been determined by the
authority to be consistent with any applicable compre-
hensive plan of water management approved by the
director of the division of environmental protection or
in the process of preparation by such director and to be
consistent with the standards set by the state environ-
mental quality board, for the waters of the state affected thereby. Any resolution of the authority providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the authority that such determinations have been made. A loan agreement shall be entered into between the authority and each governmental agency to which a loan is made for the acquisition or construction of a water development project, which loan agreement shall include without limitation the following provisions:

(1) The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;

(2) The specific purposes for which the proceeds of the loan shall be expended including the refinancing of existing water development project debt as provided above, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

(3) The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of such governmental agency under the loan agreement, increase, service charges from persons using said project, which service charges shall be pledged for the repayment of such loan together with all interest, fees and charges thereon and all other financial obligations of such governmental agency under the loan agreement; and

(4) The agreement of the governmental agency to comply with all applicable laws, rules and regulations issued by the authority or other state, federal and local bodies in regard to the construction, operation, maintenance and use of the project.

§22C-1-6. Powers, duties and responsibilities of authority generally.
The water development authority, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

(1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under sections nine, ten and sixteen of this article. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects, and, in accordance with the provisions of chapter twenty-nine-a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the
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(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water or wastewater facilities operated under permits issued pursuant to the provisions of article eleven, chapter twenty-two of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished,
be examined and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to section sixteen of this article is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents and other employees, who are covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water or wastewater facilities.
(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter and collect rentals and other charges for the use or services of any water development project as provided in this article, and charge and collect reasonable interest, fees and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

§22C-1-7. Power of authority to collect service charges and exercise other powers of governmental agencies in event of default; power to require governmental agencies to enforce their rights.

In order to ensure that the public purposes to be served by the authority may be properly carried out and in order to assure the timely payment to the authority of all sums due and owing under loan agreements with governmental agencies, as referred to in section five of this article, notwithstanding any provision to the contrary elsewhere contained in this code, in event of any default by a governmental agency under such a loan agreement, the authority has, and may, at its option, exercise the following rights and remedies in addition to the rights and remedies conferred by law or pursuant to said loan agreement:
(1) The authority may directly impose, in its own name and for its own benefit service charges determined by it to be necessary under the circumstances upon all users of the water development project to be acquired or constructed pursuant to such loan agreement, and proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(2) The authority may exercise, in its own name or in the name of and as agent for the governmental agency, all of the rights, authority, powers and remedies of the governmental agency with respect to the water development project or which may be conferred upon the governmental agency by statute, rule, regulation or judicial decision, including, without limitation, all rights and remedies with respect to users of such water development project.

(3) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by such governmental agency of all of the terms and conditions of such loan agreement including, without limitation, the adjustment and increase of service charges as required to repay the loan or otherwise satisfy the terms of such loan agreement, the enforcement and collection of such service charges and the enforcement by such governmental agency of all rights and remedies conferred by statute, rule, regulation or judicial decision.

§22C-1-8. Expenditure of funds for study and engineering of proposed projects.

With the approval and the consent of the board, either the director of the division of environmental protection or the commissioner of the bureau of public health, or both of them, shall expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed water development project and may use its engineering and other forces, including consulting engineers and sanitary engineers, for the purpose of effecting such study. All such expenses incurred by the director or commissioner prior to the
issuance of water development revenue bonds or notes under this article shall be paid by the director or commissioner and charged to the appropriate water development project and the director and commissioner shall keep proper records and accounts, showing the amounts so charged. Upon the sale of water development revenue bonds or notes for a water development project, the funds so expended by the director or commissioner, with the approval of the authority, in connection with such project, shall be repaid to the division of environmental protection or bureau of public health from the proceeds of such bonds or notes.

§22C-1-9. Authority empowered to issue water development revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The authority is hereby empowered to issue from time to time water development revenue bonds and notes of the state in such principal amounts as the authority deems necessary to pay the cost of or finance, in whole or in part, by loans to governmental agencies, one or more water development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects.

The authority may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of water development revenue refunding bonds by the state pursuant to the provisions of section twenty of this article. Except as may otherwise be expressly provided in this article or by the authority, every issue of its bonds or notes are obligations of the authority payable out of the revenues and reserves created for such purposes by the authority, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made and the revenues so
pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof.

All such bonds and notes shall have and are hereby declared to have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the authority, bear such date and mature at such time, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the authority may authorize. The bonds and notes of the authority may be sold by the authority, at public or private sale, at or not less than the price the authority determines. The bonds and notes shall be executed by the chair and vice-chair of the authority, both of whom may use facsimile signatures. The official seal of the authority or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the authority. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery and in case the seal of the authority has been changed after a facsimile has been imprinted on such bonds or notes such facsimile seal will continue to be sufficient for all
purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the authority to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the authority; a covenant to fix, alter and collect rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any water development project or any other assets of the authority; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; notes issued in anticipation of the issuance of bonds, the agreement of the authority to do all things necessary for the authorization, issuance and sale of such bonds in such amounts as may be necessary for the timely retirement of such notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent thereto and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the authority for operating, administrative or other expenses of the authority; securing any bonds or notes by a trust agreement; and
any other matters, of like or different character, which
in any way affect the security or protection of the bonds
or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes are less than the
minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chair of the authority shall certify,
on or before the first day of December of each year, the
amount of such deficiency to the governor of the state,
for inclusion, if the governor shall so elect, of the amount
of such deficiency in the budget to be submitted to the
next session of the Legislature for appropriation to the
authority to be pledged for payment of such bonds or
notes: Provided, That the Legislature is not required to
make any appropriation so requested, and the amount
of such deficiencies is not a debt or liability of the state.

Neither the members of the authority nor any person
executing the bonds or notes are liable personally on the
bonds or notes or be subject to any personal liability or
accountability by reason of the issuance thereof.

§22C-1-10. Trustee for bondholders; contents of trust
agreement.

In the discretion of the authority, any water develop-
ment revenue bonds or notes or water development
revenue refunding bonds issued by the authority under
this article may be secured by a trust agreement
between the authority and a corporate trustee, which
trustee may be any trust company or banking institution
having the powers of a trust company within or without
this state.

Any such trust agreement may pledge or assign
revenues of the authority to be received, but shall not
convey or mortgage any water development project or
any part thereof. Any such trust agreement or any
resolution providing for the issuance of such bonds or
notes may contain such provisions for protecting and
enforcing the rights and remedies of the bondholders or
noteholders as are reasonable and proper and not in
violation of law, including the provisions contained in
section nine of this article and covenants setting forth the duties of the authority in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation and insurance of the water development project the cost of which is paid, in whole or in part, from the proceeds of such bonds or notes, the rentals or other charges to be imposed for the use or services of any water development project, provisions with regard to the payment of the principal of and interest, charges and fees on loans made to governmental agencies from the proceeds of such bonds or notes, the custody, safeguarding, and application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such water development project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the authority deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the water development project. Any such trust agreement or resolution authorizing the issuance of water development revenue bonds may provide the method whereby the general administrative overhead expenses of the authority will be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

§22C-1-11. Trust agreements for related responsibilities; reimbursements.

Notwithstanding any other provision of this code to the contrary, when the authority acts in the capacity of
fiscal agent, authorizing authority or some other
capacity for any agency, department, instrumentality or
public corporation of the state which is issuing or
purchasing bonds or notes, the authority may, in the
exercise of its responsibilities, enter into trust agree-
ments with one or more trust companies or banking
institutions having trust powers, located within or
without the state, with respect to the receipt, invest-
ment, handling, payment and delivery of funds of such
agency, department, instrumentality or public corpora-
tion. The authority is entitled to reimbursement for the
expenses of the authority incident to performing such
services, including the fees and expenses of third parties
providing services to the authority with respect thereto,
from the proceeds of bonds or notes or of the revenues
derived by such agency, department, instrumentality or
public corporation.

§22C-1-12. Legal remedies of bondholders and trustees.

Any holder of water development revenue bonds
issued under the authority of this article or any of the
coupons appertaining thereto and the trustee under any
trust agreement, except to the extent the rights given
by this article may be restricted by the applicable
resolution or such trust agreement, may by civil action,
mandamus or other proceedings, protect and enforce
any rights granted under the laws of this state or
granted under this article, by the trust agreement or by
the resolution authorizing the issuance of such bonds,
and may enforce and compel the performance of all
duties required by this article, or by the trust agreement
or resolution, to be performed by the authority or any
officer thereof, including the fixing, charging and
collecting of sufficient rentals or other charges.

§22C-1-13. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.

Water development revenue bonds and notes and
water development revenue refunding bonds issued
under authority of this article and any coupons in
connection therewith are not a debt or a pledge of the
faith and credit or taxing power of this state or of any county, municipality or any other political subdivision of this state, and the holders or owners thereof have no right to have taxes levied by the Legislature or taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All such bonds and notes shall contain on the face thereof a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality or political subdivision thereof, but are payable solely from revenues and funds pledged for their payment.

All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. This article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§22C-1-14. Use of funds by authority; restrictions thereon.

All moneys, properties and assets acquired by the authority, whether as proceeds from the sale of water development revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of water development revenue bonds or in any trust agreement securing the same, or except when invested pursuant to section fifteen of this article, shall be kept in appropriate depositories and secured as
provided and required by law. The resolution authorizing the issuance of such bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any banking institution or trust company to which, such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution or trust agreement provide.

§22C-1-15. Investment of funds by authority.

The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

1. Direct obligations of or obligations guaranteed by the United States of America;
2. Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;
3. Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;
4. Certificates of deposit secured by obligations of the United States of America;
5. Direct obligations of or obligations guaranteed by the state of West Virginia;
6. Direct and general obligations of any other state within the territorial United States, to the payment of
the principal of and interest on which the full faith and
credit of such state is pledged: Provided, That at the
time of their purchase, such obligations are rated in
either of the two highest rating categories by a
nationally recognized bond-rating agency; and

(7) Any fixed interest bond, note or debenture of any
corporations organized and operating within the United
States: Provided, That such corporation shall have a
minimum net worth of fifteen million dollars and its
securities or its parent corporation's securities are listed
on one or more of the national stock exchanges:
Provided, however, That (i) such corporation has earned
a profit in eight of the preceding ten fiscal years as
reflected in its statements, and (ii) such corporation has
not defaulted in the payment of principal or interest on
any of its outstanding funded indebtedness during its
preceeding ten fiscal years, and (iii) the bonds, notes or
debentures of such corporation to be purchased are
rated "AA" or the equivalent thereof or better than
"AA" or the equivalent thereof at least two or more
nationally recognized rating services such as Standard
and Poor's, Dun & Bradstreet or Moody's.

§22C-1-16. Rentals and other revenues from water
development projects owned by the au-
thority; contracts and leases of the author-
ity; cooperation of other governmental
agencies; bonds of such agencies.

This section applies to any water development project
or projects which are owned, in whole or in part, by the
authority. The authority may charge, alter and collect
rentals or other charges for the use or services of any
water development project, and contract in the manner
provided by this section with one or more persons, one
or more governmental agencies, or any combination
thereof, desiring the use or services thereof, and fix the
terms, conditions, rentals or other charges for such use
or services. Such rentals or other charges are not subject
to supervision or regulation by any other authority,
department, commission, board, bureau or agency of the
state, and such contract may provide for acquisition by
such person or governmental agency of all or any part
of such water development project for such considera-
tion payable over the period of the contract or otherwise
as the authority in its sole discretion determines to be
appropriate, but subject to the provisions of any
resolution authorizing the issuance of water develop-
ment revenue bonds or notes or water development
revenue refunding bonds of the authority or any trust
agreement securing the same. Any governmental
agency which has power to construct, operate and
maintain public water or wastewater facilities may
enter into a contract or lease with the authority whereby
the use or services of any water development project of
the authority will be made available to such governmen-
tal agency and pay for such use or services such rentals
or other charges as may be agreed to by such govern-
mental agency and the authority.

Any governmental agency or agencies or combination
thereof may cooperate with the authority in the acqui-
sition or construction of a water development project
and shall enter into such agreements with the authority
as are necessary, with a view to effective cooperative
action and safeguarding of the respective interests of the
parties thereto, which agreements shall provide for such
contributions by the parties thereto in such proportion
as may be agreed upon and such other terms as may
be mutually satisfactory to the parties, including,
without limitation, the authorization of the construction
of the project by one of the parties acting as agent for
all of the parties and the ownership and control of the
project by the authority to the extent necessary or
appropriate for purposes of the issuance of water
development revenue bonds by the authority. Any
governmental agency may provide such contribution as
is required under such agreements by the appropriation
of money or, if authorized by a favorable vote of the
electors to issue bonds or notes or levy taxes or
assessments and issue notes or bonds in anticipation of
the collection thereof, by the issuance of bonds or notes
or by the levying of taxes or assessments and the
issuance of bonds or notes in anticipation of the
collection thereof, and by the payment of such approp-
riated money or the proceeds of such bonds or notes to
the authority pursuant to such agreements.

Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a public water or wastewater facility, whether or not the governmental agency at the time of such an election had the authority to pay the proceeds from such bonds or notes issued in anticipation thereof to the authority as provided in this section, may issue such bonds or notes in anticipation of the issuance thereof and pay the proceeds thereof to the authority in accordance with an agreement between such governmental agency and the authority: Provided, That the legislative authority of the governmental agency finds and determines that the water development project to be acquired or constructed by the authority in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

§22C-1-17. Maintenance, operation and repair of projects; reports by authority to governor and Legislature.

Each water development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority or if owned by a governmental agency, by such governmental agency, or the authority or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in
accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects.

§22C-1-18. Water development bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all water development revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§22C-1-19. Purchase and cancellation of notes or bonds.

The authority, subject to such agreements with noteholders or bondholders as may then exist, has the power, out of any funds available therefor, to purchase notes or bonds of the authority.

If the notes or bonds are then redeemable, the price of such purchase shall not exceed the redemption price then applicable plus accrued interest to the next interest payment date thereon. If the notes or bonds are not then redeemable, the price of such purchase shall not exceed the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date. Upon such purchase such notes or bonds shall be canceled.

§22C-1-20. Refunding bonds.
Any bonds issued hereunder and at any time outstanding may at any time and from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as it may deem necessary to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon; to provide additional funds for the purposes of the authority; and any premiums and commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded have matured or thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the redemption of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: Provided, That the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange prior to the date on which they are payable or, if they are called for redemption, prior to the date on which they are by their terms subject to redemption. Any refunding bonds issued under the authority of this article are payable from the revenues out of which the bonds to be refunded thereby were payable, or from other moneys or the principal of and interest on or other investment yield from, investments or proceeds of bonds or other applicable funds and moneys, including investments of proceeds of any refunding bonds, and are subject to the provisions contained in section nine of this article and shall be secured in accordance with the provisions of sections nine and ten of this article.

§22C-1-21. Exemption from taxation.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the operation and maintenance of water development projects are essential governmental functions, the authority is not required to pay any taxes or assessments upon any water development
§22C-1-22. Acquisition of property by authority — Acquisition by purchase; governmental agencies authorized to convey, etc., property.

The authority may acquire by purchase, whenever it deems such purchase expedient, any land, property, rights, rights-of-way, franchises, easements and other interests in lands it deems necessary or convenient for the construction and operation of any water development project upon such terms and at such prices it considers reasonable and can be agreed upon between the authority and the owner thereof, and take title thereto in the name of the state.

All governmental agencies, notwithstanding any contrary provision of law, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

§22C-1-23. Same — Acquisition under subdivision (10), section six of this article; property of public utilities and common carriers; relocation, restoration, etc., of highways and public utility facilities.
The authority may acquire, pursuant to subdivision ten, section six of this article, any land, rights, rights-of-way, franchises, easements or other property necessary or proper for the construction or the efficient operation of any water development project.

This section does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, unless provision is made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

When the authority finds it necessary to change the location of any portion of any public road, state highway, railroad or public utility facility in connection with the construction of a water development project, it shall cause the same to be reconstructed at such location as the unit or division of government having jurisdiction over such road, highway, railroad or public utility facility deems most favorable. Such construction shall be of substantially the same type and in as good condition as the original road, highway, railroad or public utility facility. The cost of such reconstruction, relocation or removal and any damage incurred in changing the location of any such road, highway, railroad or public utility facility shall be paid by the authority as a part of the cost of such water development project.

When the authority finds it necessary that any public highway or portion thereof be vacated by reason of the acquisition or construction of a water development project, the authority shall request the commissioner of the division of highways, in writing, to vacate such highway or portion thereof if the highway or portion thereof to be vacated is part of the state road system, or, if the highway or portion thereof to be vacated is under the jurisdiction of a county or a municipality, the authority shall request the governing body of such county or municipality to vacate such public road or portion thereof. The authority shall pay to the commis-
sioner of the division of highways or to the county or municipality, as the case may be, as part of the cost of such water development project, any amounts required to be deposited with any court in connection with proceedings for the determination of compensation and damages and all amounts of compensation and damages finally determined to be payable as a result of such vacation.

The authority may make reasonable rules for the installation, construction, maintenance, repair, renewal, relocation and removal of railroad or public utility facilities in, on, over or under any water development project. Whenever the authority determines that it is necessary that any such facilities installed or constructed in, on, over or under property of the authority pursuant to such rules be relocated, the railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the authority. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the authority as a part of the cost of such water development project. In case of any such relocation or removal of facilities, the railroad or public utility owning or operating them, and its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances in the new location in, on, over or under the property of the authority for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

§22C-1-24. Financial interest in contracts prohibited; penalty.

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the
authority and any governmental agency. If any officer,
member or employee of the authority has such financial
interest in a contract or sale of property prohibited
hereby, he or she is guilty of a misdemeanor, and, upon
conviction thereof, shall be fined not more than one
thousand dollars, or imprisoned in the county jail not
more than one year, or both fined and imprisoned.

§22C-1-25. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

§22C-1-26. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§22C-1-27. Authorized limit on borrowing.

The aggregate principal amount of bonds and notes issued by the authority shall not exceed two hundred million dollars outstanding at any one time: Provided, That in computing the total amount of bonds and notes which may at any one time be outstanding, the principal amount of any outstanding bonds or notes refunded or to be refunded either by application of the proceeds of the sale of any refunding bonds or notes of the authority or by exchange for any such refunding bonds or notes, shall be excluded.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-1. Definitions.
Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Authority" means the water development authority provided for in section four, article one of this chapter.

(b) "Cost" as applied to any project financed under the provisions of this article means the total of all costs incurred by a local government that are reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project including:

(1) Developmental, planning and feasibility studies, surveys, plans and specifications;

(2) Architectural, engineering, financial, legal or other special services;

(3) Acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements;

(4) Site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment;

(5) The reasonable costs of financing incurred by the local government in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, and the funding of accounts and reserves which the authority may require; and

(6) Other items that the division of environmental protection determines to be reasonable and necessary.

c) "Fund" means the state water pollution control revolving fund provided for in this article as it may be expanded or modified from time to time pursuant to the clean water act, as amended, the federal safe drinking
water act, as amended or by the executive order of the
 governor issued to comply with federal laws relating
 thereto.

(d) "Instrumentality" means the division of environ-
 mental protection or the agency designated by an order
 of the governor as having the primary responsibility for
 administering the fund pursuant to the federal clean
 water act, as amended, and the federal safe drinking
 water act, as amended, or other federal laws.

(e) "Local government" means any county, city, town,
 municipal corporation, authority, district, public service
district, commission or political subdivision in West
 Virginia.

(f) "Project" means any public water or wastewater
treatment facility located or to be located in or outside
this state by a local government and includes:

(1) Sewage and wastewater collection, treatment and
disposal facilities;

(2) Public water transportation, treatment and
distribution facilities;

(3) Drainage facilities and projects;

(4) Administrative, maintenance, storage and labor-
 atory facilities related to the facilities delineated in
 subdivisions (1), (2) and (3) of this subsection;

(5) Interests in land related to the facilities delineated
 in subdivisions (1), (2), (3) and (4) of this subsection; and

(5) Other projects allowable under federal law.

§22C-2-2. Designation of division of environmental
 protection as state instrumentality for
 purposes of capitalization agreements with
 the United States environmental protection
 agency.

The division of environmental protection shall act as
 the instrumentality that is empowered to enter into
 capitalization agreements with the United States
 environmental protection agency, to accept capitaliza-
 tion grant awards made under the federal clean water
act, as amended, the safe drinking water act, as amended, and other federal laws and to otherwise manage the fund provided for in this article in accordance with the requirements of said federal laws.

§22C-2-3. West Virginia water pollution control revolving fund; disbursement of fund moneys; administration of the fund.

(a) Under the direction of the division of environmental protection, the water development authority shall establish, administer and manage a permanent and perpetual fund, to be known as the “West Virginia Water Pollution Control Revolving Fund.” The fund shall be comprised of moneys appropriated to said fund by the Legislature, moneys allocated to the state by the federal government expressly for the purposes of establishing and maintaining a state water pollution control revolving fund, all receipts from loans made from the fund to local governments, all income from the investment of moneys held in the fund, and all other sums designated for deposits to the fund from any source, public or private. Moneys in the fund shall be used solely to make loans to local governments to finance or refinance the costs of a project: Provided, That moneys in the fund shall be utilized to defray the costs incurred by the authority and the division of environmental protection in administering the provisions of this article: Provided, however, That moneys in the fund shall be used to make grants for projects to the extent allowed or authorized by federal law.

(b) The director of the division of environmental protection, in consultation with the authority, shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code, to:

(1) Govern the disbursement of moneys from the fund; and

(2) Establish a state water pollution control revolving fund program to direct the distribution of grants or loans from the fund to particular local governments and establish the interest rates and repayment terms of such loans.
(c) In order to carry out the administration and management of the fund, the authority is authorized to employ officers, employees, agents, advisers and consultants, including attorneys, financial advisers, engineers, other technical advisers and public accountants and, notwithstanding any provisions of this code to the contrary, to determine their duties and compensation without the approval of any other agency or instrumentality.

(d) The authority shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of the authority.

(e) All moneys belonging to the fund shall be kept in appropriate depositories and secured in conformance with this code. Disbursements from the fund shall be authorized for payment by the director of the authority or the director's designee. Any depository or officer of such depository to which moneys of the fund are paid shall act as trustee of such moneys and shall hold and apply them solely for the purposes for which said moneys are provided under this article. Moneys in the fund shall not be commingled with other money of the authority. If not needed for immediate use or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations or securities which are considered lawful investments for public funds under this code.

§22C-2-4. Annual audit.

The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants, and the cost thereof may be defrayed as a part of the cost of construction of a project or as an administrative expense under the provisions of subsection (a), section three of this article.

§22C-2-5. Collection of money due to the fund.

In order to ensure the timely payment of all sums due and owing to the fund under a revolving fund loan agreement between the state and a local government,
and notwithstanding any provisions of this code to the contrary, the authority has and may, at its option, exercise the following rights and remedies in the event of any default by a local government under such a loan agreement:

(a) The authority may directly impose, in its own name and for its own benefit, service charges upon all users of a project funded by a loan distributed to a local government pursuant to this article, and may proceed directly to enforce and collect such service charges, together with all necessary costs of such enforcement and collection.

(b) The authority may exercise, in its own name or in the name of and as the agent for a particular local government, all of the rights, powers and remedies of the local government with respect to the project or which may be conferred upon the local government by statute, rule, regulation or judicial decision, including all rights and remedies with respect to users of the project funded by the loan distributed to that local government pursuant to this article.

(c) The authority may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a local government of all of the terms and conditions of the loan agreement between the state and that local government including:

(1) The adjustment of service charges as required to repay the loan or otherwise satisfy the terms of the loan agreement;

(2) The enforcement and collection of service charges;

and

(3) The enforcement by the local government of all rights and remedies conferred by statute, rule, regulation or judicial decision.

The rights and remedies enumerated in this section are in addition to rights and remedies conferred upon the authority by law or pursuant to the loan agreement.

§22C-2-6. State construction grants program established;
(a) The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to establish a state construction grants program that is designed to complement and supplement the state water pollution control revolving fund program established pursuant to subsection (b), section three of this article.

(b) The special fund designated "The West Virginia Construction Grants Fund" established in the state treasury is continued. The special fund shall be comprised of moneys appropriated to said fund by the Legislature, assessments on existing wastewater treatment facilities, and all other sums designated for deposit to the special fund from any source, public or private: Provided, That such assessments shall be made and collected in accordance with fee schedules to be established by legislative rules promulgated by the director of the division of environmental protection, in accordance with chapter twenty-nine-a of this code. Moneys in the special fund shall be used solely for the state construction grants program established under subsection (a) of this section: Provided, however, That moneys in the special fund may be utilized to defray the costs incurred by the division of environmental protection in administering the provisions of this section.

§22C-2-7. Environmental review of funded projects.

(a) The division of environmental protection shall conduct an environmental review on each project funded under this article. The director of the division of environmental protection shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the environmental review of funded projects: Provided, That said rules shall be consistent with the rules and regulations promulgated by the United States environmental protection agency pursuant to the federal clean water act, as amended.

(b) The director of the division of environmental protection is authorized to direct a local government, or its agent, to implement all measures that, in the
judgment of the director, are necessary in order to mitigate or prevent adverse impacts to the public health, safety or welfare or to the environment that may result from a project funded under this article. The director is further authorized to require all projects to comply with all other appropriate federal laws and regulations that are required of such projects under the federal clean water act, as amended.


The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other general, special or local law, the provisions of this article are controlling.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-1. Short title.

This article shall be known and cited as the "Solid Waste Management Board Act."

§22C-3-2. Legislative findings; declaration of policy and responsibility; purpose and intent of article.

The Legislature finds that uncontrolled, inadequately controlled and improper collection and disposal of solid waste (1) is a public nuisance and a clear and present danger to people; (2) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests harmful to the public health, safety and welfare; (3) constitutes a danger to livestock and domestic animals; (4) decreases the value of private and public property, causes pollution, blight and deterioration of the natural beauty and resources of the state and has adverse economic and social effects on the state and its citizens; and (5) results in the squandering of valuable nonrenewable and nonreplenishable resources contained in solid waste.

Further, the Legislature finds that governmental agencies in the state and the private sector do not have the financial and other resources needed to provide for
the proper collection and disposal of solid waste; that solid waste disposal sheds and projects must be established on a relatively large scale to be economically feasible and stable; and that proper solid waste collection and disposal at the lowest minimum cost can only be achieved through comprehensive solid waste management.

It is declared to be the public policy and a responsibility of this state to assist efforts of governmental agencies and the private sector to provide for the proper collection, disposal and recycling of solid waste and to solve and prevent the problems set forth in this article. It is the purpose and intent of the Legislature in enacting this article to provide for the necessary, dependable, effective and efficient collection, disposal and recycling of solid waste and to assist and cooperate with governmental agencies and the private sector in achieving all the purposes set forth in this article, and to encourage the recycling or extraction of recoverable resources from such solid waste.

The Legislature finds that the public policy and responsibility of the state as set forth in this section cannot be effectively attained without the funding, establishment, operation and maintenance of solid waste disposal projects as provided in this article.

§22C-3-3. Definitions.

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

2 (1) "Board" means the solid waste management board provided for in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

3 (2) "Bond" or "solid waste disposal revenue bond" means a revenue bond or note issued by the solid waste management board, previously known as the West Virginia resource recovery — solid waste disposal authority, to effect the intents and purposes of this article.

4 (3) "Construction" includes reconstruction, enlarge-
ment, improvement and providing furnishings or equipment for a solid waste disposal project.

(4) "Cost" means, as applied to solid waste disposal projects, the cost of their acquisition and construction; the cost of acquisition of all land, rights-of-way, property, rights, easements, franchise rights and interests required by the board for such acquisition and construction; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any land to which such buildings or structures may be moved; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment; all financing charges and interest prior to and during construction and for no more than eighteen months after completion of construction; the cost of all engineering services and all expenses of research and development with respect to solid waste facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such project; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of the project; the financing of such acquisition or construction, including the amount authorized in the resolution of the board providing for the issuance of solid waste disposal revenue bonds to be paid into any special funds from the proceeds of such bonds; and the financing of the placing of any such project in operation. Any obligation or expenses incurred by any governmental agency, with the approval of the board, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project are a part of the cost of such project and shall be reimbursed out of the proceeds of loans or solid waste disposal revenue bonds as authorized by the provisions of this article.
(5) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; watershed improvement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency having the authority to acquire, construct or operate solid waste facilities; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(6) "Industrial waste" means any solid waste substance resulting from or incidental to any process of industry, manufacturing, trade or business, or from or incidental to the development, processing or recovery of any natural resource.

(7) "Owner" includes all persons, partnerships or governmental agencies having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(8) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the state of West Virginia; governmental agency; political subdivision; county commission; municipality; industry; sanitary district; public service district; drainage district; soil conservation district; solid waste disposal shed district; partnership; trust; estate; individual; group of individuals acting individually or as a group; or any other legal entity.

(9) "Pollution" means the discharge, release, escape or deposit, directly or indirectly, of solid waste of whatever kind or character, on lands or in waters in the state in an uncontrolled, unregulated or unapproved manner.

(10) "Revenue" means any money or thing of value collected by, or paid to, the solid waste management board as rent, use fee, service charge or other charge
for use of, or in connection with, any solid waste disposal project, or as principal of or interest, charges or other fees on loans, or any other collections on loans made by the solid waste management board to governmental agencies to finance, in whole or in part, the acquisition or construction of any solid waste development project or projects, or other money or property which is received and may be expended for or pledged as revenues pursuant to this article.

(11) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven, chapter twenty-two of this code, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or by-product material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen, chapter twenty-two, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under articles two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.
(12) "Solid waste facility" means any system, facility, land, contiguous land, improvements on land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, materials recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(13) "Solid waste disposal project" or "project" means any solid waste facility, wastewater treatment plants, sewer treatment plants, water and sewer systems and connecting pipelines the acquisition or construction of which is authorized by the solid waste management board or any acquisition or construction which is financed, in whole or in part, from funds made available by grant or loan by, or through, the board as provided in this article, including all buildings and facilities which the board deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(14) "Solid waste disposal shed" or "shed" means a geographical area which the solid waste management board designates as provided in section nine of this article for solid waste management.

§22C-3-4. Solid waste management board; organization of board; appointment and qualification of board members; their term of office, compensation and expenses; director of board.

The solid waste management board is a governmental instrumentality of the state and a body corporate. The exercise by the board of the powers conferred on it by this article and the carrying out of its purposes and duties are essential governmental functions and are for a public purpose.

The board is composed of seven members. The secretary of the department of health and human resources and the director of the division of environmental protection, or their designees, are members ex officio of the board. The other five members of the board are
appointed by the governor, by and with the advice and
consent of the Senate, for terms of one, two, three, four
and five years, respectively. Two appointees shall be
persons having at least three years of professional
experience in solid waste management, civil engineering
or regional planning and three appointees shall be
representatives of the general public. The successor of
each such appointed member shall be appointed for a
term of five years in the same manner the original
appointments were made and so that the representation
on the board as set forth in this section is preserved,
except that any person appointed to fill a vacancy
occurring prior to the expiration of the term for which
his or her predecessor was appointed shall be appointed
only for the remainder of such term. Each board
member serves until the appointment and qualification
of his or her successor.

No more than three of the appointed board members
may at any one time be from the same congressional
district or belong to the same political party. No
appointed board member may be an officer or employee
of the United States or this state. Appointed board
members may be reappointed to serve additional terms.
All members of the board shall be citizens of the state.
Each appointed member of the board, before entering
upon his or her duties, shall comply with the require-
ments of article one, chapter six of this code and give
bond in the sum of twenty-five thousand dollars.
Appointed members may be removed from the board
only for the same causes as elective state officers may
be removed.

Annually the board shall elect one of its appointed
members as chair, another as vice chair and appoint a
secretary-treasurer, who need not be a member of the
board. Four members of the board are a quorum and
the affirmative vote of four members is necessary for
any action taken by vote of the board. No vacancy in the
membership of the board impairs the rights of a quorum
by such vote to exercise all the rights and perform all
the duties of the board. The person appointed as
secretary-treasurer shall give bond in the sum of fifty
thousand dollars. If a board member is appointed as secretary-treasurer, he or she shall give bond in the sum of twenty-five thousand dollars in addition to the bond required in the preceding paragraph.

The ex officio members of the board shall not receive any compensation for serving as a board member. Each of the five appointed members of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. All such compensation and expenses incurred by board members are payable solely from funds of the board or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the board beyond the extent to which moneys are available from funds of the board or from such appropriation.

The board shall meet at least four times annually and at any time upon the call of its chair or upon the request in writing to the chair of four board members.

The board shall appoint a director as its chief executive officer. The director shall have successfully completed an undergraduate education and, in addition, shall have two years of professional experience in solid waste management, civil engineering, public administration or regional planning.

§22C-3-5. Board to designate and establish disposal sheds; construction, maintenance, etc., of disposal projects; loan agreements; compliance with federal and state law.

To accomplish the public policy and purpose and to meet the responsibility of the state as set forth in this article, the solid waste management board shall designate and establish solid waste disposal sheds and it may initiate, acquire, construct, maintain, repair and operate solid waste disposal projects or cause the same to be operated pursuant to a lease, sublease or agreement
with any person or governmental agency; may make loans and grants to persons and to governmental agencies for the acquisition or construction of solid waste disposal projects by such persons and governmental agencies; and may issue solid waste disposal revenue bonds of this state, payable solely from revenues, to pay the cost of, or finance, in whole or in part, by loans to governmental agencies, such projects. A solid waste disposal project shall not be undertaken unless the board determines that the project is consistent with federal law, with its solid waste disposal shed plan, with the standards set by the state environmental quality board and the director of the division of environmental protection for any waters of the state which may be affected thereby, with the air quality standards set by the said director and with health standards set by the bureau of public health. Any resolution of the board providing for acquiring or constructing such projects or for making a loan or grant for such projects shall include a finding by the board that such determinations have been made. A loan agreement shall be entered into between the board and each governmental agency to which a loan is made for the acquisition or construction of a solid waste disposal project, which loan agreement shall include without limitation the following provisions:

1. The cost of such project, the amount of the loan, the terms of repayment of such loan and the security therefor, which may include, in addition to the pledge of all revenues from such project after a reasonable allowance for operation and maintenance expenses, a deed of trust or other appropriate security instrument creating a lien on such project;

2. The specific purposes for which the proceeds of the loan shall be expended, the procedures as to the disbursement of loan proceeds and the duties and obligations imposed upon the governmental agency in regard to the construction or acquisition of the project;

3. The agreement of the governmental agency to impose, collect, and, if required to repay the obligations of such governmental agency under the loan agreement, increase service charges from persons using said
project, which service charges shall be pledged for the
repayment of such loan together with all interest, fees
and charges thereon and all other financial obligations
of such governmental agency under the loan agreement;
(4) The agreement of the governmental agency to
comply with all applicable laws, rules and regulations
issued by the board or other state, federal and local
bodies in regard to the construction, operation, mainte-
nance and use of the project; and
(5) Such other provisions, terms or conditions as the
board may reasonably require.

The board shall comply with all of the provisions of
federal law and of article fifteen, chapter twenty-two of
this code and any rules promulgated thereunder which
pertain to solid waste collection and disposal.

§22C-3-6. Powers, duties and responsibilities of board
generally.

The solid waste management board may exercise all
powers necessary or appropriate to carry out and
effectuate its corporate purpose. The board may:
(1) Adopt, and from time to time, amend and repeal
bylaws necessary and proper for the regulation of its
affairs and the conduct of its business, and rules,
promulgated pursuant to the provisions of chapter
twenty-nine-a of this code, to implement and make
effective its powers and duties.
(2) Adopt an official seal.
(3) Maintain a principal office which shall be in
Kanawha county, and, if necessary, regional suboffices
at locations properly designated or provided.
(4) Sue and be sued in its own name and plead and
be impleaded in its own name, and particularly to
enforce the obligations and covenants made under
sections ten, eleven and sixteen of this article. Any
actions against the board shall be brought in the circuit
court of Kanawha county.
(5) Make loans and grants to persons and to govern-
mental agencies for the acquisition or construction of
solid waste disposal projects and adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, solid waste disposal projects, and, in accordance with chapter twenty-nine-a of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any solid waste disposal project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue solid waste disposal revenue bonds and notes and solid waste disposal revenue refunding bonds of the state, payable solely from revenues as provided in section ten of this article, unless the bonds are refunded by refunding bond, for the purpose of paying all or any part of the cost of acquiring, constructing, reconstructing, improving, furnishing, equipping, or repairing solid waste disposal projects, or making loans to persons or to governmental agencies for the acquisition, design or construction of solid waste disposal projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any solid waste facility operated under permits issued pursuant to the provisions of article fifteen, chapter twenty-two of this code and owned by any person or governmental agency. This article does
(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than two thousand dollars, the board shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids.

A contract or lease for the operation of a solid waste disposal project constructed and owned by the board or an agreement for cooperation in the acquisition or construction of a solid waste disposal project pursuant to section sixteen of this article is not subject to the foregoing requirements and the board may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project. The board may reject any and all bids. A bond with good and sufficient surety, approved by the board, is required of all contractors in an amount equal to at least fifty percent of the contract price, conditioned upon the faithful performance of the contract.
(12) Employ managers, superintendents, engineers, accountants, auditors and other employees, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of solid waste disposal revenue bonds or notes issued by the board, from revenues and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the governor, grants for or in aid of the construction of any solid waste disposal project or for research and development with respect to solid waste disposal projects and solid waste disposal sheds and receive and accept from any source aid or contributions of money, property, labor or other things of value, to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to solid waste disposal projects and solid waste disposal sheds.

(15) Purchase fire and extended coverage and liability insurance for any solid waste disposal project and for the principal office and suboffices of the board, insurance protecting the board and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the board may agree to provide under any resolution authorizing the issuance of solid waste disposal revenue bonds.

(16) Charge, alter and collect rentals and other charges for the use or services of any solid waste disposal project as provided in this article, and charge and collect reasonable interest, fees and other charges in connection with the making and servicing of loans to governmental agencies in furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys
received or to be received by the board to secure or to
pay the principal of and interest on the bonds and notes
issued by the board pursuant to this article.

(18) Do all acts necessary and proper to carry out the
powers expressly granted to the board in this article.

§22C-3-7. Development of state solid waste management
plan.

On or before the first day of January, one thousand
nine hundred ninety-three, the solid waste management
board shall prepare an overall state plan for the proper
management of solid waste: Provided, That such plan
shall be consistent with the findings and purposes of
article four of this chapter, article fifteen of chapter
twenty-two and article eleven of chapter twenty of this
code: Provided, however, That such plan shall incorpo-
rate the county or regional plans developed pursuant to
sections eight and twenty-four, article four of this
chapter, as amended: Provided further, That such plan
shall be updated every two years following its initial
preparation.

§22C-3-8. Power of board to collect service charges and
exercise other powers of governmental
agencies in event of default; power to re-
quire governmental agencies to enforce
their rights.

In order to ensure that the public purposes to be
served by the board may be properly carried out and
in order to assure the timely payment to the board of
all sums due and owing under loan agreements with
governmental agencies, as referred to in section five of
this article, notwithstanding any provision to the
contrary elsewhere contained in this code, in event of
any default by a governmental agency under such a loan
agreement, the board has, and may, at its option,
exercise the following rights and remedies in addition
to the rights and remedies conferred by law or pursuant
to said loan agreement:

(1) The board may directly impose, in its own name
and for its own benefit, service charges determined by
it to be necessary under the circumstances upon all
users of the solid waste disposal project to be acquired
or constructed pursuant to such loan agreement, and
proceed directly to enforce and collect such service
charges, together with all necessary costs of such
enforcement and collection.

(2) The board may exercise, in its own name or in the
name of and as agent for the governmental agency, all
of the rights, board, powers and remedies of the
governmental agency with respect to the solid waste
disposal project or which may be conferred upon the
governmental agency by statute, rule, regulation or
judicial decision, including, without limitation, all rights
and remedies with respect to users of such solid waste
disposal project.

(3) The board may, by civil action, mandamus or other
judicial or administrative proceeding, compel perfor-
mance by such governmental agency of all of the terms
and conditions of such loan agreement including,
without limitation, the adjustment and increase of
service charges as required to repay the loan or
otherwise satisfy the terms of such loan agreement, the
enforcement and collection of such service charges and
the enforcement by such governmental agency of all
rights and remedies conferred by statute, rule, regula-
tion or judicial decision.

§22C-3-9. Development and designation of solid waste
disposal sheds by board.

The board shall maintain the division of the state into
geographical areas for solid waste management which
shall be known as solid waste disposal sheds. The board
may, from time to time, modify the boundaries of such
sheds in a manner consistent with the provisions of this
section. Before it modifies the sheds, the board shall
consult with the affected municipalities and county or
regional solid waste authorities and obtain and evaluate
their opinions as to how many sheds there should be and
where their boundaries should be located. The board
shall then cause feasibility and cost studies to be made
in order for it to designate the solid waste disposal sheds
within each of which the most dependable, effective, efficient and economical solid waste disposal projects may be established. The sheds shall not overlap and shall cover the entire state.

The board shall designate the sheds so that:

(1) The goal of providing solid waste collection and disposal service to each household, business and industry in the state can reasonably be achieved.

(2) The total cost of solid waste collection and disposal and the cost of solid waste collection and disposal within each shed and per person can be kept as low as possible.

(3) Solid waste collection and disposal service, facilities and projects can be integrated in the most feasible, dependable, effective, efficient and economical manner.

(4) No county is located in more than one shed: Provided, That the board may divide a county among two or more sheds upon request of the appropriate county or regional solid waste authority.

The board, in modifying the boundaries of solid waste disposal sheds, is exempt from the provisions of chapter twenty-nine-a.

§22C-3-10. Board empowered to issue solid waste disposal revenue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

The board is hereby empowered to issue, from time to time, solid waste disposal revenue bonds and notes of the state in such principal amounts as the board deems necessary to pay the cost of or finance, in whole or in part, by loans to governmental agencies, one or more solid waste development projects, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder shall not exceed that amount capable of being serviced by revenues received from such projects, and shall not exceed in the aggregate the sum of one hundred million dollars: Provided, That up to twenty-five million dollars
may be issued for projects located or to be located in areas which lack adequate sewer or water service and the area is in need of such services to comply with federal requirements.

The board may, from time to time, issue renewal notes, issue bonds to pay such notes and whenever it deems refunding expedient, refund any bonds by the issuance of solid waste disposal revenue refunding bonds of the state. Except as may otherwise be expressly provided in this article or by the board, every issue of its bonds or notes are obligations of the board payable out of the revenues and reserves created for such purposes by the board, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made and the revenue so pledged and thereafter received by the board is immediately subject to the lien of such pledge without any physical delivery thereof or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the board irrespective of whether such parties have notice thereof. All such bonds and notes shall have all the qualities of negotiable instruments.

The bonds and notes shall be authorized by resolution of the board, bear such dates and mature at such times, in the case of any such note or any renewals thereof not exceeding five years from the date of issue of such original note, and in the case of any such bond not exceeding fifty years from the date of issue, as such resolution may provide. The bonds and notes shall bear interest at such rate, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be payable in such medium of payment, at such place and be subject to such terms of redemption as the board may authorize. The board may sell such bonds and notes at public or private sale, at the price the board determines. The bonds and notes shall be executed by the chair and vice chair of the
board, both of whom may use facsimile signatures. The official seal of the board or a facsimile thereof shall be affixed thereto or printed thereon and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached thereto shall bear the signature or facsimile signature of the chair of the board. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes or coupons ceases to be such officer before delivery of such bonds or notes, such signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until such delivery and, in case the seal of the board has been changed after a facsimile has been imprinted on such bonds or notes, such facsimile seal will continue to be sufficient for all purposes.

Any resolution authorizing any bonds or notes or any issue thereof may contain provisions (subject to such agreements with bondholders or noteholders as may then exist, which provisions shall be a part of the contract with the holders thereof) as to pledging all or any part of the revenues of the board to secure the payment of the bonds or notes or of any issue thereof; the use and disposition of revenues of the board; a covenant to fix, alter and collect rentals, fees, service charges and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide such reserves as may be required by the applicable resolution; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition thereof; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the resolution authorizing the issuance of the bonds or notes; the use, lease, sale or other disposition of any solid waste disposal project or any other assets of the board; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue thereof; agreement of the board to do all
things necessary for the authorization, issuance and sale
of bonds in such amounts as may be necessary for the
timely retirement of notes issued in anticipation of the
issuance of bonds; limitations on the issuance of
additional bonds or notes; the terms upon which
additional bonds or notes may be issued and secured; the
refunding of outstanding bonds or notes; the procedure,
if any, by which the terms of any contract with
bondholders or noteholders may be amended or abro-
gated, the holders of which must consent thereto, and
the manner in which such consent may be given;
limitations on the amount of moneys to be expended by
the board for operating, administrative or other
expenses of the board; and any other matters, of like or
different character, which in any way affect the security
or protection of the bonds or notes.

In the event that the sum of all reserves pledged to
the payment of such bonds or notes is less than the
minimum reserve requirements established in any
resolution or resolutions authorizing the issuance of such
bonds or notes, the chair of the board shall certify, on
or before the first day of December of each year, the
amount of such deficiency to the governor of the state,
for inclusion, if the governor shall so elect, of the amount
of such deficiency in the budget to be submitted to the
next session of the Legislature for appropriation to the
board to be pledged for payment of such bonds or notes:
Provided, That the Legislature is not required to make
any appropriation so requested, and the amount of such
deficiencies is not a debt or liability of the state.

Neither the members of the board nor any person
executing the bonds or notes are liable personally on the
bonds or notes or are subject to any personal liability
or accountability by reason of the issuance thereof.

§22C-3-11. Establishment of reserve funds, replacement
and improvement funds and sinking funds; fiscal agent; purposes for use of bond
proceeds; application of surplus.

(a) Before issuing any revenue bonds in accordance
with the provisions of this article, the board shall consult
with and be advised by the water development authority as to the feasibility and necessity of the proposed issuance of revenue bonds. Such consultation shall include, but not be limited to, the following subjects:

(1) The relationship of the proposed issuance of revenue bonds to the statutory debt limitation provided for in section ten of this article;

(2) The degree to which the proceeds will be used for capital improvements in the form of real or personal property;

(3) The extent to which the proposed use of proceeds coincides with the purposes of this article;

(4) A weighing of the public benefit to be derived from the issuance as opposed to any private gain; and

(5) The sufficiency of projected revenues available to the board to pay the interest on indebtedness as it falls due, to constitute a sinking fund for the payment thereof at maturity, or to discharge the principal within a prescribed period of time.

(b) Prior to issuing revenue bonds under the provisions of this article, the board shall enter into agreements satisfactory to the water development authority with regard to the selection of all consultants, advisors and other experts to be employed in connection with the issuance of such bonds and the fees and expenses to be charged by such persons, and to establish any necessary reserve funds and replacement and improvement funds, all such funds to be administered by the water development authority, and, so long as any such bonds remain outstanding, to establish and maintain a sinking fund or funds to retire such bonds and pay the interest thereon as the same may become due. The amounts in any such sinking fund, as and when so set apart by the board, shall be remitted to the water development authority at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by the water development authority, as agent for the board, in a manner consistent with the provisions of this article and with the resolution pursuant to which the
bonds have been issued. The water development authority shall act as fiscal agent for the administration of any sinking fund and reserve fund established under each resolution authorizing the issuance of revenue bonds pursuant to the provisions of this article, and shall invest all funds not required for immediate disbursement in the same manner as funds are invested pursuant to the provisions of section fifteen, article one of this chapter.

(c) Notwithstanding any other provision of this article to the contrary, no revenue bonds shall be issued, nor the proceeds thereof expended or distributed, pursuant to the provisions of this article, without the prior approval of the water development authority. Upon such approval, the proceeds of revenue bonds shall be used solely for the following purposes:

(1) To pay the cost of acquiring, constructing, reconstructing, enlarging, improving, furnishing, equipping or repairing solid waste disposal projects;

(2) To make loans to persons or to governmental agencies for the acquisition, design and construction of solid waste disposal projects, taking such collateral security for any such loans as may be approved by the water development authority; and

(3) To pay the costs and expenses incidental to or necessary for the issuance of such bonds.

(d) If the proceeds of revenue bonds issued for any solid waste disposal project exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used by the fiscal agent for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but not at a price exceeding the price at which any of such bonds is in the same year redeemable, as fixed by the board in its said resolution, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

§22C-3-12. Legal remedies of bondholders.

1 Any holder of solid waste disposal revenue bonds
issued under the authority of this article or any of the
coupons appertaining thereto, except to the extent the
rights given by this article may be restricted by the
applicable resolution, may by civil action, mandamus or
other proceeding, protect and enforce any rights
granted under the laws of this state or granted under
this article, by the resolution authorizing the issuance
of such bonds, and may enforce and compel the perform-
ance of all duties required by this article, or by the
resolution, to be performed by the board or any officer
or employee thereof, including the fixing, charging and
collecting of sufficient rentals, fees, service charges or
other charges.

§22C-3-13. Bonds and notes not debt of state, county,
municipality or of any political subdivision;
expenses incurred pursuant to article.

Solid waste disposal revenue bonds and notes and solid
waste disposal revenue refunding bonds issued under
authority of this article and any coupons in connection
therewith are not a debt or a pledge of the faith and
credit or taxing power of this state or of any county,
municipality or any other political subdivision of this
state, and the holders or owners thereof have no right
to have taxes levied by the Legislature or taxing
authority of any county, municipality or any other
political subdivision of this state for the payment of the
principal thereof or interest thereon, but such bonds and
notes are payable solely from the revenues and funds
pledged for their payment as authorized by this article
unless the notes are issued in anticipation of the issuance
of bonds or the bonds are refunded by refunding bonds
issued under authority of this article, which bonds or
refunding bonds are payable solely from revenues and
funds pledged for their payment as authorized by this
article. All such bonds and notes shall contain on the
face thereof a statement to the effect that the bonds or
notes, as to both principal and interest, are not debts of
the state or any county, municipality or political
subdivision thereof, but are payable solely from re-
venues and funds pledged for their payment.

All expenses incurred in carrying out the provisions
of this article are payable solely from funds provided under authority of this article. This article does not authorize the board to incur indebtedness or liability on behalf of or payable by the state or any county, municipality or political subdivision thereof.

§22C-3-14. Use of funds, properties, etc., by board; restrictions thereon.

1. All moneys, properties and assets acquired by the board, whether as proceeds from the sale of solid waste disposal revenue bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds. Such moneys, except as otherwise provided in any resolution authorizing the issuance of solid waste disposal revenue bonds or except when invested, shall be kept in appropriate depositories and secured as provided and required by law. The resolution authorizing the issuance of such bonds of any issue shall provide that any officer to whom such moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and such resolution provide.

§22C-3-15. Audit of funds disbursed by the board and recipients thereof.

1. Beginning in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, and every second fiscal year thereafter, the Legislature shall cause to be performed a post audit and a performance audit for the intervening two-year period of the recipients of any grant or loan provided by the solid waste management board. The audit shall cover the disbursement of such loans or grants provided pursuant to section thirty, article four of this chapter, the use of such loans or grants by the recipient as well as all other appropriate subject matter.

§22C-3-16. Rentals, fees, service charges and other revenues from solid waste disposal projects; contracts and leases of board; coop-
eration of other governmental agencies; bonds of such agencies.

This section applies to any solid waste disposal project or projects which are owned, in whole or in part, by the board.

The board may charge, alter and collect rentals, fees, service charges or other charges for the use or services of any solid waste disposal project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services thereof, and fix the terms, conditions, rentals, fees, service charges or other charges for such use or services. Such rentals, fees, service charges or other charges are not subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, and such contract may provide for acquisition by such person or governmental agency of all or any part of such solid waste disposal project for such consideration payable over the period of the contract or otherwise as the board in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of solid waste disposal revenue bonds or notes or solid waste disposal revenue refunding bonds of the board.

Any governmental agency which has power to construct, operate and maintain solid waste disposal facilities may enter into a contract or lease with the board whereby the use or services of any solid waste disposal project of the board will be made available to such governmental agency and pay for such use or services such rentals, fees, service charges or other charges as may be agreed to by such governmental agency and the board.

Any governmental agency or agencies or combination thereof may cooperate with the board in the acquisition or construction of a solid waste disposal project and shall enter into such agreements with the board as are necessary, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto, which agreements shall provide for such contributions by the parties thereto in such proportion.
as may be agreed upon and such other terms as may
be mutually satisfactory to the parties, including,
without limitation, the authorization of the construction
of the project by one of the parties acting as agent for
all of the parties and the ownership and control of the
project by the board to the extent necessary or approp-
riate for purposes of the issuance of solid waste disposal
revenue bonds by the board. Any governmental agency
may provide such contribution as is required under such
agreements by the appropriation of money or, if
authorized by a favorable vote of the electors to issue
bonds or notes or levy taxes or assessments and issue
notes or bonds in anticipation of the collection thereof,
by the issuance of bonds or notes or by the levying of
taxes or assessments and the issuance of bonds or notes
in anticipation of the collection thereof, and by the
payment of such appropriated money or the proceeds of
such bonds or notes to the board pursuant to such
agreements.

Any governmental agency, pursuant to a favorable
vote of the electors in an election held for the purpose
of issuing bonds to provide funds to acquire, construct
or equip, or provide real estate and interests in real
estate for a solid waste disposal project, whether or not
the governmental agency at the time of such election
had the board to pay the proceeds from such bonds or
notes issued in anticipation thereof to the board as
provided in this section, may issue such bonds or notes
in anticipation of the issuance thereof and pay the
proceeds thereof to the board in accordance with an
agreement between such governmental agency and the
board: Provided, That the legislative board of the
governmental agency finds and determines that the
solid waste disposal project to be acquired or con-
structed by the board in cooperation with such govern-
mental agency will serve the same public purpose and
meet substantially the same public need as the project
otherwise proposed to be acquired or constructed by the
governmental agency with the proceeds of such bonds
or notes.

§22C-3-17. Maintenance, operation and repair of pro-
jects; repair of damaged property; reports by board to governor and Legislature.

Each solid waste development project, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the board or if owned by a governmental agency, by such governmental agency, or the board or such governmental agency shall cause the same to be maintained and kept in good condition and repair. Each such project owned by the board shall be operated by such operating employees as the board employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

As soon as possible after the close of each fiscal year, the board shall make an annual report of its activities for the preceding fiscal year to the governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the board's operations during the preceding fiscal year. The board shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operation of its projects. A report of the audit shall be submitted to the governor and the Legislature.

§22C-3-18. Solid waste disposal revenue bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code notwithstanding, all solid waste disposal revenue bonds issued pursuant to this article are lawful investments for the West Virginia state board of investments and are also lawful investments for financial institutions as defined in section two, article one, chapter thirty-one-a of this code, and for
insurance companies.

§22C-3-19. Exemption from taxation.

The board is not required to pay any taxes or assessments upon any solid waste disposal project or upon any property acquired or used by the board or upon the income therefrom. Bonds and notes issued by the board and all interest and income thereon are exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes.

§22C-3-20. Governmental agencies authorized to convey property.

All governmental agencies, notwithstanding any provision of law to the contrary, may lease, lend, grant or convey to the board, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair and without the necessity for an advertisement, auction, order of court or other action or formality, other than the regular and formal action of the governmental agency concerned, any real property or interests therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the board, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

§22C-3-21. Financial interest in contracts, projects, etc., prohibited; gratuities prohibited; penalty.

No officer, member or employee of the board may be financially interested, directly or indirectly, in any contract of any person with the board, or in the sale of any property, real or personal, to or by the board. This section does not apply to contracts or purchases of property, real or personal, between the board and any governmental agency.

No officer, member or employee of the board may have or acquire any financial interest, either direct or indirect, in any project or activity of the board or in any services or material to be used or furnished in connec-
tion with any project or activity of the board. If an
officer, member or employee of the board has any such
interest at the time he or she becomes an officer,
member or employee of the board, he or she shall
disclose and divest himself or herself of it. Failure to do
so is cause for dismissal from the position he or she holds
with the authority.

This section does not apply in instances where a
member of the board who is a contract solid waste
hauler either seeks or has a financial interest, direct or
indirect, in any project or activity of the board or in any
services or material to be used or furnished in connec-
tion with any project or activity of the board: Provided,
That that member shall fully disclose orally and in
writing to the board the nature and extent of any
interest, prior to any vote by the board which involves
his or her interest, withdraw from any deliberation or
discussion by the board of matters involving his or her
interest, and refrain from voting on any matter which
directly or indirectly affects him or her.

No officer, member or employee of the board may
accept a gratuity from any person doing business with
the board or from any person for the purpose of gaining
favor with the board.

Any officer, member or employee of the board who
has any financial interest prohibited by this section or
who fails to comply with its provisions is guilty of a
misdemeanor, and, upon conviction thereof, shall be
fined not more than one thousand dollars, or imprisoned
in the county jail not more than one year, or both fined
and imprisoned.

§22C-3-22. Conduct of proceedings of board.

The board shall comply with all of the requirements
in article nine-a, chapter six of this code.

§22C-3-23. Regulation of solid waste collectors and
haulers to continue under public service
commission; bringing about their com-
pliance with solid waste disposal shed plan
and solid waste disposal projects; giving
testimony at commission hearings.
Solid waste collectors and haulers who are "common carriers by motor vehicle," as defined in section two, article one, chapter twenty-four-a of this code, shall continue to be regulated by the public service commission in accordance with the provisions of chapter twenty-four-a and rules promulgated thereunder. Nothing in this article gives the board any power or right to regulate such solid waste collectors and haulers in any manner, but the public service commission, when it issues a new certificate of convenience and necessity, or when it alters or adjusts the provisions of any existing certificate of convenience and necessity, or when it approves the assignment or transfer of any certificate of convenience and necessity, shall consult with the board regarding what action it could take which would most likely further the implementation of the board's solid waste disposal shed plan and solid waste disposal projects and shall take any reasonable action that will lead to or bring about compliance of such waste collectors and haulers with such plan and projects.

At any hearing conducted by the public service commission pertaining to solid waste collectors and haulers on any of these matters, any member of the board, the director or an employee of the board designated by the director may appear before the commission and present evidence.

§22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

The provisions of this article are complementary to those contained in article twenty-four, chapter seventeen of this code, and do not alter or diminish the authority of any enforcement agency, as defined in section two thereof, to collect and dispose of abandoned household appliances and motor vehicles, inoperative household appliances and junked motor vehicles and parts thereof, including tires. The board and such enforcement agencies shall cooperate fully with each other in collecting and disposing of such solid waste.

§22C-3-25. Liberal construction of article.
ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-1. Legislative findings and purposes.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the state of West Virginia results in:

1. A public nuisance and a clear and present danger to the citizens of West Virginia;
2. The degradation of the state's environmental quality including both surface and groundwaters which provide essential and irreplaceable sources of domestic and industrial water supplies;
3. Provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare;
4. Decreases public and private property values and results in the blight and deterioration of the natural beauty of the state;
5. Has adverse social and economic effects on the state and its citizens; and
6. Results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the state of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that other states of these United States of America have imposed stringent standards for the proper collection and disposal of solid waste and that the relative lack of such standards and enforcement for such activities in West Virginia has resulted in the importation and disposal into the state...
of increasingly large amounts of infectious, dangerous and undesirable solid waste and hazardous waste from other states by persons and firms who wish to avoid the costs and requirements for proper, effective and safe disposal of such wastes in the states of origin.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans. It is the further purpose of the Legislature to restrict and regulate persons and firms from exploiting and endangering the public health and welfare of the state by disposing of solid wastes and other dangerous materials which would not be accepted for disposal in the location where such wastes or materials were generated.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

(1) Source reduction. — This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste, and similar activities.

(2) Recycling, reuse and materials recovery. — This involves separating and recovering valuable materials from the waste stream, composting food and yard waste, and marketing of recyclables.

(3) Landfilling. — To the maximum extent possible,
this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land use conflicts engendered by these proposed facilities. The Legislature also finds that such local land use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decision-making process and the land use values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.

§22C-4-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article, the terms:

(a) “Approved solid waste facility” means a commercial solid waste facility or practice which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

(b) “Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by
sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and does not include land upon which reused or recycles materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(c) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(d) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "Class B facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) "Compliance order" means an administrative order issued pursuant to section ten, article fifteen, chapter
twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.

(g) “Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(h) “Person” means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the state of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(i) “Sludge” means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(j) “Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste
either identified or listed under article eighteen, chapter twenty-two of this code, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under articles two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(k) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

(l) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section nine, article three of this chapter.

(m) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

(n) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(o) "Incineration technologies" means any technology that uses controlled flame combustion to thermally
break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

(p) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(q) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

(a) Each and every county solid waste authority authorized and created by the county commission of any county pursuant to former article sixteen, chapter seven of this code is hereby abolished on and after the first day of January, one thousand nine hundred eighty-nine. On and after the first day of January, one thousand nine hundred eighty-nine, a new county solid waste authority is hereby created and established as a public agency in every county of the state and is the successor to each county solid waste authority which may have been created by the county commission: Provided, That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors is comprised of five members who are appointed as follows: One by the director of the division of environmental protection, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the public
service commission. The members of the board are appointed for terms of four years for which the initial shall start on the first day of July, one thousand nine hundred eighty-eight: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.

(a) On and after the first day of January, one thousand nine hundred eighty-nine, any two or more counties within the same solid waste shed and with the approval of the solid waste management board, may establish a regional solid waste authority. Such a regional solid waste authority is a public agency and is the successor to any county solid waste authority existing on the date of said approval by the solid waste management board. The solid waste management board may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority are appointed as follows: One by the director of the division of environmental protection, two by the county commission of each county participating therein, one by the board of supervisors for each soil conservation district in which a county of the region is situated,
one by the chairman of the public service commission
and two municipal representatives from each county
having one or more participating municipality to be
selected by the mayors of the participating municipality
from each such county. The members of the board are
appointed for terms of four years for which the initial
terms start on the first day of July, one thousand nine
hundred eighty-eight: Provided, That the members
appointed by the county commission shall be appointed
to initial terms of two and four years, respectively, and
to terms of four years after the expiration of each such
initial term. The members of the board shall receive no
compensation for their service thereon but shall be
reimbursed their actual expenses incurred in the
discharge of their duties. Vacancies in the office of
member of the board of directors shall be filled for the
balance of the remaining term by the appropriate
appointing authority within sixty days after such
vacancy occurs. No member who has any financial
interest in the collection, transportation, processing,
recycling or the disposal of refuse, garbage, solid waste
or hazardous waste shall vote or act on any matter
which directly affects the member's personal interests.

§22C-4-5. Authorities as successor to county commissions
and former county solid waste authorities.

The county and regional solid waste authorities
created herein, as the case may be, are the successors
to the county commissions of each county, or the solid
waste authority previously created by said commission
and abolished as of the first day of January, one
thousand nine hundred eighty-nine, by this article, in
the ownership, operation and maintenance of such
dumps, landfills and other solid waste facilities, solid
waste collection services and litter and solid waste
control programs. The county commission of each
county, or the solid waste authority thereof, shall, on the
first day of January, one thousand nine hundred eighty-nine, transfer all ownership, operation, control and other
rights, title and interests in such solid waste facilities,
services and programs, and the properties, funds,
appropriations and contracts related thereto to the
§22C-4-6. Election by county commission to assume powers and duties of the county solid waste authority.

Notwithstanding any provision of this article, any county commission which, on the first day of July, one thousand nine hundred eighty-eight, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article fifteen, chapter twenty-two of this code, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to the first day of October, one thousand nine hundred eighty-nine, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the solid waste management board. Thirty days after entry of said order by the county commission the county solid waste authority ceases to exist and the county commission assumes all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter or chapter twenty-two of this code.

§22C-4-7. Management of authority vested in board of directors; expenses paid by county commissions, procedure.

(a) The management and control of the authority, its property, operations and affairs of any nature is vested in and governed by the board of directors.

(b) The expenses of any county solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, in the development of the litter and solid waste control plan under section eight of this article and to provide solid waste collection and disposal services under this article shall be paid by the county commission from the general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds received by the authority from other
The county commission has the authority to determine the amount to be allocated annually to the authority.

(c) The expenses of any regional solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, or for the development of the litter and solid waste control plan under section eight of this article, or to provide solid waste collection and disposal services under this article shall be paid by the county commissions of each participating county from general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds from other sources received by the authority. Each county participating in the regional solid waste authority shall pay a pro rata share of such expenses based upon the population of said county in the most recent decennial census conducted by the United States Census Bureau. Prior to any county becoming liable for any expenses of the authority under this subsection, the authority's annual budget must first be approved by the solid waste management board.

(d) An organizational meeting of each board of directors shall be held as soon as practicable at which time a chair and vice chair shall be elected from among the members of the board to serve a term of one year after which such officers shall be elected annually. The board of directors shall also appoint a secretary-treasurer, who need not be a member of the board of directors, and who shall give bond in a sum determined adequate to protect the interests of the authority by the director of the division of environmental protection. The board shall meet at such times and places as it or the chair may determine. It is the duty of the chair to call a meeting of the board upon the written request of a majority of the members thereof. The board shall maintain an accurate record and minutes of all its proceedings and is subject to the provisions of article one, chapter twenty-nine-b of this code, the freedom of information act and article nine-a, chapter six of this code, open governmental proceedings. A majority of the board is a quorum for the transaction of business.
§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

(a) Each county and regional solid waste authority is required to develop a comprehensive litter and solid waste control plan for its geographic area and to submit said plan to the solid waste management board on or before the first day of July, one thousand nine hundred ninety-one. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by the thirty-first day of March, one thousand nine hundred ninety-one. The comments received by the county or regional solid waste authority at public hearings, two of which are required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the public service commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of
garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the disposal of solid wastes which are not generated by sources situated within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the division of highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the county jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.
(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section is subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before the first day of July, one thousand nine hundred ninety-two: Provided, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

§22C-4-9. Assistance to county or regional solid waste authorities by the solid waste management board, division of natural resources, division of environmental protection, bureau of public health and the attorney general.

(a) The division of natural resources, the division of environmental protection, the solid waste management board, and the bureau of public health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The attorney general shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and appropriations available for such purposes, or with the written approval of the attorney general, said authority may employ counsel to represent it.

(b) The solid waste management board shall provide assistance to the county or regional solid waste author-
§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the public service commission to file report.

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at approved solid waste facilities or in any other lawful manner. The director of the division of environmental protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars shall be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid.

(b) The solid waste management board in consultation and collaboration with the public service commission shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the governor, the president of the Senate and the speaker of the House of Delegates.

(c) The public service commission in consultation and collaboration with the division of human services shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their
ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the governor, the president of the Senate and the speaker of the House of Delegates.

§22C-4-11. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.

Upon approval of the litter and solid waste control plan by the solid waste management board, the county or regional solid waste authority may acquire, by purchase, lease, gift or otherwise, land for the establishment of solid waste facilities and is authorized to construct, operate, maintain and contract for the operation of such facilities. The authority may pay for lease or acquisition of such lands and the construction, operation and maintenance of such solid waste facilities from such fees, grants, financing by the solid waste program of the division of environmental protection or funds from other sources as may be available to the authority. The authority may prohibit the deposit of any solid waste in such solid waste facilities owned, leased or operated by the authority which have originated from sources outside the geographic limits of the county or region. The authority board of directors shall establish and charge reasonable fees for the use of such facilities operated by the authority.

§22C-4-12. Bonds and notes.

For constructing or acquiring any solid waste facilities for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extension thereto, and also for reimbursing or paying the costs and expenses of creating the authority, if any, the board of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds or
notes of such authority, payable from the revenues
derived from the operation of the solid waste facilities
under control of the authority or from such other funds
as are available to the authority for such purpose. Such
bonds or notes may be issued in one or more series, may
bear such date or dates, may mature at such time or
times not exceed forty years from their respective dates,
may bear interest at such rate or rates, payable at such
times, may be in such form, may carry such registration
privileges, may be executed in such manner, may be
payable at such place or places, may be subject to such
terms of redemption with or without premium, may be
declared or become due before maturity date thereof,
may be authenticated in any manner, and upon com-
pliance with such conditions, and may contain such
terms and covenants as may be provided by resolution
or resolutions of the board. Notwithstanding the form
or tenor thereof, and in the absence of any express
recital on the face thereof, that the bond or note is
nonnegotiable, all such bonds or notes are, and shall be
treated as, negotiable instruments for all purposes. The
bonds or notes shall be executed by the chair of the
board, who may use a facsimile signature. The official
seal of the authority or a facsimile thereof shall be
affixed to or printed on each bond or note and attested,
manually or by facsimile signature, by the secretary-
treasurer of the board, and any coupons attached to any
bond or note shall bear the signature of facsimile
signature of the chair of the board. Bonds or notes
bearing the signatures of officers in office on the date
of the signing thereof are valid and binding for all
purposes notwithstanding that before the delivery
thereof any or all of the persons whose signatures
appear thereon have ceased to be such officers. Notwith-
standing the requirements or provisions of any other
law, any such bonds or notes may be negotiated or sold
in such manner and at such time or times as is found
by the board to be most advantageous. Any resolution
or resolutions providing for the issuance of such bonds
or notes may contain such covenants and restrictions
upon the issuance of additional bonds or notes thereafter
as may be deemed necessary or advisable for the
assurance of the payment of the bonds or notes thereby authorized.

§22C-4-13. Items included in cost of properties.

The cost of any solid waste facilities acquired under the provisions of this article includes the cost of the acquisition or construction thereof, costs of closure of solid waste facilities, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds or notes prior to and during construction or acquisition and for twelve months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

§22C-4-14. Bonds or notes may be secured by trust indenture.

In the discretion and at the option of the board such bonds or notes may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the state of West Virginia. The resolution authorizing the bonds or notes and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its board and officers in relation to the construction or acquisition of solid waste facilities and the improvement, extension, operation, repair, maintenance and insurance thereof,
and the custody, safeguarding and application of all
moneys, and may provide that all or any part of the
construction work shall be contracted for, constructed
and paid for, under the supervision and approval of
consulting engineers employed or designated by the
board and satisfactory to the original bond purchasers,
their successors, assignees or nominees, who may be
given the right to require the security given by
contractors and by any depository of the proceeds of
bonds or notes or revenues of the solid waste facilities
or other money pertaining thereto be satisfactory to such
purchasers, their successors, assignees or nominees.
Such indenture may set forth the rights and remedies
of the bondholders or noteholders and such trustee.

§22C-4-15. Sinking fund for bonds or notes.
1 At or before the time of the issuance of any bonds or
notes under this article, the board may by resolution or
in the trust indenture provide for the creation of a
sinking fund and for payments into such find from the
revenues of the solid waste facilities operated by the
authority or from other funds available thereto such
sums in excess of the cost of maintenance and operation
of such properties as will be sufficient to pay the
accruing interest and retire the bonds or notes at or
before the time each will respectively become due and
to establish and maintain reserves therefor. All sums
which are or should be, in accordance with such
provisions, paid into such sinking fund shall be used
solely for payment of interest and principal and for the
retirement of such bonds or notes or at prior to maturity
as may be provided or required by such resolution.

§22C-4-16. Collection, etc., of revenues and funds and
enforcement of covenants; default; suit, etc.,
by bondholder or noteholder or trustee to
compel performance of duties; appointment
and powers of receiver.
1 The board for any such authority has power to insert
enforceable provisions in any resolution authorizing the
issuance of bonds or notes relating to the collection,
custody and application of revenues or of the authority
from the operation of the solid waste facilities under its
control or other funds available to the authority and to
the enforcement of the covenants and undertakings of
the authority. In the event there is default in the sinking
fund provisions aforesaid or in the payment of the
principal or interest on any of such bonds or notes or,
in the event the authority or its board or any of its
officers, agents or employees, fails or refuses to comply
with the provisions of this article, or defaults in any
covenant or agreement made with respect to the
issuance of such bonds or notes or offered as security
therefor, then any holder or holders of such bonds or
notes and any such trustee under the trust indenture,
if there be one, have the right by suit, action, mandamus
or other proceeding instituted in the circuit court for the
county or any of the counties wherein the authority
extends, or in any other court of competent jurisdiction,
to enforce and compel performance of all duties
required by this article or undertaken by the authority
in connection with the issuance of such bonds or notes,
and upon application of any such holder or holders, or
such trustee, such court shall, upon proof of such
defaults, appoint a receiver for the affairs of the
authority and its properties, which receiver so appointed
shall forthwith directly, or by her or his agents and
attorneys, enter into and upon and take possession of the
affairs of the authority and each and every part thereof,
and hold, use, operate, manage and control the same,
and in the name of the authority exercise all of the
rights and powers of such authority as found expedient,
and such receiver has power and authority to collect and
receive all revenues and apply same in such manner as
the court directs. Whenever the default causing the
appointment of such receiver has been cleared and fully
discharged and all other defaults have been cured, the
court may in its discretion and after such notice and
hearing as it deems reasonable and proper direct the
receiver to surrender possession of the affairs of the
authority to its board. Such receiver so appointed has
no power to sell, assign, mortgage, or otherwise dispose
of any assets of the authority except as hereinbefore
provided.
§22C-4-17. Operating contracts.

1 The board may enter into contracts or agreements
2 with any persons, firms or corporations for the operation
3 and management of the solid waste facilities for such
4 period of time and under such terms and conditions as
5 are agreed upon between the board and such persons,
6 firms or corporations. The board has power to provide
7 in the resolution authorizing the issuance of bonds or
8 notes, or in any trust indenture securing such bonds or
9 notes, that such contracts or agreements are valid and
10 binding upon the authority as long as any of said bonds
11 or notes, or interest thereon, are outstanding and
12 unpaid.

§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.

1 Unless otherwise provided by resolution of the board,
2 there is a statutory mortgage lien upon such solid waste
3 facilities of the authority, which exists in favor of the
4 holders of bonds or notes hereby authorized to be issued,
5 and each of them, and the coupons attached to said
6 bonds or notes, and such solid waste facilities remain
7 subject to such statutory mortgage lien until payment
8 in full of all principal of and interest on such bonds or
9 notes. Any holder of such bonds or notes, of any coupons
10 attached thereto, may, either at law or in equity, enforce
11 said statutory mortgage lien conferred hereby and upon
12 default in the payment of the principal of or interest on
13 said bonds or notes, and may foreclose such statutory
14 mortgage lien in the manner now provided by the laws
15 of the state of West Virginia for the foreclosure of
16 mortgages on real property.

§22C-4-19. Refunding bonds or notes.

1 The board of any authority having issued bonds or
2 notes under the provisions of this article is hereby
3 empowered thereafter by resolution to issue refunding
4 bonds or notes of such authority for the purpose of
5 retiring or refinancing any or all outstanding bonds or
6 notes, together with any unpaid interest thereon and
7 redemption premium thereunto appertaining and all of
8 the provisions of this article relating to the issuance,
security and payment of bonds or notes are applicable to such refunding bonds or notes, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds or notes to be so refunded.

§22C-4-20. Indebtedness of authority.
No constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies applies to the indebtedness of an authority. No indebtedness of any nature of authority is an indebtedness of the state of West Virginia or any municipality or county therein or a charge against any property of said state of West Virginia or any municipalities or counties. No indebtedness or obligation incurred by any authority gives any right against any member of the governing body of any municipality or any member of the authority of any county or any member of the board of any authority. The rights of creditors of any authority are solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

§22C-4-21. Property, bonds or notes and obligations of authority exempt from taxation.
The authority is exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipalities. The property of the authority is exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, are exempt from taxes.

§22C-4-22. Use of prisoners for litter pickup; funds provided from litter control fund; county commission, regional jail and correctional facility authority and sheriff to cooperate with solid waste authority.
Upon the approval of the litter and solid waste control
plan as provided in section eight hereof, each county and regional solid waste authority is hereby authorized and directed to implement a program to utilize those individuals incarcerated in the county or regional jails for litter pickup within the limits of available funds. Such program shall be funded from those moneys allocated to the authority by the director of the division of natural resources from the litter control fund pursuant to section twenty-six, article four, chapter twenty of this code. The authority may expend such additional funds for this program as may be available from other sources. The county commission and the sheriff of each county and the regional jail and correctional facility authority shall cooperate with the county or regional solid waste authority in implementing this program pursuant to section one, article eleven-a, and sections three and thirteen, article twelve, chapter sixty-two of this code.

§22C-4-23. Powers, duties and responsibilities of authority generally.

The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

(1) Sue and be sued, plead and be impleaded and have and use a common seal.

(2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.

(3) The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.

(4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.

(5) To promulgate such rules as may be proper and necessary to implement the purposes and duties of this
(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.

(7) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein.

(8) Make available the use or services of any solid waste facility collection, transportation and processing facilities related thereto, to any person, partnership, corporation or governmental agency consistent with this article.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and duties.

(10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or incidental to the performance of its duties and powers.

(11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.

(12) Receive and accept from any source such grants, fees, real and personal property, contributions and funds of any nature as may become available to the authority in order to carry out the purposes of this article.

(13) Cooperate with and make such recommendations to local, state and federal government and the private sector in the technical, planning and public policy aspects of litter control and solid waste management as the authority may find appropriate and effective to carry out the purposes of this article.
(14) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste facilities or any solid waste collection, transportation and processing services provided by the authority.

(15) Prohibit the dumping of solid waste outside the hours of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility and the mandatory disposal provision in section ten of this article by referring violations to the division of environmental protection or the appropriate law-enforcement authorities.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority by this article and powers conferred upon the authority by this article.

All rules promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this code.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

(a) On or before the first day of July, one thousand nine hundred ninety-one, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the solid waste management board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons
of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including all solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The plan shall be developed based upon information readily available. Due to the limited funds and time available the plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings
and encourage and solicit other public participation in
the preparation of the siting plan as required by the
rules promulgated by the solid waste management
board for this purpose. Upon completion of the siting
plan, the county or regional solid waste authority shall
file said plan with the solid waste management board.

(d) The siting plan takes effect upon approval by the
solid waste management board pursuant to the rules
promulgated for this purpose. Upon approval of said
plan, the solid waste management board shall transmit
a copy thereof to the director of the division of environ­
mental protection and to the clerk of the county
commission of the county encompassed by said plan
which county clerk shall file the plan in an appropriate
manner and shall make the plan available for inspection
by the public.

(e) Effective upon approval of the siting plan by the
solid waste management board, it is unlawful for any
person to establish, construct, install or operate a
commercial solid waste facility at a site not authorized
by the siting plan: Provided, That an existing commer­
cial solid waste facility which, on the eighth day of
April, one thousand nine hundred eighty-nine, held a
valid solid waste permit or compliance order issued by
the division of natural resources pursuant to the former
provisions of article five-f of twenty of this code may
continue to operate but may not expand the spatial land
area of the said facility beyond that authorized by said
solid waste permit or compliance order, and may not
increase the aggregate monthly solid waste capacity in
excess of ten thousand tons monthly unless such a
facility is authorized by the siting plan.

(f) The county or regional solid waste authority may,
from time to time, amend the siting plan in a manner
consistent with the requirements of this section for
completing the initial siting plan and the rules promul­
gated by the solid waste management board for the
purpose of such amendments.

(g) Notwithstanding any provision of this code to the
contrary, upon application from a person who has filed
a pre-siting notice pursuant to section thirteen, article
fifteen, chapter twenty-two of this code, the county or
regional solid waste authority or county commission, as
appropriate, may amend the siting plan by redesignating
a zone that has been designated as an area where
a commercial solid waste facility is tentatively pro-
bited to an area where one is authorized. In such case,
the person seeking the change has the burden to
affirmatively and clearly demonstrate, based on the
criteria set forth in subsection (b) of this section, that
a solid waste facility could be appropriately operated in
the public interest at such location. The solid waste
management board shall provide, within available
resources, technical support to a county or regional solid
waste authority, or county commission as appropriate,
when requested by such authority or commission to
assist it in reviewing an application for any such
amendment.

(h) The solid waste management board shall prepare
and adopt a siting plan for any county or regional solid
waste authority which does not complete and file with
the said state authority such a siting plan in compliance
with the provisions of this section and the rules
promulgated thereunder. Any siting plan adopted by the
solid waste management board pursuant to this subsec-
tion shall comply with the provisions of this section, and
the rules promulgated thereunder, and has the same
effect as a siting plan prepared by a county or regional
solid waste authority and approved by the solid waste
management board.

(i) The siting plan adopted pursuant to this section
shall incorporate the provisions of the litter and solid
waste control plan, as approved by the solid waste
management board pursuant to section eight of this
article, regarding collection and disposal of solid waste
and the requirements, if any, for additional commercial
solid waste facility capacity.

(j) The solid waste management board is authorized
and directed to promulgate rules specifying the public
participation process, content, format, amendment,
review and approval of siting plans for the
purposes of this section.
§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment in this code, and facilities which were otherwise exempted from local site approval under any prior enactment in this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority or county commission shall base its determination upon the following criteria: The efficient disposal of solid waste generated within the county or region, economic development, transportation facilities, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority, or county commission, as appropriate, shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) hereof which support its decision to issue or deny a certificate of site approval.
(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

§22C-4-26. Approval of new Class A facilities by solid waste authorities and county commissions, and referendum.

(a) Except as provided below with respect to Class B facilities, from and after the tenth day of March, one thousand and nine hundred ninety, in order to obtain approval to operate a new Class A facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four of this code and in section thirteen, article fifteen, chapter twenty-two of this code;

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(3) File an application for approval of operation as a Class A facility with, and obtain approval from, the county commission for each county in which the facility would be located. Each county commission shall act on such application and either grant or deny it within thirty days after the application is determined by the county commission to be filed in a completed manner. The county commission shall hold at least one public hearing and shall solicit public comment prior to acting on the application. The county commission shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.
(b) If applications are approved pursuant to subdivisions (1), (2) and (3), subsection (a) of this section, each county commission shall order that a referendum be placed upon the ballot not less than fifty-six days before the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a Class A facility be located in the county. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall a solid waste facility handling of between ten and thirty thousand tons of solid waste per month be located within ____________ County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the siting of a Class A facility within the county, then the county commission, the county or regional solid waste authority and the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for siting a Class A facility within the county, then the application process as set forth in this article and article fifteen chapter twenty-two of this code may proceed: Provided, That such vote is not binding on and does not require the division of environmental protection to issue a permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to
a vote until two years after the date of the previous referendum.

(c) After the tenth day of March, one thousand nine hundred ninety, the public referendum established in this section is mandatory for every new Class A facility applicant which will accept between ten and thirty thousand tons of solid waste per month. A new Class A facility applicant means any applicant for a state solid waste permit for a Class A facility who has not prior to the tenth day of March, one thousand nine hundred ninety, obtained a certificate of site approval for a Class A facility from the county or regional solid waste authority to establish, construct or operate a Class A facility, and also means any applicant for a state solid waste permit for a Class A facility if a legal challenge to the issuance of a certificate of site approval by the county or regional solid waste authority or the county commission approval for the proposed Class A facility was pending in any state or federal court as of the first day of September, one thousand nine hundred ninety-one.

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

(a) From and after the eighteenth day of October, one thousand nine hundred ninety-one, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the public service commission in the manner specified in section one-c, article two, chapter twenty-four, and in section thirteen, article fifteen, chapter twenty-two of this code;

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant
or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(3) File an application for approval of operation as a Class A facility with, and obtain approval from, the county commission for each county in which the facility is or would be located. Each county commission shall act on such application and either grant or deny it within thirty days after the application is determined by the county commission to be filed in a completed manner. The county commission shall hold at least one public hearing and shall solicit public comment prior to acting on the application. The county commission shall provide notice of such public hearing with publication of a Class II legal advertisement in a qualified newspaper serving the county where the proposed site is situated.

(b) If applications are approved pursuant to subdivisions (1), (2) and (3), subsection (a) of this section, the county or regional solid waste authority shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the solid waste facility is located. Upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for
holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the _____ solid waste facility, located within _____ County, West Virginia, be permitted to handle between ten and thirty thousand tons of solid waste per month?

☐ For the facility
☐ Against the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission, the county or regional solid waste authority and the division of environmental protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the division of environmental protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

(a) From and after the eighteenth day of October, one
thousand nine hundred ninety-one, in order to increase
the maximum allowable monthly tonnage handled at a
Class A facility by an aggregate amount of more than
ten percent of the facility's permit tonnage limitation
within a two-year period, the permittee shall:

(1) File an application for approval with, and obtain
approval from, the county or regional solid waste
authority for the county or counties in which the facility
is located. Such application shall be a modification of the
Class A facility's certificate of site approval. The county
or regional solid waste authority shall act upon such
application and either grant or deny it within thirty
days after the application is determined by the county
or regional solid waste authority to be filed in a
completed manner;

(2) File an application for approval with, and obtain
approval from, the public service commission to modify
the certificate of need in the manner set forth in section
one-c, article two, chapter twenty-four of this code; and

(3) File an application for a major permit modification
with the division of environmental protection.

(b) If applications are approved pursuant to subdivi-
sions (1) and (2), subsection (a) of this section and an
application has been filed pursuant to subdivision (3),
subsection (a) of this section, the county or regional solid
waste authority shall publish a Class II legal advertise-
ment in compliance with the provisions of article three,
chapter fifty-nine of this code, in a newspaper of general
circulation in the counties wherein the solid waste
facility is located. Upon the written petition of regis-
tered voters residing in the county equal to not less than
fifteen percent of the number of votes cast within the
county for governor at the preceding gubernatorial
election, which petition shall be filed with the county
commission within sixty days after the last date of
publication of the notice provided in this section, the
county commission shall, upon verification of the
required number of signatures on the petition, and not
less than fifty-six days before the election, order a
referendum be placed upon the ballot. Any referendum
conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class A facility applicant be permitted to increase the maximum tonnage allowed to be handled at the facility not to exceed thirty thousand tons per month. Any election at which such question is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall the solid waste facility located within ______ County, West Virginia, be allowed to handle a maximum of ______ solid waste per month?

☐ For the increase in maximum allowable tonnage

☐ Against the increase in maximum allowable tonnage

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be handled per month at the facility, then the division of environmental protection shall not proceed to modify the Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question is for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be handled per month at such facility, then the application process as set forth in this article and article
fifteen, chapter twenty-two of this code may proceed: 

Provided, That such vote is not binding on nor does it 
require the county or regional solid waste authority or 
the division of environmental protection to approve an 
application to modify the permit. If the majority of the 
legal votes cast is against the question, that does not 
prevent the question from again being submitted to a 
vote at any subsequent election in the manner provided 
for in this section: Provided, however, That an applicant 
may not resubmit the question for a vote prior to a 
period of two years from the date of the previous 
referendum herein described.

§22C-4-29. Judicial review of certificate of site approval.

(a) Any party aggrieved by a decision of the county 
or regional solid waste authority or county commission 
granting or denying a certificate of site approval may 
obtain judicial review thereof in the same manner 
provided in section four, article five, chapter twenty- 
nine-a of this code, which provisions shall govern such 
review with like effect as if the provisions of said section 
were set forth in extenso in this section, except that the 
petition shall be filed, within the time specified in said 
section, in the circuit court of Kanawha County.

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

§22C-4-30. Solid waste assessment interim fee; regulated 
motor carriers; dedication of proceeds; 
criminal penalties.

(a) Imposition. — Effective the first day of July, one 
thousand nine hundred eighty-nine, a solid waste 
assessment fee is hereby levied and imposed upon the 
disposal of solid waste at any solid waste disposal facility 
in this state to be collected at the rate of one dollar per
ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) Collection, return, payment and record. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the tax commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the tax commissioner on or before the fifteenth day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the tax commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the tax commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by article ten, chapter eleven of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee or file returns with the fee as required in this section, the tax commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the tax commissioner, in a separate account, in trust for and payable to the tax commissioner, and to keep the amount of such fees in such account until remitted to the tax commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the tax commissioner.

(6) Whenever the owner of a solid waste disposal
facility leases the solid waste facility to an operator, the
operator is primarily liable for collection and remittance
of the fee imposed by this section and the owner is
secondarily liable for remittance of the fee imposed by
this section. However, if the operator fails, in whole or
in part, to discharge his or her obligations under this
section, the owner and the operator of the solid waste
facility are jointly and severally responsible and liable
for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting
the fee imposed by this section is an association or
corporation, the officers thereof are liable, jointly and
severally, for any default on the part of the association
or corporation, and payment of the fee and any additions
to tax, penalties and interest imposed by article ten,
chapter eleven of this code may be enforced against
them as against the association or corporation which
they represent.

(8) Each person disposing of solid waste at a solid
waste disposal facility and each person required to
collect the fee imposed by this section shall keep
complete and accurate records in such form as the tax
commissioner may require in accordance with the rules
of the tax commissioner.

(c) Regulated motor carriers. — The fee imposed by
this section and section twenty-two, article five, chapter
seven of this code is a necessary and reasonable cost for
motor carriers of solid waste subject to the jurisdiction
of the public service commission under chapter twenty-
four-a of this code. Notwithstanding any provision of law
to the contrary, upon the filing of a petition by an
affected motor carrier, the public service commission
shall, within fourteen days, reflect the cost of said fee
in said motor carrier's rates for solid waste removal
service. In calculating the amount of said fee to said
motor carrier, the commission shall use the national
average of pounds of waste generated per person per
day as determined by the United States Environmental
Protection Agency.

(d) Definition of solid waste disposal facility. — For
purposes of this section, the term "solid waste disposal
facility" means any approved solid waste facility or open
dump in this state and includes a transfer station when
the solid waste collected at the transfer station is not
finally disposed of at a solid waste facility within this
state that collects the fee imposed by this section.
Nothing herein authorizes in any way the creation or
operation of or contribution to an open dump.

(e) Exemptions. — The following transactions are
exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal
facility by the person who owns, operates or leases the
solid waste disposal facility if it is used exclusively to
dispose of waste originally produced by such person in
such person's regular business or personal activities or
by persons utilizing the facility on a cost-sharing or
nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual
not in the business of hauling or disposing of solid waste
on such days and times as designated by the director of
the division of environmental protection as exempt from
the fee imposed pursuant to section eleven, article
fifteen, chapter twenty-two of this code; and

(4) Disposal of solid waste at a solid waste disposal
facility by a commercial recycler which disposes of
thirty percent or less of the total waste it processes for
recycling. In order to qualify for this exemption each
commercial recycler must keep accurate records of
incoming and outgoing waste by weight. Such records
must be made available to the appropriate inspectors
from the division of environmental protection of solid
waste authority, upon request.

(f) Procedure and administration. — Notwithstanding
section three, article ten, chapter eleven of this code,
each and every provision of the "West Virginia Tax
Procedure and Administration Act" set forth in article
ten, chapter eleven of this code applies to the fee
imposed by this section with like effect as if said act
were applicable only to the fee imposed by this section
and were set forth in extenso herein.
(g) Criminal penalties. — Notwithstanding section two, article nine, chapter eleven of this code, sections three through seventeen, article nine, chapter eleven of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) Dedication of proceeds. — The net proceeds of the fee collected by the tax commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the “Solid Waste Planning Fund” which is hereby continued. The solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over to, each county solid waste authority to be expended for the purposes of this article: Provided, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:

(A) Grants to the county or regional solid waste authorities for the purposes of this article; and

(B) Administration, technical assistance or other costs of the solid waste management board necessary to implement the purposes of this article and article three of this chapter.

(i) Effective date. — This section is effective on the first day of July, one thousand nine hundred ninety.

ARTICLE 5. COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY SITING BOARD.

§22C-5-1. Short title.

This article may be known and cited as the “Commercial Hazardous Waste Management Facility Siting Act.”

§22C-5-2. Purpose and legislative findings.
(a) The purpose of this article is to establish a state commercial hazardous waste management facility siting board and to establish the procedure for which approval certificates are granted or denied for commercial hazardous waste management facilities.

(b) The Legislature finds that hazardous waste is generated throughout the state as a by-product of the materials used and consumed by individuals, businesses, enterprise and governmental units in the state, and that the proper management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety. The Legislature further finds that:

(1) The availability of suitable facilities for the treatment, storage and disposal of hazardous waste is necessary to protect the environment resources and preserve the economic strength of this state and to fulfill the diverse needs of its citizens;

(2) Whenever a site is proposed for the treatment, storage or disposal of hazardous waste, the nearby residents and the affected county and municipalities may have a variety of reasonable concerns regarding the location, design, construction, operation, closing and long-term care of facilities to be located at the site, the effect of the facility upon their community's economic development and environmental quality and the incorporation of such concerns into the siting process;

(3) Local authorities have the responsibility for promoting public health, safety, convenience and general welfare, encouraging planned and orderly land use development, recognizing the needs of industry and business, including solid waste disposal and the treatment, storage and disposal of hazardous waste and that reasonable concerns of local authorities should be considered in the siting of commercial hazardous waste management facilities; and

(4) New procedures are needed to resolve many of the conflicts which arise during the process of siting commercial hazardous waste management facilities.
§22C-5-3. Definitions.

1 Unless the context clearly requires a different meaning, as used in this article the terms:
2
3 (a) “Board” means the commercial hazardous waste management facility siting board established pursuant to section four of this article;
4
5 (b) “Commercial hazardous waste management facility” means any hazardous waste treatment, storage or disposal facility which accepts hazardous waste, as identified or listed by the director of the division of environmental protection under article eighteen chapter twenty-two of this code, generated by sources other than the owner or operator of the facility and does not include an approved hazardous waste facility owned and operated by a person for the sole purpose of disposing of hazardous wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis;
6
7 (c) “Hazardous waste management facility” means any facility including land and structures, appurtenances, improvements and equipment used for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) Facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; or (ii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works. A facility may consist of one or more treatment, storage or disposal operational units.

§22C-5-4. Establishment of commercial hazardous waste management facility siting board; composition; appointment; compensation; powers; rules; and procedures.

1 (a) The commercial hazardous waste management facility siting board is continued. It consists of nine members including the director of the division of
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4 environmental protection and the chief of the office of
5 air quality of the division of environmental protection
6 who are nonvoting members ex officio, two ad hoc
7 members appointed by the county commission of the
8 county in which the facility is or is proposed to be
9 located who are residents of said county, and five other
10 permanent members to be appointed by the governor
11 with the advice and consent of the Senate, two of whom
12 are representative of industries engaged in business in
13 this state and three of whom are representative of the
14 public at large. No two or more of the five permanent
15 voting members of the board appointed by the governor
16 shall be from the same county. Upon initial appointment
17 one of said other five members shall be appointed for
18 five years, one for four years, one for three years, one
19 for two years and one for one year. Thereafter, said
20 permanent members shall be appointed for terms of five
21 years each. Vacancies occurring other than by expira-
22 tion of a term shall be filled by the governor in the same
23 manner as the original appointment for the unexpired
24 portion of the term. The term of the ad hoc members
25 continue until a final determination has been made in
26 the particular proceeding for which they are appointed.
27 Four of the voting members on the board constitute a
28 quorum for the transaction of any business, and the
29 decision of four voting members of the board is action
30 of the board. No person is eligible to be an appointee
31 of the governor to the board who has any direct personal
32 financial interest in any commercial hazardous waste
33 management enterprise. The five permanent voting
34 members of the board shall annually elect from among
35 themselves a chair no later than the thirty-first day of
36 July of each calendar year. The board shall meet upon
37 the call of the chair or upon the written request of at
38 least three of the voting members of the board.
39
40 (b) Each member of the board, other than the two
41 members ex officio, shall be paid, out of funds approp-
42 riated for such purpose the same compensation, and
43 each member of the board, including members ex
44 officio, shall be paid the expense reimbursement, as is
45 paid to members of the Legislature for their interim
46 duties as recommended by the citizens legislative
compensation commission and authorized by law for
each day or portion thereof engaged in the discharge of
official duties. The division of environmental protection
shall make available to the board such professional and
support staff and services as may be necessary in order
to support the board in carrying out its responsibilities
within the limit of funds available for this purpose. The
office of the attorney general shall provide legal advice
and representation to the board as requested, within the
limit of funds available for this purpose, or the board,
with the written approval of the attorney general, may
employ counsel to represent it.

(c) After the eighth day of April, one thousand nine
two hundred eighty-nine, no person shall construct or
commence construction of a commercial hazardous
waste management facility without first obtaining a
certificate of site approval issued by the board in the
manner prescribed herein. For the purpose of this
section, "construct" and "construction" means (i) with
respect to new facilities, the significant alteration of a
site to install permanent equipment or structures or the
installation of permanent equipment or structures; (ii)
with respect to existing facilities, the alteration or
expansion of existing structures or facilities to include
accommodation of hazardous waste, or expansion of
more than fifty percent the area or capacity of an
existing hazardous waste facility, or any change in
design or process of a hazardous waste facility that will
result in a substantially different type of facility.
Construction does not include preliminary engineering
or site surveys, environmental studies, site acquisition,
acquisition of an option to purchase or activities
normally incident thereto.

(d) Upon receiving a written request from the owner
or operator of the facility, the board may allow, without
going through the procedures of this article, any
changes in the facilities which are designed (1) to
prevent a threat to human health or the environment
because of an emergency situation; (2) to comply with
federal or state laws and regulations; or (3) to result in
demonstrably safer or environmentally more acceptable processes.

(e) An application for certificate of site approval consists of a copy of all hazardous waste permits, if any, and permit applications, if any, issued by or filed with any state permit-issuing authority pursuant to article eighteen, chapter twenty-two of this code and a detailed written analysis with supporting documentation of the following factors:

(1) The nature of the probable environmental and economic impacts, including, but not limited to, specification of the predictable adverse effects on quality of natural environment, public health and safety, scenic, historic, cultural and recreational values, water and air quality, wildlife, property values, transportation networks and an evaluation of measures to mitigate such adverse effects;

(2) The nature of the environmental benefits likely to be derived from such facility, including the resultant decrease in reliance upon existing waste disposal facilities which do not comply with applicable laws and rules, and a reduction in fuel consumption and vehicle emissions related to long-distance transportation of hazardous waste; and

(3) The economic benefits likely to be derived from such facility, including, but not limited to, a reduction in existing costs for the disposal of hazardous waste, improvement to the state's ability to retain and attract business and industry due to predictable and stable waste disposal costs, and any economic benefits which may accrue to the municipality or county in which the facility is to be located.

(f) On or before sixty calendar days after the receipt of such application, the board shall mail written notice to the applicant as to whether or not such application is complete. If, or when, the application is complete, the board shall notify the applicant and the county commission of the county in which the facility is or is proposed to be located. Said county commission shall thereupon, within thirty days of receipt of such notice, appoint the
two ad hoc members of the board to act upon the
application.

(g) Immediately upon determining that an application
is complete, the board shall, at the applicant's expense,
cause a notice to be published in the state register,
which shall be no later than thirty calendar days after
the date of such written notice of completeness, and shall
provide notice to the chief executive office of each
municipality in which the proposed facility is to be
located and to the county commission of the county in
which the facility is proposed to be located, and shall
direct the applicant to provide reasonable notice to the
public which shall, at a minimum, include publication
as a Class I-O legal advertisement in at least two
newspapers having general circulation in the vicinity in
which the proposed facility is to be located identifying
the proposed location, type of facility and activities
involved, the name of the permittee, and the date, time
and place at which the board will convene a public
hearing with regard to the application. The date of the
hearing shall be set by the board and shall commence
within sixty days of the date of notice of completeness
of an application.

(h) The board shall conduct a public hearing upon the
application in the county in which the facility is to be
located and shall keep an accurate record of such
proceedings by stenographic notes and characters or by
mechanical or electronic means. Such proceedings shall
be transcribed at the applicant's expense. The board
may accept both written and oral comments on the
application.

(i) The commercial hazardous waste management
facility siting board may request further information of
the applicant and shall render a decision based upon the
application and the record, either, requesting further
information, granting a certificate of site approval,
deny ing it, or granting it upon such terms, conditions
and limitations as the board deems appropriate. The
board shall base its decision upon the factors set forth
in subsection (e). The written decision of the board
containing its findings and conclusions shall be mailed
by certified mail to the applicant and to any requesting
person on or before sixty calendar days after receipt by
the board of a complete record of the hearing.

(j) The board may exercise all powers necessary or
appropriate to carry out the purposes and duties
provided in this article, including the power to promul-
gate rules in compliance with chapter twenty-nine-a of
this code.

§22C-5-5. Effect of certification.

A grant of an approval certificate shall supersede any
local ordinance or regulation that is inconsistent with
the terms of the approval certificate. Nothing in this
chapter affects the authority of the host community to
enforce its regulations and ordinances to the extent that
they are not inconsistent with the terms and conditions
of the approval certificate. Grant of an approval
certificate does not preclude or excuse the applicant
from the requirement to obtain approval or permits
under this chapter or other state or federal laws.

§22C-5-6. Commercial hazardous waste management
facility siting fund; fees.

(a) There is hereby continued in the state treasury a
special revenue fund entitled the "commercial hazard-
ous waste management facility siting fund" which may
be expended by the director of the division of environ-
mental protection for the following:

(1) The necessary expenses of the board which may
include expenses and compensation for each member of
the board as authorized by this article.

(2) Administration, professional and support services
provided by the division to the board.

(3) Legal counsel and representation provided by the
attorney general to the board for the purposes of this
article.

(b) The director of the division of environmental
protection shall promulgate rules, pursuant to section
one, article one, chapter twenty-nine-a of this code,
establishing reasonable fees to be charged each appli-
cant for a certificate of site approval. Such fees shall be
calculated to recover the reasonable and necessary
expenses of the board, division of environmental
protection and attorney general which such agencies
incur as pursuant to this article.


(a) Any person having an interest adversely affected
by a final decision made and entered by the board is
titled to judicial review thereof in the circuit court of
Kanawha county, or the circuit court of the county in
which the facility is, or is proposed to be, situated, such
appeal to be perfected by the filing of a petition with
the court within sixty days of the date of receipt by the
applicant of the board's written decision.

(b) The review shall be conducted by the court without
a jury and shall be upon the record made before the
board except that in cases of alleged irregularities in
procedure before the board not shown in the record,
testimony thereon may be taken before the court. The
court may hear oral arguments and require written
briefs.

The court may affirm the order or decision of the
board or remand the case for further proceedings. It
may reverse, vacate or modify the order or decision of
the board if the substantial rights of the petitioner or
petitioners have been prejudiced because the adminis-
trative findings, inferences, conclusions, decision or
order are:

(1) In violation of constitutional or statutory
provisions;

(2) In excess of the statutory authority or jurisdiction
of the board;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative
and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse
of discretion or clearly unwarranted exercise of
discretion.

(c) The judgment of the circuit court is final unless
reversed, vacated or modified on appeal to the supreme
court of appeals. The petition seeking such review must
be filed with said supreme court of appeals within
ninety days from the date of entry of the judgment of
the circuit court.

(d) Legal counsel and services for the board in all
appeal proceedings shall be provided by the attorney
general.

§22C-5-8. Remedies.

(a) Any person who violates this section shall be
compelled by injunction, in a proceeding instituted in
the circuit court or the locality where the facility or
proposed facility is to be located, to cease the violation.

(b) Such an action may be instituted by the board,
director of the division of environmental protection,
political subdivision in which the violation occurs or any
other person aggrieved by such violation. In any such
action, it is not necessary for the plaintiff to plead or
prove irreparable harm or lack of an adequate remedy
at law. No person shall be required to post any
injunction bond or other security under this section.

(c) No action may be brought under this section after
an approval certificate has been issued by the board,
notwithstanding the pendency of any appeals or other
challenges to the board's action.

(d) In any action under this section, the court may
award reasonable costs of litigation, including attorney
and expert witness fees, to any party if the party
substantially prevails on the merits of the case and if
in the determination of the court the party against
whom the costs are requested has acted in bad faith.

ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL

§22C-6-1. Legislative purpose.

The purpose of this article is to provide the opportun-
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2 ity for public participation in the decision to locate
3 commercial hazardous waste management facilities and
4 to locate any hazardous waste management facility
5 which disposes of greater than ten thousand tons of
6 hazardous waste per annum in West Virginia.

§22C-6-2. Definitions.

1 Unless the context clearly requires a different
2 meaning, as used in this article the terms:
3
4 (a) “Board” means the commercial hazardous waste
5 management facility siting board established pursuant
6 to section three, article five of this chapter;
7
8 (b) “Commercial hazardous waste management facil-
9 ity” means any hazardous waste treatment, storage or
10 disposal facility which accepts hazardous waste, as
11 identified or listed by the director of the division of
12 environmental protection under article eighteen, chap-
13 ter twenty-two of this code, generated by sources other
14 than the owner or operator of the facility and does not
15 include an approved hazardous waste facility owned and
16 operated by a person for the sole purpose of disposing
17 of hazardous wastes created by that person or such
18 person and other persons on a cost-sharing or nonprofit
19 basis;
20
21 (c) “Hazardous waste management facility” means any
22 facility including land and structures, appurtenances,
23 improvements and equipment used for the treatment,
24 storage or disposal of hazardous wastes, which accepts
25 hazardous waste for storage, treatment or disposal. For
26 the purposes of this article, it does not include: (i)
27 Facilities for the treatment, storage or disposal of
28 hazardous wastes used principally as fuels in an on-site
29 production process; or (ii) facilities used exclusively for
30 the pretreatment of wastes discharged directly to a
31 publicly owned sewage treatment works. A facility may
32 consist of one or more treatment, storage or disposal
33 operational units.
34
35 (d) “On site” means the location for disposal of
36 hazardous waste including the hazardous waste gener-
37 ated at the location of disposal or generated at some
§22C-6-3. Procedure for public participation.

(a) From and after the fifth day of June, one thousand nine hundred ninety-two, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than ten thousand tons per annum on site in this state, an applicant shall:

(1) File a pre-siting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a pre-siting notice with the commercial hazardous waste management facility siting board; and

(3) File a pre-siting notice with the division of environmental protection.

(b) If a pre-siting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot: Provided, That such a referendum is not required for a hazardous waste management facility for which at least ninety percent of the capacity is designated for hazardous waste generated at the site of disposal. Any
referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than ten thousand tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

"Shall a commercial hazardous waste management facility be located within ______ County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)"
or,

"Shall a hazardous waste management facility disposing of greater than ten thousand tons per annum on site be located within County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)"
If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the division of environmental protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or division of environmental protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in article eighteen, chapter twenty-two of this code and article five of this chapter, in the case of a commercial hazardous waste management facility, may proceed: Provided, That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the division of environmental protection to issue the permit, as the case may be. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

§22C-7-1. Oil and gas inspector; supervising inspectors; tenure; oath and bond.

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

The director of the division of environmental protection shall divide the state so as to equalize, as far as practical, the work of each oil and gas inspector. The director may designate a supervising inspector and other inspectors as may be necessary, and may designate their places of abode, at points convenient to the accomplishment of their work.

The director of the division of environmental protection shall make each appointment from among the three qualified eligible candidates on the register having the
The director of the division of environmental protection or the director's designee may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director or the director's designee, as the case may be, shall immediately notify in writing each member of the oil and gas inspectors' examining board of such action, together with a detailed statement of the reasons therefor. Thereafter, the oil and gas inspectors' examining board, after hearing, if it finds that the action of striking such name was arbitrary or unreasonable, may order the name of any candidate so stricken from the register to be reinstated thereon. Such reinstatement shall be effective from the date of removal from the register.

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

After having served for a probationary period of one year to the satisfaction of the director for the division of environmental protection, an oil and gas inspector or supervising inspector shall have permanent tenure until such inspector becomes seventy years of age, subject only to dismissal for cause in accordance with the provisions of section two of this article. No oil and gas inspector or supervising inspector while in office shall be directly or indirectly interested as owner, lessee, operator, stockholder, superintendent or engineer of any oil or gas drilling or producing venture or of any coal mine in this state. Before entering upon the discharge of such duties as an oil and gas inspector or supervising inspector, each inspector shall take the oath of office prescribed by section five, article IV of the constitution of West Virginia, and shall execute a bond in the penalty of two thousand dollars, with security to be approved by the director of the division of environmental protection, conditioned upon the faithful discharge of the inspector's duties, a certificate of which oath and bond shall be filed in the office of the secretary of state.

The supervising inspector and oil and gas inspectors shall perform such duties as are imposed upon them by this chapter or chapter twenty-two of this code, and
related duties assigned by the director of the division of
environmental protection.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

(a) No person is eligible for appointment as an oil and
gas inspector or supervising inspector unless, at the time
of his or her probationary appointment, such person (1)
is a citizen of West Virginia, in good health, and of good
character, reputation and temperate habits; (2) has had
at least six years' actual relevant experience in the oil
and gas industry: Provided, That not exceeding three
years of such experience shall be satisfied by any
combination of (i) a bachelor of science degree in science
or engineering which shall be considered the equivalent
of three years' actual relevant experience in the oil and
gas industry, (ii) an associate degree in petroleum
technology which shall be considered the equivalent of
two years actual relevant experience in the oil and gas
industry, and (iii) actual relevant environmental
experience including, without limitation, experience in
wastewater, solid waste or reclamation each full year of
which shall be considered as a year of actual relevant
experience in the oil and gas industry; and (3) has good
theoretical and practical knowledge of oil and gas
drilling and production methods, practices and tech-
niques, sound safety practices and applicable mining
laws.

(b) In order to qualify for appointment as an oil and
gas inspector or supervising inspector, an eligible
applicant shall submit to a written and oral examination
by the oil and gas inspectors’ examining board and shall
furnish such evidence of good health, character and
other facts establishing eligibility as such board may
require. If such board finds after investigation and
examination that an applicant (1) is eligible for
appointment and (2) has passed all written and oral
examinations, the board shall add such applicant's name
and grade to the register of qualified eligible candidates
and certify its action to the director of the division of
environmental protection. No candidate’s name may
remain on the register for more than three years without requalifying.

(c) The salary of the supervising inspector shall be not less than twenty-seven thousand five hundred dollars per annum. Salaries of inspectors shall be not less than twenty-two thousand dollars per annum. The supervising inspector and inspectors are entitled to mileage expense reimbursement at the rate established for in-state travel of public employees, in the governor's travel rules, as administered by the department of administration. Within the limits provided by law, the salary of each inspector and of the supervising inspector shall be fixed by said director and the oil and gas inspectors' examining board. In fixing salaries of the oil and gas inspectors and of the supervising inspector, said director shall consider ability, performance of duty and experience. No reimbursement for traveling expenses may be made except upon an itemized account of such expenses submitted by the inspector or supervising inspector, as the case may be, who shall verify, upon oath, that such expenses were actually incurred in the discharge of official duties.

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

Proceedings for the removal of an oil and gas inspector or the supervising inspector may be initiated by said director whenever there are reasonable grounds to believe that adequate cause exists warranting removal. Such a proceeding shall be initiated by a verified petition, filed with the oil and gas inspectors' examining board by said director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens engaged in oil and gas drilling and production operations in the state may petition said director for the removal of an inspector or the supervising inspector. If such petition is verified by at least one of the petitioners, based on actual knowledge of the affiant, and alleges facts which, if true, warrant the
removal of the inspector or supervising inspector, said
director shall cause an investigation of the facts to be
made. If, after such investigation, said director finds
that there is substantial evidence which, if true,
warrants removal of the inspector or supervising
inspector, the director shall file a petition with the oil
and gas inspectors' examining board requesting removal
of the inspector or supervising inspector.

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

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

The chair of the board, and the director may admin-
ister oaths and subpoena witnesses.

An inspector or supervising inspector who willfully
refuses or fails to appear before such board, or having
appeared, refuses to answer under oath any relevant
question on the ground that the inspector's testimony or
answer might incriminate such inspector, or refuses to
accept a grant of immunity from prosecution on account
of any relevant matter about which the inspector may
be asked to testify at such hearing before such board,
forfeits the inspector's position.

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

§22C-7-3. Oil and gas inspectors' examining board created; composition; appointment, term and compensation of members; meetings; powers and duties generally; continuation following audit.

(a) There is hereby continued an oil and gas inspectors' examining board consisting of five members, two of whom shall be ex officio members and three of whom shall be appointed by the governor, by and with the advice and consent of the Senate. Appointed members may be removed only for the same causes and like manner as elective state officers. One member of the board who shall be the representative of the public at large and shall be a person who is knowledgeable about the subject matter of this article and has no direct or indirect financial interest in oil and gas production other than the receipt of royalty payments which do not exceed a five year average of six hundred dollars per year; one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of independent oil and gas operators; and one member shall be a person who by reason of previous training and experience may reasonably be said to represent the viewpoint of major oil and gas producers.

The chief of the office of oil and gas of the division of environmental protection and the chief of the office of water resources of the division of environmental protection shall be ex officio members.

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

The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or
portion thereof engaged in the discharge of official duties.

The chief of the office of oil and gas shall serve as chair of the board. The board shall elect a secretary from its members.

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

The board shall meet at such times and places as shall be designated by the chair. It is the duty of the chair to call a meeting of the board on the written request of two members. Notice of each meeting shall be given in writing to each member by the secretary at least five days in advance of the meeting. A majority of members is a quorum for the transaction of business.

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

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

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

(3) Conduct, after public notice of the time and place thereof, examinations of candidates for appointment. By unanimous agreement of all members of the board, one or more members of the board or an employee of the division of environmental protection may be designated to give to a candidate the written portion of the examination;
(4) Prepare and certify to the director of the division of environmental protection a register of qualified eligible candidates for appointment as oil and gas inspectors or as supervising inspectors, with such differentiation, if any, between the certification of candidates for oil and gas inspectors and for supervising inspectors as the board may from time to time deem necessary or advisable. The register shall list all qualified eligible candidates in the order of their grades, the candidate with the highest grade appearing at the top of the list. After each meeting of the board held to examine such candidates and at least annually, the board shall prepare and submit to the director of the division of environmental protection a revised and corrected register of qualified eligible candidates for appointment, deleting from such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing, indicating their continued availability for such appointment; (c) who have been passed over for appointment for three years; (d) who have become ineligible for appointment since the board originally certified that such persons were qualified and eligible for appointment; or (e) who, in the judgment of at least three members of the board, should be removed from the register for good cause;

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

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

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

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

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

(10) Render such advice and assistance to the director of the division of environmental protection as the director shall from time to time determine necessary or desirable in the performance of such duties.

(c) After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas inspectors' examining board within the division of environmental protection should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the oil and gas inspectors' examining board within the division of environmental protection shall continue to exist until the first day of July, two thousand.

ARTICLE 8. SHALLOW GAS WELL REVIEW BOARD.

§22C-8-1. Declaration of public policy; legislative findings.

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

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

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

(3) Safeguard, protect and enforce the correlative
rights of gas operators and royalty owners in a pool of
gas to the end that each such gas operator and royalty
owner may obtain a just and equitable share of produc-
tion from such pool of gas.

(b) The Legislature hereby determines and finds that
gas found in West Virginia in shallow sands or strata
has been produced continuously for more than one
hundred years; that the placing of shallow wells has
heretofore been regulated by the state for the purpose
of ensuring the safe recovery of coal and gas, but that
regulation should also be directed toward encouraging
the fullest practical recovery of both coal and gas
because modern extraction technologies indicate the
desirability of such change in existing regulation and
because the energy needs of this state and the United
States require encouragement of the fullest practical
recovery of both coal and gas; that in order to encourage
and ensure the fullest practical recovery of coal and gas
in this state and to further ensure the safe recovery of
such natural resources, it is in the public interest to
enact new statutory provisions establishing a shallow
gas well review board which shall have the authority to
regulate and determine the appropriate placing of
shallow wells when gas well operators and owners of
coal seams fail to agree on the placing of such wells, and
establishing specific considerations, including minimum
distances to be allowed between certain shallow gas
wells, to be utilized by the shallow gas well review board
in regulating the placing of shallow wells; that in order
to encourage and ensure the fullest practical recovery
of coal and gas in this state and to protect and enforce
the correlative rights of gas operators and royalty
owners of gas resources, it is in the public interest to
enact new statutory provisions establishing a shallow
gas well review board which shall also have authority
to establish drilling units and order the pooling of
interests therein to provide all gas operators and royalty
owners with an opportunity to recover their just and
equitable share of production.

§22C-8-2. Definitions.

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

(1) “Board” means the shallow gas well review board
provided for in section four of this article;

(2) “Chair” means the chair of the shallow gas well
review board provided for in section four of this article;

(3) “Coal operator” means any person who proposes to
or does operate a coal mine;

(4) “Coal seam” and “workable coal bed” are inter-
changeable terms and mean any seam of coal twenty
inches or more in thickness, unless a seam of less
thickness is being commercially worked, or can in the
judgment of the division foreseeably be commercially
worked and will require protection if wells are drilled
through it;

(5) “Commission” means the oil and gas conservation
commission provided for in section four, article nine of
this chapter;

(6) “Commissioner” means the oil and gas conservation
commissioner provided for in section four, article nine
of this chapter;

(7) “Correlative rights” means the reasonable oppor-
tunity of each person entitled thereto to recover and
receive without waste the gas in and under a tract or
tracts, or the equivalent thereof;

(8) “Deep well” means any well other than a shallow
well, drilled and completed in a formation at or below
the top of the uppermost member of the “Onondaga
Group”;

(9) “Division” means the state division of environmen-
(10) "Director" means the director of the division of environmental protection as established in article one, chapter twenty-two of this code or such other person to whom the director delegates authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code;

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

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

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

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

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

(16) "Owner" when used with reference to any coal seam, shall include any person or persons who own, lease or operate such coal seam;
(17) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

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

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

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

(21) "Shallow well" means any gas well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the well operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perforated or stimulated in any manner;

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

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

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

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

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, under which a coal seam as defined in section two of this article and section one, article six, chapter twenty-two of this code, is located, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of this chapter or chapter twenty-two of this code.

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

(1) Deep wells;

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

(3) Any shallow well as to which no objection is made under section seventeen, article six, chapter twenty-two of this code;

(4) Wells as defined in subdivision (4), section one, article nine, chapter twenty-two of this code; or


§22C-8-4. Shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

(a) There is hereby continued the “Shallow Gas Well Review Board” which shall be composed of three members, two of whom shall be the commissioner and the chief of the office of oil and gas. The remaining member of the board shall be a registered professional
who has been successfully tested in mining engineering,
with at least ten years practical experience in the coal
mining industry and shall be appointed by the governor,
by and with the advice and consent of the Senate:

Provided, That any person so appointed while the Senate
of this state is not in session shall be permitted to serve
in an acting capacity for one year from appointment or
until the next session of the Legislature, whichever is
less. As soon as practical after appointment and
qualification of the member appointed by the governor,
the governor shall convene a meeting of the board for
the purpose of organizing and electing a chair, who
serves as such until a successor is elected by the board.

(b) A vacancy in the membership appointed by the
governor shall be filled by appointment by the governor
within sixty days after the occurrence of such vacancy.
Before performing any duty hereunder, each member of
the board shall take and subscribe to the oath required
by section five, article IV of the Constitution of West
Virginia, and serves thereafter until a successor has
been appointed and qualified.

(c) The member of the board appointed by the
governor shall be paid the same compensation, and each
member of the board shall be paid the expense reim-
bursement, as is paid to members of the Legislature for
their interim duties as recommended by the citizens
legislative compensation commission and authorized by
law for each day or portion thereof engaged in the
discharge of official duties. Each member of the board
shall also be reimbursed for all reasonable and neces-
sary expenses actually incurred in the performance of
the duties as a member of the board.

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

§22C-8-5. Same — Meetings; notice; general powers and
duties.

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

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

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

(d) The board is hereby empowered and it shall be its duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of section three of this article, the board shall have jurisdiction and authority over all persons and property necessary therefor:

Provided, That the provisions of this article shall not be
construed to grant to the board authority or power to
(1) limit production or output from or prorate produc-
tion of any gas well, or (2) fix prices of gas.

(e) The board shall have specific authority to:

(1) Take evidence and issue orders concerning appli-
cations for drilling permits and drilling units in
accordance with the provisions of this article;

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

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

(4) Issue subpoenas for the attendance of and sworn
testimony by witnesses and subpoenas duces tecum for
the production of any books, records, maps, charts,
diagrams and other pertinent documents, and adminis-
ter oaths and affirmations to such witnesses, whenever,
in the judgment of the board, it is necessary to do so
for the effective discharge of its duties under the
provisions of this article.

§22C-8-6. Rules; notice requirements.

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

(b) Notwithstanding the provisions of section two,
article seven, chapter twenty-nine-a of this code, any
notice required under the provisions of this article shall
be given at the direction of the chair by (1) personal or
substituted service and if such cannot be had then by
(2) certified United States mail, addressed, postage and
certification fee prepaid, to the last known mailing
address, if any, of the person being served, with the
direction that the same be delivered to addressee only,
return receipt requested, and if there be no known
mailing address or if the notice is not so delivered then
by (3) publication of such notice as a Class II legal
advertisement in compliance with the provisions of
article three, chapter fifty-nine of this code, and the
publication area for such publication shall be the county
or counties wherein any land which may be affected by
the order of the board is situate. The chair shall also
mail a copy of such notice to all other persons who have
specified to the chair an address to which all such
notices may be mailed. All notices shall issue in the
name of the state, shall be signed by the chair, shall
specify the style and number of the proceeding, the date,
time and place of any meeting, conference or hearing,
and shall briefly state the purpose of the proceeding.
Proof of service or publication of such notice shall be
made to the board promptly and in any event within the
time during which the person served must respond to
the notice. If service is made by a person other than the
sheriff or the chair, such person shall make proof
thereof by affidavit. Failure to make proof of service or
publication within the time required shall not affect the
validity of the service of the notice.

§22C-8-7. Objections to proposed drilling; conferences;
agreed locations and changes on plats; hearings; orders.

(a) At the time and place fixed by the chair for the
meeting of the board and for consideration of the
objections to proposed drilling filed by coal seam owners
pursuant to section seventeen, article six, chapter
twenty-two of this code, the well operator and the
objecting coal seam owners present or represented shall
hold a conference with the board to consider the
objections. Such persons present or represented at the
conference may agree upon either the drilling location
as proposed by the well operator or an alternate location.
Any change in the drilling location from the drilling
location proposed by the well operator shall be indicated
on the plat enclosed with the notice of objection filed
with the chair by the director in accordance with the
provisions of section seventeen, article six, chapter
twenty-two of this code, and the distance and direction
to the new drilling location from the proposed drilling
location shall also be shown on such plat. If agreement is reached at the conference by the well operator and such objecting coal seam owners present or represented at the conference, the board shall issue a written order stating that an agreement has been reached, stating the nature of such agreement, and directing the director to grant the well operator a drilling permit for the location agreed upon. The original of such order shall be filed with the division within five days after the conference of the board at which the drilling location was agreed upon and copies thereof shall be mailed by registered or certified mail to the well operator and the objecting coal seam owners present or represented at such conference.

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

(1) Refuse a drilling permit;

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

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

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

(c) The written order of the board shall contain findings of fact and conclusions based thereon concern-
(1) Whether the drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or any coal mine already surveyed and platted but not yet being operated;

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

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

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

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

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

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

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

(8) The methods proposed for the recovery of coal and gas;
(9) The distance limitations established in section eight of this article;

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

(11) The surface topography and use; and

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

(d) Any member of the board may file a separate opinion. Copies of all orders and opinions shall be mailed by the board, by registered or certified mail, to the parties present or represented at the hearing.

§22C-8-8. Distance limitations.

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

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

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

(b) The words “existing well” as used in this section means (i) any well not plugged within nine months after being drilled to its total depth and either completed in the same target formation or drilled for the purpose of producing from the same target formation, and (ii) any unexpired, permitted drilling location for a well to the same target formation.

(c) The minimum distance limitations established by this section shall not apply if the proposed well be drilled through an existing or planned pillar of coal required for protection of a preexisting oil or gas well and the proposed well will neither require enlargement of such pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

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

§22C-8-9. Application to establish a drilling unit; contents; notice.

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

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

(1) The name and address of the applicant;

(2) A plat prepared by a licensed land surveyor or
registered professional engineer showing the boundary
of the proposed drilling unit, the district and county in
which such unit is located, the acreage of the proposed
drilling unit, the boundary of the tracts which comprise
the proposed drilling unit, the names of the owners of
record of each such tract, the proposed well location on
the proposed drilling unit, and the proposed well
location for which the division refused to issue a drilling
permit;
(3) The names and addresses of the royalty owners of
the gas underlying the tracts which comprise the
proposed drilling unit;
(4) The names and addresses of the gas operators of
the tracts which comprise the proposed drilling unit;
(5) The approximate depth and target formation to
which the well for the proposed drilling unit is to be
drilled;
(6) A statement indicating whether a voluntary
pooling agreement has been reached among any or all
of the royalty owners of the gas underlying the tracts
which comprise the proposed drilling unit and the gas
operators of such tracts;
(7) An affidavit of publication of the notice of intent
to file an application to establish a drilling unit as
required in subsection (c) of this section; and
(8) Such other pertinent and relevant information as
the board may prescribe by reasonable rules promul-
gated in accordance with the provisions of section six of
this article.
(c) Prior to the filing of an application to establish a
drilling unit, the applicant shall cause to be published,
as a Class II legal advertisement in accordance with the
provisions of article three, chapter fifty-nine of this code,
a notice of intent to file an application to establish a
drilling unit. Such notice shall contain the information
required by subdivisions (1), (4) and (5), subsection (b)
of this section, the name of the royalty owner of the gas
underlying the proposed well location on the proposed
drilling unit, plus an abbreviated description, or, at the
applicant's option, a plat of the drilling unit, disclosing
the county and district wherein the proposed drilling
unit is to be located, the post office closest to the
proposed drilling unit, a statement that the applicant
will deliver a copy of the plat required by subdivision
(2) of subsection (b) to any person desiring the same, the
date upon which the applicant intends to file the
application to establish a drilling unit, and a statement
that written protests and objections to such application
may be filed with the board until a specified date, which
date shall be at least ten days after the date upon which
the applicant intends to file the application to establish
a drilling unit. The publication area of the notice
required by this subsection shall be the county or
counties in which the proposed drilling unit is to be
located.

(d) At the time an application to establish a drilling
unit is filed, the applicant shall forward a copy thereof
by registered or certified mail to each and every person
whose name and address were included on the applica-
tion in accordance with the provisions of subdivisions (3)
and (4), subsection (b) of this section. With each such
application there shall be enclosed a notice (the form for
which shall be furnished by the board on request)
addressed to each such person to whom a copy of the
application is required to be sent, informing the person
that the application is being mailed by registered or
certified mail, pursuant to the requirements of this
article: Provided, That the application and notice need
not be forwarded to those royalty owners or gas
operators within the boundary of the proposed drilling
unit who have previously agreed to voluntary pooling by
separately stated document or documents empowering
the gas operator, by assignment or otherwise, unilater-
ally to declare a unit.

§22C-8-10. Establishment of drilling units; hearings;
orders.

(a) At the time and place fixed by the chair for the
meeting of the board and for consideration of an
application to establish a drilling unit, the applicant
shall present proof that the drilling location on the
proposed drilling unit has been agreed to by all of the
owners of the coal seams underlying such drilling
location; and thereafter the applicant, the royalty
owners of the gas underlying the tracts comprising the
unit, and the gas operators of the tracts comprising the
unit or such of them as are present or represented, shall
hold a conference with the board to consider the
application. Such persons present or represented at the
conference may agree upon the boundary of the drilling
unit as proposed by the applicant or as changed to
satisfy all valid objections of those persons present or
represented. Any change in the boundary of the drilling
unit from the boundary proposed by the applicant shall
be shown on the plat filed with the board as part of the
application. If agreement is reached at the conference
upon the boundary of the drilling unit among the
applicants, the royalty owners of the gas underlying the
tracts comprising the drilling unit and the gas operators
of the tracts comprising such unit, or such of them as
are present or represented, and if such agreement is
approved by the board, the board shall issue a written
order establishing and specifying the boundary of the
drilling unit.

(b) If the applicant, the royalty owners of the gas
underlying the tracts comprising the drilling unit and
the gas operators of the tracts comprising such unit, or
such of them as are present or represented at the time
and place fixed by the chair for consideration of the
application, are unable to agree upon the boundary of
the drilling unit, then the board shall hold a hearing
without recess of more than one business day to consider
the application to establish a drilling unit. All of the
pertinent provisions of article five, chapter twenty-nine-
a of this code shall apply to and govern such hearing.
Within twenty days after the close of the hearing, the
board shall issue a written order either establishing a
drilling unit or dismissing the application. If the board
determines to establish a drilling unit, the order shall
specify the boundary of such drilling unit. In determin-
ing whether to grant or deny an application to establish
a drilling unit, the board shall consider:
(1) The surface topography and property lines of the lands comprising the drilling unit;

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

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

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

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

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

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

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

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

(4) The drilling unit includes a portion of the acreage from under which the well operator intended to produce gas under the drilling permit which was refused.

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

§22C-8-11. Pooling of interests in a drilling unit; limitations.

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

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

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

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

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

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

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

§22C-8-12. Effect of order establishing drilling unit or
pooling of interests; recordation.

(a) An order issued by the board establishing a
drilling unit and ordering the pooling of interests
therein shall not entitle the gas operator designated in
such order to drill a well on such drilling unit until such
gas operator shall have received a drilling permit in
accordance with the provisions applicable to alternative
drilling locations set out in section seventeen, article six,
chapter twenty-two of this code. All orders issued by the
board establishing a drilling unit shall be filed with the
director and shall also direct the director to issue a
drilling permit for the drilling location agreed to by all
of the owners of the coal seams underlying such drilling
location.

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

§22C-8-13. Judicial review; appeal to supreme court of
appeals; legal representation for board.

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

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

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

§22C-8-14. Operation on drilling units.

All operations including, but not limited to, the commencement, drilling or operation of a well upon a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.

§22C-8-15. Validity of unit agreements.

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

§22C-8-16. Injunctive relief.

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

(b) Upon application by the board, the circuit courts of this state may by mandatory or prohibitory injunction compel compliance with the provisions of this article, the rules promulgated by the board hereunder and all orders of the board. The court may issue a temporary injunction in any case pending a decision on the merits of any application filed. Any other section of this code to the contrary notwithstanding, the state shall not be required to furnish bond or other undertaking as a prerequisite to obtaining mandatory, prohibitory or temporary injunctive relief under the provisions of this article.

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

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

(e) If the board shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any rule promulgated by the board hereunder or any order or final decision of the board, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in such person's own behalf for an injunction to enjoin such violation or threatened violation in any court in which the board might have brought suit. The board shall be made a
party defendant in such application in addition to the
person or persons violating or threatening to violate any
provision of this article, any rule promulgated by the
board hereunder or any order of the board. The
application shall proceed and injunctive relief may be
granted without bond or other undertaking in the same
manner as if the application had been made by the
chair.

§22C-8-17. Penalties.

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

(b) Any person who, with the intention of evading any
provision of this article, any of the rules promulgated
by the board hereunder or any order of the board shall
make or cause to be made any false entry or statement
in any application or other document permitted or
required to be filed under the provisions of this article,
any of the rules promulgated by the board hereunder
or any order of the board, shall be guilty of a misde-
meanor, and, upon conviction thereof, shall be fined not
more than five thousand dollars, or imprisoned in the
county jail not more than six months, or both fined and
imprisoned.

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

§22C-8-18. Construction.

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

§22C-8-19. Rules, orders and permits remain in effect.
The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article seven, of former chapter twenty-two of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the board continued in this article but all such rules, orders and permits shall be subject to review by the board to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two of this code.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

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

(1) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources; (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

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

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

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

§22C-9-2. Definitions.

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

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

7 (2) "Director" means the director of the division of
8 environmental protection or such other person to whom
9 the director has delegated authority or duties pursuant
10 to sections six or eight, article one, chapter twenty-two
11 of this code;

12 (3) "Person" means any natural person, corporation,
13 partnership, receiver, trustee, executor, administrator,
14 guardian, fiduciary or other representative of any kind,
15 and includes any government or any political subdivi-
16 sion or any agency thereof;

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

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

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

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

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

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

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

(11) "Shallow well" means any well drilled and completed in a formation above the top of the uppermost member of the "Onondaga Group": Provided, That in drilling a shallow well the operator may penetrate into the "Onondaga Group" to a reasonable depth, not in excess of twenty feet, in order to allow for logging and completion operations, but in no event may the "Onondaga Group" formation be otherwise produced, perfo-
rated or stimulated in any manner;

(12) "Deep well" means any well, other than a shallow well, drilled and completed in a formation at or below the top of the uppermost member of the "Onondaga Group";

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

(14) "Waste" means and includes: (A) Physical waste, as that term is generally understood in the oil and gas industry; (B) the locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or (C) the drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: Provided, That nothing in this exclusion is intended to address ownership of the gas;

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

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

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

§22C-9-3. Application of article; exclusions.
(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of article six, chapter twenty-two of this code.

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

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

(2) Any well commenced or completed prior to the ninth day of March, one thousand nine hundred seventy-two, unless such well is, after completion (whether such completion is prior or subsequent to that date), (i) deepened subsequent to that date to a formation at or below the top of the uppermost member of the “Onondaga Group” or (ii) involved in secondary recovery operations for oil under an order of the commissioner entered pursuant to section eight of this article;

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

(4) Free gas rights.

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

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

(2) Fix prices of oil or gas.
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ifications of commissioner; general powers and duties.

(a) There is hereby continued as provided for in subsection (h) of this section, the "Oil and Gas Conservation Commission" which shall be composed of five members. The director of the division of environmental protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the governor, by and with the advice and consent of the Senate. Of the three members appointed by the governor, one shall be an independent producer and at least one shall be a public member not engaged in full-time employment in an activity under the jurisdiction of the public service commission or the federal energy regulatory commission. As soon as practical after appointment of the members of the commission, the governor shall call a meeting of the commission to be convened at the state capitol for the purpose of organizing and electing a chair.

(b) The members of the commission appointed by the governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the governor to serve any number of terms. The members of the commission appointed by the governor, before performing any duty hereunder, shall take and subscribe to the oath required by section five, article IV of the constitution of West Virginia. Vacancies in the membership appointed by the governor shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the governor within sixty days of the occurrence of such vacancy. Any member appointed by the governor may be removed by the governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office.

(c) The commission shall meet at such times and
places as shall be designated by the chair. The chair
may call a meeting of the commission at any time, and
shall call a meeting of the commission upon the written
request of two members or upon the written request of
the oil and gas conservation commissioner. Notification
of each meeting shall be given in writing to each
member by the chair at least five days in advance of the
meeting. Any three members, one of which may be the
chair constitute a quorum for the transaction of any
business as herein provided for. A majority of the
commission is required to determine any issue brought
before it.

(d) The board shall pay each member the same
compensation as is paid to members of the Legislature
for their interim duties as recommended by the citizens
legislative compensation commission and authorized by
law for each day or portion thereof engaged in the
discharge of official duties and shall reimburse each
member for actual and necessary expenses incurred in
the discharge of official duties.

(e) The commission shall appoint the oil and gas
conservation commissioner and advise the commission
regarding the duties and authority under this article
and consult with the commissioner prior to his or her
reaching any final decisions and entering orders
hereunder. However, the commissioner has full and
final authority under this article with the commission
serving in an advisory capacity to the commissioner. The
commissioner shall possess a degree from an accredited
college or university in petroleum engineering or
geology and must be a registered professional engineer
with particular knowledge and experience in the oil and
gas industry.

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

(g) Without limiting the commissioner's general authority, the commissioner shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commissioner and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commissioner, it is necessary to do so for the effective discharge of the commissioner's duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the chief of office of oil and gas, to the division of environmental protection and to any other agency of state government having responsibility related to the oil and gas industry.

(h) After having conducted a preliminary performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the oil and gas conservation commission should be continued and reestablished. Accordingly, pursuant to the provisions of section five of said article, the oil and gas conservation commission shall continue to exist until the first day of July, one thousand nine hundred ninety-seven.
§22C-9-5. Rules; notice requirements.

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

(b) Notwithstanding the provisions of section two, article seven, chapter twenty-nine-a of this code, any notice required under the provisions of this article shall be given at the direction of the commissioner by (1) personal or substituted service and if such cannot be had then by (2) certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested, and if there be no known mailing address or if the notice is not so delivered then by (3) publication of such notice as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county or counties wherein any land which may be affected by such order is situate. In addition, the commissioner shall mail a copy of such notice to all other persons who have specified to the commissioner an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by the commissioner, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commissioner in the same manner as is now provided by the “West Virginia Rules of Civil Procedure for Trial Courts of Record” for service of process in civil actions in the various courts of this state. A certified copy of any pooling order entered under the provisions of this article shall be
presented by the commissioner to the clerk of the county commission of each county wherein all or any portion of the pooled tract is located, for recordation in the record book of such county in which oil and gas leases are normally recorded. Such recording of such order from the time noted thereon by such clerk shall be notice of the order to all persons.

§22C-9-6. Waste of oil or gas prohibited.

Waste of oil or gas is hereby prohibited.

§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells.

(a) Drilling units.

(1) After one discovery deep well has been drilled establishing a pool, an application to establish drilling units may be filed with the commissioner by the operator of such discovery deep well or by the operator of any lands directly and immediately affected by the drilling of such discovery deep well, or subsequent deep wells in said pool, and the commissioner shall promptly schedule a hearing on said application. Each application shall contain such information as the commissioner may prescribe by reasonable rules promulgated by the commissioner in accordance with the provisions of section five of this article.

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

(3) On the date specified in such notice, the commissioner shall hold a public hearing to determine the area to be included in such spacing order and the acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from the outside boundary of the unit at which a deep well may be drilled thereon. At such hearing the commissioner shall consider:
(i) The surface topography and property lines of the lands underlaid by the pool to be included in such order;

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

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

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

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

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

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

(4) When it is determined that an oil or gas pool underlies an area for which a spacing order is to be entered, the commissioner shall include in such order all lands determined or believed to be underlaid by such pool and exclude all other lands.

(5) No drilling unit established by the commissioner shall be smaller than the maximum area which can be drained efficiently and economically by one deep well: Provided, That if at the time of a hearing to establish drilling units, there is not sufficient evidence from which to determine the area which can be drained efficiently and economically by one deep well, the commissioner may enter an order establishing temporary drilling units for the orderly development of the pool pending the obtaining of information necessary to determine the ultimate spacing for such pool.
(6) An order establishing drilling units shall specify the minimum distance from the nearest outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance provided shall be the same in all drilling units established under said order with necessary exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the commissioner finds that a deep well to be drilled at or more than the specified minimum distance from the boundary of a drilling unit would not be likely to produce in paying quantities or will encounter surface conditions which would substantially add to the burden or hazard of drilling such deep well, or that a location within the area permitted by the order is prohibited by the lawful order of any state agency or court, the commissioner is authorized after notice and hearing to make an order permitting the deep well to be drilled at a location within the minimum distance prescribed by the spacing order. In granting exceptions to the spacing order, the commissioner may restrict the production from any such deep well so that each person entitled thereto in such drilling unit shall not produce or receive more than his just and equitable share of the production from such pool.

(7) An order establishing drilling units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the commissioner from time to time, to include additional lands determined to be underlaid by such pool or to exclude lands determined not to be underlaid by such pool. An order establishing drilling units may be modified by the commissioner to permit the drilling of additional deep wells on a reasonably uniform pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any order modifying a prior order shall be made only after application by an interested operator and notice and hearing as prescribed herein for the original order: Provided, That drilling units established by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a gas well.

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

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

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

(b) Pooling of interests in drilling units.

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

(2) All operations, including, but not limited to, the commencement, drilling or operation of a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall be deemed for all purposes the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to a
146 separately owned tract included in a drilling unit shall, 147 when produced, be deemed for all purposes to have been 148 actually produced from such tract by a deep well drilled 149 thereon.

150 (3) Any pooling order under the provisions of this 151 subsection (b) shall authorize the drilling and operation 152 of a deep well for the production of oil or gas from the 153 pooled acreage; shall designate the operator to drill and 154 operate such deep well; shall prescribe the time and 155 manner in which all owners of operating interests in the 156 pooled tracts or portions of tracts may elect to partic- 157 ipate therein; shall provide that all reasonable costs and 158 expenses of drilling, completing, equipping, operating, 159 plugging and abandoning such deep well shall be borne, 160 and all production therefrom shared, by all owners of 161 operating interests in proportion to the net oil or gas 162 acreage in the pooled tracts owned or under lease to 163 each owner; and shall make provisions for payment of 164 all reasonable costs thereof, including a reasonable 165 charge for supervision and for interest on past-due 166 accounts, by all those who elect to participate therein.

167 (4) No drilling or operation of a deep well for the 168 production of oil or gas shall be permitted upon or 169 within any tract of land unless the operator shall have 170 first obtained the written consent and easement there- 171 for, duly acknowledged and placed of record in the office 172 of the county clerk, for valuable consideration of all 173 owners of the surface of such tract of land, which 174 consent shall describe with reasonable certainty, the 175 location upon such tract, of the location of such proposed 176 deep well, a certified copy of which consent and 177 easement shall be submitted by the operator to the 178 commissioner.

179 (5) Upon request, any such pooling order shall provide 180 just and equitable alternatives whereby an owner of an 181 operating interest who does not elect to participate in 182 the risk and cost of the drilling of a deep well may elect:

183 (i) Option 1. To surrender such interest or a portion 184 thereof to the participating owners on a reasonable basis 185 and for a reasonable consideration, which, if not agreed
upon, shall be determined by the commissioner; or

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

(6) In the event a nonparticipating owner elects Option 2, and an owner of any operating interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling and operating, a deep well for the benefit of such nonparticipating owner as provided in the pooling order, then such operating owner shall be entitled to the share of production from the tracts or portions thereof pooled accruing to the interest of such nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive of one eighth of the production attributable to all unleased tracts or portions thereof, until the market value of such nonparticipating owner's share of the production, exclusive of such royalty, overriding royalty or one eighth of production, equals double the share of such costs payable by or charged to the interest of such nonparticipating owner.

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

§22C-9-8. Secondary recovery of oil; unit operations.

Upon the application of any operator in a pool productive of oil and after notice and hearing, the commissioner may enter an order requiring the unit operation of such pool in connection with a program of secondary recovery of oil, and providing for the unitization of separately owned tracts and interests within such pool, but only after finding that: (1) The order is reasonably necessary for the prevention of waste and the drilling of unnecessary deep wells; (2) the proposed plan of secondary recovery will increase the ultimate recovery of oil from the pool to such an extent
that the proposed secondary recovery operation will be economically feasible; (3) the production of oil from the unitized pool can be allocated in such a manner as to ensure the recovery by all operators of their just and equitable share of such production; and (4) the operators of at least three fourths of the acreage (calculating partial interests on a pro rata basis for operator interests on any parcel owned in common) and the royalty owners of at least three fourths of the acreage (calculating partial interests on a pro rata basis for royalty interests on any parcel owned in common) in such pool have approved the plan and terms of unit operation to be specified by the commissioner in its order, such approval to be evidenced by a written contract setting forth the terms of the unit operation and executed by said operators and said royalty owners, and filed with the commissioner on or before the day set for hearing. The order requiring such unit operation shall designate one operator in the pool as unit operator and shall also make provision for the proportionate allocation to all operators of the costs and expenses of the unit operation, including reasonable charges for supervision and interest on past-due accounts, which allocation shall be in the same proportion that the separately owned tracts share in the production of oil from the unit. In the absence of an agreement entered into by the operators and filed with the commissioner providing for sharing the costs of capital investment in wells and physical equipment, and intangible drilling costs, the commissioner shall provide by order for the sharing of such costs in the same proportion as the costs and expenses of the unit operation: *Provided, That any operator who has not consented to the utilization shall not be required to contribute to the costs or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment, and intangible drilling costs, except out of the proceeds from the sale of the production accruing to the interest of such operator: *Provided, however, That no credit to the well costs shall be adjusted on the basis of less than the average well costs within the unitized area: *Provided further, That no order entered under the provisions of this section

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


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

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

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

(d) At any such hearing any interested person may
represent themselves or be represented by an attorney-
at-law admitted to practice before any circuit court of
this state. Upon request by the commissioner, the
commissioner shall be represented at such hearing by
the attorney general or the attorney general's assistants
without additional compensation. The commissioner,
with the written approval of the attorney general, may
employ special counsel to represent the commissioner at
any such hearing.

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

The decision of the commissioner shall be final unless
reversed, vacated or modified upon judicial review
thereof in accordance with the provisions of section
eleven of this article.

§22C-9-11. Judicial review; appeal to supreme court of
appeals; legal representation for
commissioner.

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

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

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

§22C-9-12. Injunctive relief.

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

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

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

d) The commissioner shall be represented in all such proceedings by the attorney general or the attorney general's assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation. The commissioner, with the written approval of the attorney general, may employ special counsel to represent the commissioner in any such proceedings.

(e) If the commissioner shall refuse or fail to apply for an injunction to enjoin a violation or threatened violation of any provision of this article, any reasonable rule promulgated by the commissioner hereunder or any order or final decision of the commissioner, within ten days after receipt of a written request to do so by any person who is or will be adversely affected by such violation or threatened violation, the person making such request may apply in his own behalf for an injunction to enjoin such violation or threatened violation in any court in which the commissioner might have brought suit. The commissioner shall be made a party defendant in such application in addition to the person or persons violating or threatening to violate any provision of this article, any reasonable rule promulgated by the commissioner hereunder or any order or final decision of the commissioner. The application shall proceed and injunctive relief may be granted without
§22C-9-13. Special oil and gas conservation tax.

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

§22C-9-14. Penalties.

(a) Any person who violates any provision of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or any final decision of the commissioner, other than a violation covered by the provisions of subsection (b) of this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, and each day that a violation continues shall constitute a new and separate violation.

(b) Any person who, for the purpose of evading any provision of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or final decision of the commissioner, shall make or cause to be made any false entry or statement in a report required under the provisions of this article, any of the reasonable rules promulgated by the commissioner hereunder or any order or final decision of the commissioner, or shall make or cause to be made any false entry in any record, account or memorandum required under the provisions of this article, any of the
reasonable rules promulgated by the commissioner hereunder or any order or any final decision of the commissioner, or who shall omit, or cause to be omitted, from any such record, account or memorandum, full, true and correct entries, or shall remove from this state or destroy, mutilate, alter or falsify any such record, account or memorandum, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned.

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

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

§22C-9-16. Rules, orders and permits remain in effect.
The rules promulgated and all orders and permits in effect upon the effective date of this article pursuant to the provisions of article eight, of former chapter twenty-two of this code shall remain in full force and effect as if such rules, orders and permits were adopted by the director established in this chapter but all such rules, orders and permits are subject to review by the commissioner to ensure they are consistent with the purposes and policies set forth in this chapter and chapter twenty-two of this code.

ARTICLE 10. INTERSTATE MINING COMPACT.

§22C-10-1. Enactment of compact.
The "Interstate Mining Compact" is hereby continued in law and continued in effect with all other jurisdic-
terns legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. Findings and Purposes.

(a) The party states find that:

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

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

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

(4) Such variables as soil structure and composition, physiography, climatic conditions and the needs of the public make impracticable to all mining areas of a single standard for the conservation, adaption or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

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

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

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

(2) Assist in the reduction or elimination or counte-
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(3) Encourage, with due recognition of relevant regional, physical and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

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

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

Article II. Definitions.

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores and other solid matter from its original location, and the preparation, washing, cleaning or other treatment of minerals, ores or other solid matter so as to make them suitable for commercial, industrial or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

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

Article III. State Programs.
Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws or the continuing of the same in force, to accomplish:

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

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

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

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

Article IV. Powers.

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

(a) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation and patterns of community or regional development or change.

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

(c) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.
(d) Gather and disseminate information relating to any of the matters within the purview of this compact.

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

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

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

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

Article V. The Commission.

(a) There is hereby created an agency of the party states to be known as the “Interstate Mining Commission,” hereinafter called “the commission.” The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate from among the members of the advisory body required by this paragraph, who shall represent
him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

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

(c) The commission shall have a seal.

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

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

(f) The commission may establish and maintain, independently or in conjunction with a party state,
suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance:

Provided, That the commission take such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

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

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

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

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

Article VI. Advisory, Technical
and Regional Committees.

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

Article VII. Finance.

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

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One half in equal shares, and the remainder in proportion to the value of minerals, ores and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its
obligations, in whole or in part, with funds available to it under Article V (h) of this compact: Provided, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met, in whole or in part, in such manner. Except where the commission makes use of funds available to it under Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

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

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

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

Article VIII. Entry Into Force and Withdrawal.

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

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

Article IX. Effect on Other Laws.

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

Article X. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

§22C-10-2. Bylaws of interstate mining commission.

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

§22C-10-3. Effective date.

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

ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-1. Creation of commission; members; terms; compact with other political units.

There is hereby created a commission consisting of three members, to act jointly with commissioners appointed for like purposes by the commonwealths of Pennsylvania and Virginia, the state of Maryland, and the District of Columbia, and an additional three
members to be appointed by the president of the United States, and which, together with the other commissioners appointed as hereinbefore mentioned, shall constitute and be known as the "interstate commission on the Potomac River basin." The said commission of the state of West Virginia shall consist of three members. The governor, by and with the advice and consent of the Senate, shall appoint two persons as two of such commissioners, each of whom shall be a resident and citizen of this state. The terms of one of the said two commissioners first appointed shall be three years and of the other shall be six years; and their successors shall be appointed by the governor, by and with the advice and consent of the Senate, for terms of six years each. Each commissioner shall hold office until his successor shall be appointed and qualified. Vacancies occurring in the office of any such commissioner for any reason or cause shall be filled by appointment by the governor, by and with the advice and consent of the Senate, for the unexpired term. The third commissioner from this state is the commissioner of the bureau of public health ex officio, and the term of the ex officio commissioner terminates at the time he ceases to hold said office. Said ex officio commissioner may delegate, from time to time, to any deputy or other subordinate in his division or office, the power to be present and participate, including voting, as his representative or substitute at any meeting of or hearing by or other proceeding of the commission. The term of each of the initial three members shall begin at the date of the appointment of the two appointive commissioners: Provided, That the compact hereinafter referred to shall then have gone into effect, in accordance with article six thereof, otherwise to begin upon the date said compact shall become effective, in accordance with said article six.

Any commissioner may be removed from office by the governor.

The governor of the state of West Virginia is hereby authorized and directed to execute a compact on behalf of the state of West Virginia, with the other states and the district hereinafter referred to, who may by their
legislative bodies so authorize a compact in form substantially as follows:

A COMPACT

Whereas, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate streams; and

Whereas, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

Whereas, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district; now, therefor,

The states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac valley conservancy district, hereinafter designated the conservancy district, comprising all of the area drained by the Potomac river and its tributaries; and also, do hereby create, as an agency of each signatory body, the interstate commission on the Potomac River basin, hereinafter designated
the commission, under the articles of organization as set forth below.

Article I

The interstate commission on the Potomac River basin shall consist of three members from each signatory body and three members appointed by the president of the United States. Said commissioners, other than those appointed by the president, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed, and shall serve without compensation from the commission but shall be paid by the commission their actual expenses incurred and incident to the performance of their duties.

(A) The commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(B) The commission shall appoint, and at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The commission may maintain one or more offices for the transaction of its business and may meet at any time within the area of the signatory bodies.

(C) The commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the
signatory bodies reserves the right to make at any time an examination and audit of the accounts of the commission.

(D) A quorum of the commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the commission who shall represent at least a majority of the signatory bodies: Provided, however, That no action of the commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the commissioners from such signatory body shall vote in favor thereof.

Article II

The commission shall have the power:

(A) To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the conservancy district.

(B) To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said conservancy district.

(C) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the conservancy district and on the aims, views, purposes and recommendations of the commission in relation thereto.

(D) To cooperate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans,
programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

(E) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(F) (1) To make, and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the conservancy district, and also, for cleanliness of the various streams in the conservancy district.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the district in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the commission with its recommendations thereon.

The commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state
water pollution control agencies will work to establish
programs of treatment of sewage and industrial wastes
which will meet or exceed standards established by the
commission for classified waters. The commission may
from time to time make such changes in definitions of
classifications and in standards as may be required by
changed conditions or as may be necessary for unifor-
mity and in a manner similar to that in which these
standards and classifications were originally
established.

It is recognized, owing to such variable factors as
location, size, character and flow and the many varied
uses of the waters subject to the terms of this compact,
that no single standard of sewage and waste treatment
and no single standard of quality of receiving waters is
practical and that the degree of treatment of sewage and
industrial wastes should take into account the classifi-
cation of the receiving waters according to present and
proposed highest use, such as for drinking water supply,
bathing and other recreational purposes, maintenance
and propagation of fish life, industrial and agricultural
uses, navigation and disposal of wastes.

Article III

For the purpose of dealing with the problems of
pollution and of water and associated land resources in
specific areas which directly affect two or more, but not
all, signatory bodies, the commission may establish
sections of the commissions consisting of the commis-
ioners from such affected signatory bodies: Provided,
however, That no signatory body may be excluded from
any section in which it wishes to participate. The
commissioners appointed by the president of the United
States may participate in any section. The commission
shall designate, and from time to time may change, the
geographical area with respect to which each section
shall function. Each section shall, to such extent as the
commission may from time to time authorize, have
authority to exercise and perform with respect to its
designated geographical area any power or function
vested in the commission, and in addition may exercise
such other powers and perform such functions as may
be vested in such section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a section of any power or function vested in the commission may be financed by the commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

Article IV

The moneys necessary to finance the commission in the administration of its business in the conservancy district shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

Article V

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the conservancy district and in planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in article four.

Article VI
This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the commissioners of the District of Columbia, and approval by the Congress of the United States: Provided, however, That this compact shall not be effective as to any signatory body until ratified thereby.

Article VII

Any signatory body may, by legislative action, after one year's notice to the commission, withdraw from this compact.

§22C-11-2. Appointment of alternates.

The governor, by and with the consent of the Senate, shall appoint an alternate member for the two members of the commission who are not ex officio, and each alternate shall have power to act in the absence of the person for whom he is alternate. The governor shall appoint the first alternates hereunder on or before July first, one thousand nine hundred forty-nine, the term of each alternate to run concurrently with the term of the member for whom he is alternate.

§22C-11-3. Expenses of commission; appropriation; officers and employees; meetings.

The commissioners shall be reimbursed, out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission.

There shall be appropriated to the commission out of any moneys in the state treasury unexpended and available therefor, and not otherwise appropriated, such sums as may be necessary for the uses and purposes of the commission in carrying out the provisions of this article and the payment of the proper proportion of the state of West Virginia of the expenses of the “interstate commission on the Potomac River basin,” in accordance with article four of said compact.

The commission shall elect from its membership a
chairman and may also select a secretary who need not be a member. The commission may employ such assistants as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

§22C-1-4. Effective date; findings; termination date.

This article shall become effective upon the adoption of substantially similar amendments to the interstate compact by each of the signatory states to the compact, and upon the approval of the amendments to the compact by the Congress of the United States.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the interstate compact. Accordingly, pursuant to the provisions of section five, article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, one thousand nine hundred ninety-eight.

§22C-11-5. Restrictions.

Neither the governor of the state of West Virginia nor any member of the commission aforesaid, representing the state of West Virginia, shall consent to the construction of any dam, whether in the state of West Virginia, or without this state, which shall flood lands in this state, without the express consent of the Legislature.

ARTICLE 12. OHIO RIVER VALLEY WATER SANITATION COMMISSION.

§22C-12-1. Ohio River valley water sanitation compact approved.

The following Ohio River valley water sanitation
compact, which has been negotiated by representatives
of the states of Illinois, Indiana, Kentucky, New York,
Ohio, Pennsylvania, Tennessee and West Virginia, is
hereby approved, ratified, adopted, enacted into law,
and entered into by the state of West Virginia as a party
thereto and signatory state, namely:

Ohio River Valley
Water Sanitation Compact

Whereas, A substantial part of the territory of each
of the signatory states is situated within the drainage
basin of the Ohio River; and

Whereas, The rapid increase in the population of the
various metropolitan areas situate within the Ohio
drainage basin, and the growth in industrial activity
within that area, have resulted in recent years in an
increasingly serious pollution of the waters and streams
within the said drainage basin, constituting a grave
menace to the health, welfare, and recreational facilities
of the people living in such basin, and occasioning great
economic loss; and

Whereas, The control of future pollution and the
abatement of existing pollution in the waters of said
basin are of prime importance to the people thereof, and
can best be accomplished through the cooperation of the
states situated therein, by and through a joint or
common agency;

Now, Therefore, the states of Illinois, Indiana,
Kentucky, New York, Ohio, Pennsylvania, Tennessee
and West Virginia do hereby covenant and agree as
follows:

Article I

Each of the signatory states pledges to each of the
other signatory states faithful cooperation in the control
of future pollution in and abatement of existing
pollution from the rivers, streams and waters in the
Ohio River basin which flow through, into or border
upon any of such signatory states, and in order to effect
such object, agrees to enact any necessary legislation to
enable each such state to place and maintain the waters
of said basin in a satisfactory sanitary condition, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits, and adaptable to such other uses as may be legitimate.

Article II

The signatory states hereby create a district to be known as the "Ohio River valley water sanitation district," hereinafter called the district, which shall embrace all territory within the signatory states, the water in which flows ultimately into the Ohio River, or its tributaries.

Article III

The signatory states hereby create the "Ohio River valley water sanitation commission," hereinafter called the commission, which shall be a body corporate, with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states or by act or acts of the Congress of the United States.

Article IV

The commission shall consist of three commissioners from each state, each of whom shall be a citizen of the state from which he is appointed, and three commissioners representing the United States government. The commissioners from each state shall be chosen in the manner and for the terms provided by the laws of the state from which they shall be appointed, and any commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. The commissioners representing the United States shall be appointed by the president of the United States, or in such other manner as may be provided by Congress. The commissioners shall serve without compensation, but shall be paid their actual
expenses incurred in and incident to the performance of
their duties; but nothing herein shall prevent the
appointment of an officer or employee of any state or
of the United States government.

Article V

The commission shall elect from its number a chair-
man and vice chairman, and shall appoint, and at its
pleasure remove or discharge, such officers and legal,
clerical, expert and other assistants as may be required
to carry the provisions of this compact into effect, and
shall fix and determine their duties, qualifications and
compensation. It shall adopt a seal and suitable bylaws,
and shall adopt and promulgate rules and regulations
for its management and control. It may establish and
maintain one or more offices within the district for the
transaction of its business, and may meet at any time
or place. One or more commissioners from a majority
of the member states shall constitute a quorum for the
transaction of business.

The commission shall submit to the governor of each
state, at such time as he may request, a budget of its
estimated expenditures for such period as may be
required by the laws of such state for presentation to
the legislature thereof.

The commission shall keep accurate books of account,
showing in full its receipts and disbursements, and said
books of account shall be open at any reasonable time
to the inspection of such representatives of the respec-
tive signatory states as may be duly constituted for that
purpose.

On or before the first day of December of each year,
the commission shall submit to the respective governors
of the signatory states a full and complete report of its
activities for the preceding year.

The commission shall not incur any obligations of any
kind prior to the making of appropriations adequate to
meet the same; nor shall the commission pledge the
credit of any of the signatory states, except by and with
the authority of the legislature thereof.
It is recognized by the signatory states that no single standard for the treatment of sewage or industrial wastes is applicable in all parts of the district due to such variable factors as size, flow, location, character, self-purification, and usage of waters within the district. The guiding principle of this compact shall be that pollution by sewage or industrial wastes originating within a signatory state shall not injuriously affect the various uses of the interstate waters as hereinbefore defined.

All sewage from municipalities or other political subdivisions, public or private institutions, or corporations, discharged or permitted to flow into these portions of the Ohio River and its tributary waters which form boundaries between, or are contiguous to, two or more signatory states, or which flow from one signatory state into another signatory state, shall be so treated, within a time reasonable for the construction of the necessary works, as to provide for substantially complete removal of settleable solids, and the removal of not less than forty-five percent of the total suspended solids: Provided, that in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in article I, in specific instances such higher degree of treatment shall be used as may be determined to be necessary by the commission after investigation, due notice and hearing.

All industrial wastes discharged or permitted to flow into the aforesaid waters shall be modified or treated, within a time reasonable for the construction of the necessary works, in order to protect the public health or to preserve the waters for other legitimate purposes, including those specified in article I, to such degree as may be determined to be necessary by the commission after investigation, due notice and hearing.

All sewage or industrial wastes discharged or permitted to flow into tributaries of the aforesaid waters situated wholly within one state shall be treated to that extent, if any, which may be necessary to maintain such
waters in a sanitary and satisfactory condition at least
equal to the condition of the waters of the interstate
stream immediately above the confluence.

The commission is hereby authorized to adopt,
 prescribe and promulgate rules, regulations and stand-
ards for administering and enforcing the provisions of
this article.

Article VII

Nothing in this compact shall be construed to limit the
powers of any signatory state, or to repeal or prevent
the enactment of any legislation or the enforcement of
any requirement by any signatory state, imposing
additional conditions and restrictions to further lessen
or prevent the pollution of waters within its jurisdiction.

Article VIII

The commission shall conduct a survey of the territory
included within the district, shall study the pollution
problems of the district, and shall make a comprehen-
sive report for the prevention or reduction of stream
pollution therein. In preparing such report, the commis-
sion shall confer with any national or regional planning
body which may be established, and any department of
the federal government authorized to deal with matters
relating to the pollution problems of the district. The
commission shall draft and recommend to the governors
of the various signatory states uniform legislation
dealing with the pollution of rivers, streams and waters
and other pollution problems within the district. The
commission shall consult with and advise the various
states, communities, municipalities, corporations,
persons, or other entities with regard to particular
problems connected with the pollution of waters,
particularly with regard to the construction of plants for
the disposal of sewage, industrial and other waste. The
commission shall, more than one month prior to any
regular meeting of the legislature of any state which is
a party thereto, present to the governor of the state its
recommendations relating to enactments to be made by
any legislature in furthering the intents and purposes
of this compact.
The commission may from time to time, after investiga-
tion and after a hearing, issue an order or orders
upon any municipality, corporation, person or other
entity discharging sewage or industrial waste into the
Ohio River or any other river, stream or water, any part
of which constitutes any part of the boundary line
between any two or more of the signatory states, or into
any stream any part of which flows from any portion
of one signatory state through any portion of another
signatory state. Any such order or orders may prescribe
the date on or before which such discharge shall be
wholly or partially discontinued, modified or treated or
otherwise disposed of. The commission shall give
reasonable notice of the time and place of the hearing
to the municipality, corporation or other entity against
which such order is proposed. No such order shall go
into effect unless and until it receives the assent of at
least a majority of the commissioners from each of not
less than a majority of the signatory states; and no such
order upon a municipality, corporation, person or entity
in any state shall go into effect unless and until it
receives the assent of not less than a majority of the
commissioners from such state.

It shall be the duty of the municipality, corporation,
person or other entity to comply with any such order
issued against it or him by the commission, and any
court of general jurisdiction or any United States
district court in any of the signatory states shall have
the jurisdiction, by mandamus, injunction, specific
performance or other form of remedy, to enforce any
such order against any municipality, corporation or
other entity domiciled or located within such state or
whose discharge of the waste takes place within or
adjoining such state, or against any employee, depart-
ment or subdivision of such municipality, corporation,
person or other entity: Provided, That such court may
review the order and affirm, reverse or modify the same
upon any of the grounds customarily applicable in
proceedings for court review of administrative decisions.
The commission or, at its request, the attorney general
or other law-enforcing official, shall have power to
institute in such court any action for the enforcement
of such order.

Article X

The signatory states agree to appropriate for the
salaries, office and other administrative expenses, their
proper proportion of the annual budget as determined
by the commission and approved by the governors of the
signatory states, one half of such amount to be prorated
among the several states in proportion to their popula-
tion within the district at the last preceding federal
census, the other half to be prorated in proportion to
their land area within the district.

Article XI

This compact shall become effective upon ratification
by the legislatures of a majority of the states located
within the district and upon approval by the Congress
of the United States; and shall become effective as to any
additional states signing thereafter at the time of such
signing.

In Witness Whereof, the various signatory states have
executed this compact through their respective compact
commissioners.

§22C-12-2. Appointment of members of commission; state
director of health member ex officio.

In pursuance of article four of said compact, there
shall be three members of the “Ohio River valley water
sanitation commission” from the state of West Virginia.
The governor, by and with the advice and consent of the
Senate, shall appoint two persons as two of such
commissioners, each of whom shall be a resident and
citizen of this state. The terms of one of the said two
commissioners first appointed shall be three years and
of the other shall be six years; and their successors shall
be appointed by the governor, by and with the advice
and consent of the Senate for terms of six years each.
Each commissioner shall hold office until his successor
shall be appointed and qualified. Vacancies occurring in
the office of any such commissioner from any reason or
cause shall be filled by appointment by the governor, by
and with the advice and consent of the Senate, for the
unexpired term. The third commissioner from this state
is the director of the division of environmental protec-
tion, ex officio, and the term of the ex officio commis-
sioner terminates at the time he ceases to hold the office
of director of the division of environmental protection,
and his successor as a commissioner shall be his
successor as the director of the division of environmental
protection. With the exception of the issuance of any
order under the provisions of article nine of the compact,
the ex officio commissioner may delegate, from time to
time, to any deputy or other subordinate in his division
or office, the power to be present and participate,
including voting, as his representative or substitute at
any meeting of or hearing by or other proceeding of the
commission. The terms of each of the initial three
members shall begin at the date of the appointment of
the two appointive commissioners, provided the said
compact shall then have gone into effect in accordance
with article eleven of the compact; otherwise shall begin
upon the date which said compact shall become effective
in accordance with said article eleven.

Any commissioner may be removed from office by the
governor.

§22C-12-3. Powers of commission; duties of state officers,
departments, etc.; jurisdiction of circuit
courts; enforcement of article.

There is hereby granted to the commission and
commissioners thereof all the powers provided for in the
said compact and all the powers necessary or incidental
to the carrying out of said compact in every particular.
All officers of this state are hereby authorized and
directed to do all things falling within their respective
provences and jurisdiction necessary to or incidental to
the carrying out of said compact in every particular; it
being hereby declared to be the policy of this state to
perform and carry out the said compact and to accomp-
lish the purposes thereof. All officers, bureaus, depart-
ments and persons of and in the state government or
administration of this state of West Virginia are hereby
authorized and directed at convenient times and upon
request of the said commission to furnish the said
commission with information and data possessed by
them or any of them and to aid said commission by loan
of personnel or other means lying within their legal
powers respectively.

The circuit courts of this state are hereby granted the
jurisdiction specified in article nine of said compact, and
the attorney general or any other law-enforcing officer
of this state is hereby granted the power to institute any
action for the enforcement of the orders of the commis-
sion as specified in said article nine of the compact.

§22C-12-4. Powers granted herein supplemental to other
powers vested in commission.

Any powers herein granted to the commission shall be
regarded as in aid of and supplemental to and in no case
a limitation upon any of the powers vested in said
commission by other laws of this state or by the laws
of the states of Illinois, Indiana, Kentucky, New York,
Ohio, Pennsylvania, Tennessee, or by Congress or the
terms of said compact.

§22C-12-5. Expenses of commission; appropriations;
officers and employees; meetings.

The commissioners shall be reimbursed out of moneys
appropriated for such purposes, all sums which they
necessarily shall expend in the discharge of their duties
as members of such commission.

There shall be appropriated to the commission out of
any moneys in the state treasury unexpended and
available therefor, and not otherwise appropriated, such
sums as may be necessary for the uses and purposes of
the commission in carrying out the provisions of this
article and the payment of the proper proportion of the
state of West Virginia of the annual budget of the "Ohio
River valley water sanitation commission" in accordance
with article ten of said compact.

The commission shall elect from its membership a
chairman and may also select a secretary who need not
be a member. The commission may employ such
assistance as it may deem necessarily required, and the duties of such assistants shall be prescribed and their compensation fixed by the commission and paid out of the state treasury out of funds appropriated for such purposes upon the requisition of said commission.

The commission shall meet at such times and places as agreed upon by the commissioners or upon call of its chairman.

§22C-12-6. When article effective; findings; continuation.

This article shall take effect and become operative and the compact be executed for and on behalf of this state only from and after the approval, ratification, and adoption and entering into thereof by the states of New York, Pennsylvania, Ohio and Virginia.

After having conducted a preliminary performance review through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that West Virginia should remain a member of the compact. Accordingly, notwithstanding the provisions of article ten, chapter four of this code, West Virginia shall continue to be a member of this compact until the first day of July, two thousand.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

(a) Notwithstanding anything hereinbefore or herein-after contained, no employee or dependent of any employee is entitled to receive any sum from the workers' compensation fund, or to direct compensation from any employer making the election and receiving the permission mentioned in section nine, article two of this chapter, or otherwise under the provisions of this chapter, on account of any personal injury to or death to any employee caused by a self-inflicted injury or the
intoxication of such employee. For the purpose of this chapter, the commissioner may cooperate with the office of miners’ health, safety and training and the state division of labor in promoting general safety programs and in formulating rules to govern hazardous employments.

(b) If injury or death result to any employee from the deliberate intention of his or her employer to produce such injury or death, the employee, the widow, widower, child or dependent of the employee has the privilege to take under this chapter, and has a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable under this chapter.

(c) (1) It is declared that enactment of this chapter and the establishment of the workers’ compensation system in this chapter was and is intended to remove from the common law tort system all disputes between or among employers and employees regarding the compensation to be received for injury or death to an employee except as herein expressly provided, and to establish a system which compensates even though the injury or death of an employee may be caused by his or her own fault or the fault of a co-employee; that the immunity established in sections six and six-a, article two of this chapter, is an essential aspect of this workers’ compensation system; that the intent of the Legislature in providing immunity from common law suit was and is to protect those so immunized from litigation outside the workers’ compensation system except as herein expressly provided; that, in enacting the immunity provisions of this chapter, the Legislature intended to create a legislative standard for loss of that immunity of more narrow application and containing more specific mandatory elements than the common law tort system concept and standard of willful, wanton and reckless misconduct; and that it was and is the legislative intent to promote prompt judicial resolution of the question of whether a suit prosecuted under the asserted authority of this section is or is not prohibited by the immunity granted under this chapter.
(2) The immunity from suit provided under this section and under section six-a, article two of this chapter, may be lost only if the employer or person against whom liability is asserted acted with "deliberate intention". This requirement may be satisfied only if:

(i) It is proved that such employer or person against whom liability is asserted acted with a consciously, subjectively and deliberately formed intention to produce the specific result of injury or death to an employee. This standard requires a showing of an actual, specific intent and may not be satisfied by allegation or proof of (A) conduct which produces a result that was not specifically intended; (B) conduct which constitutes negligence, no matter how gross or aggravated; or (C) willful, wanton or reckless misconduct; or

(ii) The trier of fact determines, either through specific findings of fact made by the court in a trial without a jury, or through special interrogatories to the jury in a jury trial, that all of the following facts are proven:

(A) That a specific unsafe working condition existed in the workplace which presented a high degree of risk and a strong probability of serious injury or death;

(B) That the employer had a subjective realization and an appreciation of the existence of such specific unsafe working condition and of the high degree of risk and the strong probability of serious injury or death presented by such specific unsafe working condition;

(C) That such specific unsafe working condition was a violation of a state or federal safety statute, rule or regulation, whether cited or not, or of a commonly accepted and well-known safety standard within the industry or business of such employer, which statute, rule, regulation or standard was specifically applicable to the particular work and working condition involved, as contrasted with a statute, rule, regulation or standard generally requiring safe workplaces, equipment or working conditions;
(D) That notwithstanding the existence of the facts set forth in subparagraphs (A) through (C) hereof, such employer nevertheless thereafter exposed an employee to such specific unsafe working condition intentionally; and

(E) That such employee so exposed suffered serious injury or death as a direct and proximate result of such specific unsafe working condition.

(iii) In cases alleging liability under the provisions of the preceding paragraph (ii):

(A) No punitive or exemplary damages shall be awarded to the employee or other plaintiff;

(B) Notwithstanding any other provision of law or rule to the contrary, and consistent with the legislative findings of intent to promote prompt judicial resolution of issues of immunity from litigation under this chapter, the court shall dismiss the action upon motion for summary judgment if it finds, pursuant to Rule 56 of the Rules of Civil Procedure that one or more of the facts required to be proved by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii) do not exist, and the court shall dismiss the action upon a timely motion for a directed verdict against the plaintiff if after considering all the evidence and every inference legitimately and reasonably raised thereby most favorably to the plaintiff, the court determines that there is not sufficient evidence to find each and every one of the facts required to be proven by the provisions of subparagraphs (A) through (E) of the preceding paragraph (ii); and

(C) The provisions of this paragraph and of each subparagraph thereof are severable from the provisions of each other subparagraph, subsection, section, article or chapter of this code so that if any provision of a subparagraph of this paragraph is held void, the remaining provisions of this act and this code remain valid.

(d) The reenactment of this section in the regular session of the Legislature during the year one thousand
nine hundred eighty-three does not in any way affect the right of any person to bring an action with respect to or upon any cause of action which arose or accrued prior to the effective date of such reenactment.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1b. Additional jurisdiction of commission.

Effective the first day of July, one thousand nine hundred eighty-eight, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in section two, article fifteen, chapter twenty-two of this code, that are owned or under the direct control of persons or entities who are regulated under section five, article two, chapter twenty-four-a of this code. The commission shall establish, prescribe and enforce rules providing for the safe transportation of solid waste in the state.

(b) The public service commission shall study the feasibility of incorporating and adopting guidelines for solid waste collection fees that are based upon the volume of solid waste generated by any person. This report shall be submitted to the governor and the members of the Legislature on or before the first day of January, one thousand nine hundred ninety-three.

§24-2-1c. Certificate of need required for solid waste facilities; priority of disposal.

(a) Any person who holds a valid permit, compliance order or administrative order allowing continued operation of a commercial solid waste facility in this state on the first day of September, one thousand nine hundred ninety-one, shall submit an application for a certificate of need with the public service commission, on forms prescribed by the commission, prior to the first day of March, one thousand nine hundred ninety-two. The commission shall grant such application within sixty days after submission of a complete application.
(b) Any person applying for a permit to construct, operate or expand a commercial solid waste facility as defined in section two, article fifteen, chapter twenty-two of this code, or any person seeking a major permit modification from the division of environmental protection first shall obtain a certificate of need from the public service commission. Application for such certificate shall be submitted on forms prescribed by the commission. The commission shall grant or deny a certificate of need, in accordance with provisions set forth in this chapter. If the commission grants a certificate of need, the commission may include conditions not inconsistent with the criteria set forth in this section.

(c) For purposes of subsections (a) and (b) of this section, a complete application consists of the following and notwithstanding any other provision of this chapter to the contrary, such information contained in the application provided by the applicant is not confidential and is disclosable pursuant to the provisions of chapter twenty-nine-b of this code:

1. The names of the owners or operators of the facility including any officer, director, manager, person owning five percent or more interest or other person conducting or managing the affairs of the applicant or of the proposed facility;
2. The proposed or existing location of the facility;
3. A description of the geographic area to be served by the facility;
4. The anticipated total number of citizens to be served by the facility;
5. The average monthly tonnage of solid waste to be disposed of by the facility;
6. The total monthly tonnage of solid waste for which the facility is seeking a permit from the division of environmental protection;
7. The anticipated lifespan and closure date of the facility; and
(8) Any other information requested on the forms prescribed by the public service commission.

(d) In considering whether to grant a certificate of need the commission shall consider, but is not limited to considering, the following factors:

1. The total tonnage of solid waste generated within the county;
2. The total tonnage of solid waste generated within the wasteshed;
3. The current capacity and lifespan of other solid waste facilities located within the county, if any;
4. The current capacity and lifespan of other solid waste facilities located within the wasteshed, if any;
5. The current capacity and lifespan of other solid waste facilities located within this state;
6. The lifespan of the proposed or existing facility;
7. The cost of transporting solid waste from the points of generation within the county or wasteshed and the disposal facility;
8. The impact of the proposed or existing facility on needs and criteria contained in the statewide solid waste management plan; and
9. Any other criteria which the commission regularly utilizes in making such determinations.

(e) The public service commission shall deny a certificate of need upon one or more of the following findings:

1. The proposed capacity is unreasonable in light of demonstrated needs;
2. The location of the facility is inconsistent with the statewide solid waste management plan;
3. The location of the facility is inconsistent with any applicable county or regional solid waste management plan;
4. The proposed capacity is not reasonably cost
(5) The proposal, taken as a whole, is inconsistent with the needs and criteria contained in the statewide solid waste management plan; or

(6) The proposal, taken as a whole, is inconsistent with the public convenience and necessity.

(f) Any certificates of need granted pursuant to this section shall be conditioned on acceptance of:

(1) Solid waste generated within the county in which the facility is or is to be located; and

(2) Solid waste generated within the wasteshed in which the facility is or is to be located.

(g) An application for a certificate of need shall be submitted prior to submitting an application for certificate of site approval in accordance with section twenty-four, article four, chapter twenty-two-c of this code. Upon the decision of the commission to grant or deny a certificate of need, the commission shall immediately notify the solid waste management board and the division of environmental protection.

(h) Any party aggrieved by a decision of the commission granting or denying a certificate of need may obtain judicial review thereof in the same manner provided in section one, article five of this chapter.

(i) No person may sell, lease or transfer a certificate of need without first obtaining the consent and approval of the commission pursuant to the provisions of section twelve, article two of this chapter.

§24-2-1f. Jurisdiction of commission over solid waste facilities.

Effective the first day of July, one thousand nine hundred eighty-nine, in addition to all other powers and duties of the commission as defined in this article, the commission shall establish, prescribe and enforce rates and fees charged by commercial solid waste facilities, as defined in subsection (b), section two, article four, chapter twenty-two-c of this code.
§24-2-1h. Additional powers and duties of commission to control flow of solid waste.

(a) Upon the petition of any county or regional solid waste authority, motor carrier or solid waste facility, or upon the commission's own motion, the commission may issue an order that solid waste generated in the surrounding geographical area of a solid waste facility and transported for processing or disposal by solid waste collectors and haulers who are "motor carriers", as defined in chapter twenty-four-a of this code, be processed or disposed of at a designated solid waste facility or facilities: Provided, That such order shall not include:

(1) Disposal of solid waste at a solid waste facility by the person who owns, operates or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by such person in such person's regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste; or

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated pursuant to the provisions of section seven, article fifteen, chapter twenty-two of this code.

(b) In determining whether to issue an order establishing flow control to a solid waste facility, the commission shall consider, but is not limited to considering, the nature and composition of the solid waste, the environmental impact of controlling the flow of solid waste, the efficient disposal of solid waste, financial feasibility of proposed or existing solid waste facilities, the county or region solid waste control plan, the statewide solid waste control plan and the public convenience and necessity.

(c) The public service commission shall promulgate rules providing standards and criteria to effectuate the purposes of this section.
(d) Notwithstanding any provision of this code to the contrary, excepting rules of the public service commission from legislative rule-making review, the public service commission shall propose a legislative rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, which shall mandate that motor carriers transport source-separated recyclable materials to a recycling facility. Such legislative rule shall provide, at a minimum, for a separate rate for the transportation of such materials or that such motor carriers may contract with a customer to waive the charge for transporting such materials in exchange for the value of such materials.

(e) Notwithstanding any provision of this code to the contrary, the public service commission is hereby authorized to employ ten persons, who shall be in the classified exempt service, in addition to any personnel positions otherwise authorized or allocated to the commission as of the effective date of this section to facilitate enforcement of duties imposed upon the commission in the regulation of solid waste disposal during the second extraordinary session of the Legislature, one thousand nine hundred ninety-one.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

(a) Notwithstanding any provision of this article, or any provision of article fifteen, chapter twenty-two or article four chapter twenty-two-c, or any other provision of this code, upon the application of any commercial solid waste facility, the commission may grant to a commercial solid waste facility an emergency certificate of need to increase the maximum monthly solid waste disposal tonnage, for a period not to exceed one year, to the extent deemed necessary to prevent any disruption of solid waste disposal services in any county or wasteshed of the state resulting from the closure of an existing landfill in said county or wasteshed. The authority granted to the commission under this section
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shall expire after the thirtieth day of September, one thousand nine hundred ninety-three. No temporary certificate issued pursuant to this section shall extend beyond the thirtieth day of September, one thousand nine hundred ninety-four. The director of the division of environmental protection shall modify any commercial solid waste facility permit, issued under article fifteen, chapter twenty-two of this code, to conform with the maximum monthly solid waste disposal tonnage and any other terms and conditions set forth in a temporary certificate issued under this section.

(b) If the net tonnage increase under a temporary certificate application made pursuant to subsection (a) of this section would cause the gross monthly solid waste disposal tonnage of such facility to exceed ten thousand tons, a temporary certificate shall be issued only if the solid waste facility has: (1) Obtained from the county or regional solid waste authority for the county or counties in which the facility is located a certificate of site approval or approval for conversion from a Class B facility to a Class A facility; and (2) obtained from the county or regional solid waste authority for the county or counties in which the facility is located approval to increase the maximum monthly tonnage disposed at the facility; and (3) obtained from the county commission for the county or counties in which the landfill is located approval to operate as a Class A facility; and (4) has a certificate of need application pending before the public service commission; and (5) has installed a composite liner system in compliance with the requirements set forth in the solid waste management rules promulgated by the division of environmental protection or its predecessor. Such emergency certificate shall not authorize an increase in the maximum monthly solid waste disposal tonnage in an amount greater than that approved by the county or regional solid waste authority for the county or counties in which the landfill is located.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.
(a) The rates and charges of electric cooperatives, natural gas cooperatives and municipally operated public utilities, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services. Such rates and charges shall be adopted by the electric, natural gas or telephone cooperative's governing board and in the case of the municipally operated public utility by municipal ordinance to be effective not sooner than forty-five days after adoption: Provided, That notice of intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, and in the case of a cooperative, its customers, members and stockholders, such other reasonable notices as will allow filing of timely objections to such rate change. Such rates and charges shall be filed with the commission together with such information showing the basis of such rates and charges and such other information as the commission considers necessary. Any change in such rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative, telephone cooperative or municipality has failed to file with the commission such rates and charges with such information showing the basis of rates and charges and such other information as the commission considers necessary, the suspension period limitation of
one hundred twenty days and the one hundred day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed.

The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state, under subdivision (1), subsection (c) of this section, shall suspend the adoption of the rate
(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries, or a customer or a group of customers within the municipal boundaries, under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date said rates or charges would otherwise go into effect or until an order is issued as provided herein.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. Said hearing examiner shall conduct a public hearing, and shall within one hundred days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article. The commission may determine the method by which such rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests such a hearing.

(g) The commission may, upon petition by a municipality or electric, natural gas or telephone cooperative, allow an interim or emergency rate to take effect, subject to future modification, if it is determined that such interim or emergency rate is necessary to protect the municipality from financial hardship and if that financial hardship is attributable solely to the purchase
of the utility commodity sold. In such cases, the commission may waive the forty-five-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the state of West Virginia.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2B. WEATHER MODIFICATION.


In order to enforce the provisions of this article, the West Virginia state police shall, on request of the commission, assign at least one trooper and one investigator to an area where unlawful cloud seeding is suspected. If such police request the same, the commission shall assign an airplane and pilot. Air samples shall be taken by the division of environmental protection if requested by the state police or the commission. For such enforcement purposes, the bureau of public health shall furnish such technical services as the commission or director may request.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-5a. Hazardous substance emergency response training programs.

(a) Within one hundred twenty days of the effective date of this section, the state fire commission shall promulgate rules pursuant to chapter twenty-nine-a of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the state fire marshal.

(b) For the purposes of this section, "hazardous substance" means any hazardous substance as defined in
chapter eighty-eight, Acts of the Legislature, regular session, one thousand nine hundred eighty-five any "chemical substances and materials" listed in the rules promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one of this code, and any "hazardous waste" as defined in section three, article eighteen, chapter twenty-two of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-4. Steel futures program.

1 The commission shall develop and recommend a strategy for financial and technical assistance to steel and steel-related industries in the state. The strategy shall include investment policies with regard to these industries. In administering the program, the commission shall consult with appropriate representatives of steel, and steel-related industries, appropriate representatives of any union that represents workers in these industries, and any other persons with expert knowledge of these industries. The commission shall consult with the chairman of the public service commission to foster the development of public and private cooperative efforts that would result in energy savings and reduced energy costs for steel and steel-related industries. The commission shall consult with the division of environmental protection and other agencies with which the steel industry must interact to assist the steel industry in adhering to regulations in a manner conducive to economic viability. Assistance may be made available to steel and steel-related industries undertaking projects the commission determines to have long-term implications for and broad applicability to the economy of this state when the secretary of the department of commerce, labor and environmental resources finds that:

(a) The undertaking of projects by the steel industries will benefit the people of the state by creating or preserving jobs and employment opportunities; and

(b) The undertaking of projects by the steel industries will allow them to compete more effectively in the
Projects eligible to receive assistance under the steel futures program may include, but are not limited to, the following:

(a) Research and development specifically related to steel and steel-related industries and feasibility studies for business development within these industries;

(b) Employee training;

(c) Labor and management relations; and

(d) Technology-driven capital investment.

Financial and technical assistance may be in the form and conditioned upon terms as stipulated by each enterprise assistance program administered by the department of commerce, labor and environmental resources as the secretary considers appropriate. No later than the thirtieth day of June one thousand ninety-four, and no later than the thirtieth day of June of each year thereafter, the commission shall submit a report to the governor and Legislature describing projects of the steel futures program, results obtained from completed projects of the program and program projects for the next fiscal year.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-20a. Land development fund.

(a) The board of directors of the housing development fund may create and establish a special revolving fund of moneys made available by appropriation, grant, contribution or loan, to be known as the land development fund and to be governed, administered and accounted for by the directors, officers and managerial staff of the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned and managed by the housing development fund.

(b) The purpose of the land development fund is to provide a source from which the housing development fund may finance development costs and land develop-
ment in this state by making loans or grants therefrom, such loans to be with or without interest and with such security for repayment as the housing development fund deems reasonably necessary and practicable, or by expending moneys therefrom, for development costs and land development in this state.

(c) The housing development fund may invest and reinvest all moneys in the land development fund in any investments authorized under section six of this article, pending the disbursement thereof in connection with the financing of development costs and land development in this state.

(d) No loans shall be made by the housing development fund from the land development fund except in accordance with a written loan agreement which shall include, but not be limited to, the following terms and conditions:

(1) The proceeds of all such loans shall be used only for development costs and land development;

(2) All such loans shall be repaid in full, with or without interest, as provided in the agreement;

(3) All repayments shall be made concurrent with receipt by the borrower of the proceeds of a construction loan or mortgage, as the case may be, or at such other times as the housing development fund deems reasonably necessary or practicable; and

(4) Specification of such security for repayments upon such terms and conditions as the housing development fund deems reasonably necessary or practicable.

(e) No grants shall be made by the housing development fund from the land development fund except in accordance with a written grant agreement which shall require that the proceeds of all such grants shall be used only for development costs or land development and containing such other terms and provisions as the housing development fund may require to ensure that the public purposes of this article are furthered by such grant.
(f) The housing development fund may expend any income from the financing of development costs and land development with moneys in the land development fund, and from investment of such moneys, in payment, or reimbursement, of all expenses of the housing development fund which, as determined in accordance with procedures approved by the board of directors of the housing development fund, are fairly allocable to such financing or its land-development activities: Provided, That no funds from the land development fund shall be used to carry on propaganda, or otherwise attempt to influence legislation.

(g) The housing development fund shall create and establish a special account within the land development fund to be designated as the "special project account" into which the housing development fund shall, effective the first day of July, one thousand nine hundred ninety-two, deposit the sum of ten million dollars. Such funds shall be governed, administered and accounted for by the housing development fund as a special purpose account separate and distinct from any other moneys, fund or funds owned or managed by the housing development fund. The sole and exclusive purpose of such account is to provide a source of funds for the financing of infrastructure projects including distribution from time to time to the West Virginia water pollution control revolving fund created pursuant to section three, article two, chapter twenty-two-c of this code: Provided, That such distribution shall not exceed five million four hundred fifty thousand dollars; and distribution from time to time to fund soil conservation projects: Provided, however, That such distribution shall not exceed four million five hundred fifty thousand dollars. Until so disbursed, the moneys initially deposited or thereafter from time to time deposited in such special project account, may be invested and reinvested by the housing development fund as permitted under subdivision (8), section six of this article. Any funds remaining in the special project account on the first day of July, one thousand nine hundred ninety-five, shall automatically revert to the general fund of the housing development fund free of any limitations provided in
this section. The provisions of subsections (c), (d), (e) and (f) of this section do not apply to the special project account created in this section.

ARTICLE 19. WEST VIRGINIA COMMUNITY INFRASTRUCTURE AUTHORITY.

§31-19-4. West Virginia community infrastructure authority created; West Virginia community infrastructure board created; organization of authority and board; appointment of board members; their term of office, compensation and expenses; duties and responsibilities of director and staff of authority.

(a) There is hereby created the West Virginia community infrastructure authority. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

The authority shall be controlled, managed and operated by the five member board known as the West Virginia community infrastructure board, which is hereby created. The director of the West Virginia development office, or her or his designee, the director of the division of environmental protection, or her or his designee, and the commissioner of the division of highways, or her or his designee, are members ex-officio of the board. The executive director of the West Virginia development office, or her or his designee, is the ex-officio chair. Two members of the board shall be representative of the general public, one of which shall have had experience or a demonstrated interest in local government. The two members who are not ex-officio members of the board shall be appointed by the governor, by and with the advice and consent of the Senate, for initial terms of three and six years, respectively. The successor of each such appointed member shall be appointed for a term of six years in the same manner as the original appointments were made, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which
her or his predecessor was appointed shall be appointed
only for the remainder of such term. Each board
member shall serve until the appointment and qualifi-
cation of her or his successor. The two appointed board
members shall not at any one time belong to the same
political party. Appointed board members may be
reappointed to serve additional terms, not to exceed two
consecutive full terms. All members of the board shall
be citizens of the state. Each appointed member of the
board, before entering upon her or his duties, shall
comply with the requirements of article one, chapter six
of this code and give bond in the sum of twenty thousand
dollars in the manner provided in article two, chapter
six of this code. The governor may remove any board
member for cause as provided in article six, chapter six
of this code.

Annually the board shall elect one of its appointed
members as chair, and shall appoint a secretary-
treasurer, who need not be a member of the board.
Three members of the board is a quorum and the
affirmative vote of three members is necessary for any
action taken by vote of the board. No vacancy in the
membership of the board impairs the rights of a quorum
by such vote to exercise all the rights and perform all
the duties of the board and the authority. The person
appointed as secretary-treasurer, including a board
member if she or he is so appointed, shall give bond in
the sum of fifty thousand dollars in the manner provided
in article two, chapter six of this code.

The executive director of the West Virginia develop-
ment office or her or his designee, the director of the
division of environmental protection or her or his
designee, and the commissioner of the division of
highways or her or his designee, shall not receive any
compensation for serving as board members. Each of
the two appointed board members of the board shall
receive an annual salary of five thousand dollars,
payable in monthly installments. Each of the five board
members shall be reimbursed for all reasonable and
necessary expenses actually incurred in the perfor-
mance of her or his duties as a member of such board.
All such expenses incurred by the board are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the authority beyond the extent for which moneys are available from funds of the authority or from such appropriations.

(b) There shall be a director of the authority appointed by the board who shall supervise and manage the community infrastructure authority, and the West Virginia development office shall serve as the staff for the authority. Except as otherwise provided in this section, the duties and responsibilities of the director and of the staff shall be established by the authority. At the board's discretion, it may provide for the position of general counsel, who shall be an employee of the authority, or for the appointment of special counsel. As the board deems necessary and desirable, it may at any time elect to change its decision on the employment or appointment of a counsel.

(c) The director, or her or his designee, may employ or appoint any staff members in addition to those provided by the West Virginia development office, including general or special counsel if the position is established by the board. The number of employees needed, the positions to be filled and their salaries or wages shall be determined by the director with the approval of the board, unless the board elects to not require its approval. At any time the board may elect to change its decision concerning approval of additional staff hiring and salaries.

(d) The board shall meet at least quarterly, and more often as it deems necessary. The director and any other staff member or members as the director deems expedient shall attend board meetings.

CHAPTER 36. ESTATES IN PROPERTY.

ARTICLE 4. COVENANTS.

§36-4-9a. Cancellation of oil or gas leases for nonpayment of delay rental; prohibition against maintain-
ing actions or proceedings in state courts for enforcement of certain oil or gas leases; rebuttable presumption of intention to abandon well and well equipment.

Except in the case where operations for the drilling of a well are being conducted thereunder, any undeveloped lease for oil and/or gas in this state hereafter executed in which the consideration therein provided to be paid for the privilege of postponing actual drilling or development or for the holding of said lease without commencing operations for the drilling of a well, commonly called delay rental, has not been paid when due according to the terms of such lease, or the terms of any other agreement between lessor and lessee, shall be null and void as to such oil and/or gas unless payment thereof shall be made within sixty days from the date upon which demand for payment in full of such delay rental has been made by the lessor upon the lessee therein, as hereinafter provided, except in such cases where a bona fide dispute shall exist between lessor and lessee as to any amount due or entitlement thereto or any part thereof under such lease.

No person, firm, corporation, partnership or association shall maintain any action or proceeding in the courts of this state for the purpose of enforcing or perpetuating during the term thereof any lease herefore executed covering oil and/or gas, as against the owner of such oil and/or gas, or the owner's subsequent lessee, if such person, firm, corporation, partnership or association has failed to pay to the lessor such delay rental in full when due according to the terms thereof, for a period of sixty days after demand for such payment has been made by the lessor upon such lessee, as hereinafter provided.

The demand for payment referred to in the two preceding paragraphs shall be made by notice in writing and shall be sufficient if served upon such person, firm, partnership, association or corporation whether domestic or foreign, whether engaged in business or dissolved, by United States registered mail, return receipt requested, to the lessee's last known
A copy of such notice, together with the return receipt attached thereto, shall be filed with the clerk of the county commission in which such lease is recorded, or in which such oil and/or gas property is located, in whole or in part, and upon payment of a fee of fifty cents for each such lease, said clerk shall permanently file such notice alphabetically under the name of the first lessor appearing in such lease and shall stamp or write upon the margin of the record in the clerk's office of such lease hereafter executed the words "canceled by notice"; and as to any such lease executed before the enactment of this statute said clerk shall file such notice as hereinbefore provided and shall stamp or write upon the margin of the record of such lease in the clerk's office the words "enforcement barred by notice."

The word "lessor" includes the original lessor, as well as the original lessor's successors in title to the oil and/or gas involved. The word "lessee" includes the original lessee, the original lessee's assignee properly of record at the time such demand is made, and the original lessee's successors, heirs, or personal representatives. No assignee of such lease whose assignment is not recorded in the proper county shall be heard in any court of this state to attack the validity or sufficiency of the notice hereinbefore mentioned.

There is a rebuttable legal presumption that the failure of a person, firm, corporation, partnership or association to produce and sell or produce and use for its own purpose for a period of greater than twenty-four months, subsequent to the first day of July, one thousand nine hundred seventy-nine, oil and/or gas produced from such leased premises constitutes an intention to abandon any oil and/or gas well and oil and/or gas well equipment situate on said leased premises, including casing, rods, tubing, pumps, motors, lines, tanks, separators and any other equipment, or both, used in the production of any oil and/or gas from any well or wells on said leasehold estate.

This rebuttable presumption shall not be created in
instances (i) of leases for gas storage purposes, or (ii) where any shut-in royalty, flat rate well rental, delay rental or other similar payment designed to keep an oil or gas lease in effect or to extend its term has been paid or tendered, or (iii) where the failure to produce and sell is the direct result of the interference or action of the owner of such oil and/or gas or his subsequent lessee or assignee. Additionally, no such presumption is created when a delay in excess of twenty-four months occurs because of any inability to sell any oil and/or gas produced or because of any inability to deliver or otherwise tender such oil and/or gas produced to any person, firm, corporation, partnership or association.

In all instances when the owner of such oil and/or gas or the owner's subsequent lessee or assignee desires to terminate the right, interest or title of any person, firm, corporation, partnership or association in such oil and/or gas by utilization of the presumption created in this section, this presumption may not be utilized except in an action or proceeding by the owner of the oil and/or gas or the owner's lessee or assignee in an action brought in the circuit court for the judicial district in which the oil and/or gas property is partially or wholly located. A certified copy of a final order of the circuit court shall be mailed by the clerk of such court to the chief of the office of oil and gas of the of the division of environmental protection.

The continuation in force of any such lease after demand for and failure to pay such delay rental or failure to produce and sell, or to produce and use oil and gas for a period of twenty-four months as hereinbefore set forth is deemed by the Legislature to be opposed to public policy against the general welfare. If any part of this section shall be declared unconstitutional such declaration shall not affect any other part thereof.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-17. Aid by trained hazardous substance response personnel; immunity from civil liability;
definitions.

No person trained in a qualified program of hazardous substance emergency response certified by the state fire marshal pursuant to rules promulgated by authority of subsection (a), section five-a, article three, chapter twenty-nine of this code, who in good faith renders advice or assistance at the scene of an actual or threatened discharge of any hazardous substance and receives no remuneration for rendering such advice or assistance, is liable for any civil damages as the result of any act or omission in rendering such advice or assistance: Provided, That the exemption from liability for civil damages of this section shall be extended to any such person who receives reimbursement for out-of-pocket expenses incurred in rendering such advice or assistance or compensation from his or her regular employer for the time period during which he or she was actually engaged in rendering such advice or assistance but is not extended to any such person who by his or her act or omission caused or contributed to the cause of such actual or threatened discharge of any hazardous substance.

For the purposes of this section, "hazardous substance" means any "hazardous substance" as defined in chapter eighty-eight, Acts of the Legislature, regular session, one thousand nine hundred eighty-five; any "chemical substances and materials" listed in the rules promulgated by the commissioner of labor pursuant to section eighteen, article three, chapter twenty-one, of this code; and any "hazardous waste" as defined in section three, article eighteen, chapter twenty-two of this code.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.


As used in this article, the following definitions shall apply:

(1) "Abandoning owner" means any person, vested with title to any interest in minerals, who is proved to
have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person.

(2) "Development of the minerals" or "mineral development" means (a) mining coal by any method, or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced recovery by injection of fluids of any kind into the producing formation, or (c) utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning of article nine, chapter twenty-two of this code, or (d) production of other minerals by any method.

(3) "Interest in minerals" means any interest, real or personal, in coal, oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date of the filing of a petition under this article.

(4) "Surface owner" means any person vested with any interest in fee in the surface estate overlying the particular minerals sought to be developed under this article. A surface owner's rights under this article shall be subject to any deed of trust or other security instrument, lien, surface lease, easement or other nonpossessory interest in the surface owned by any other person; but such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder.

(5) "Unknown or missing owner" means any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-47. Dams or obstructions in watercourses; penalty.

1 No person may fell any timber and permit the same
to remain in any navigable or floatable stream of this
state when to do so obstructs the passage of boats, rafts,
staves, ties or timber of any kind.

5 Except as may be provided in chapter twenty or
twenty-two of this code, no person may construct or
maintain any dam or other structure in any stream or
watercourse, which in any way prevents or obstructs the
free and easy passage of fish up or down such stream
or watercourse, without first providing as a part of such
dam or other structure a suitable fish ladder, way or
flume, so constructed as to allow fish easily to ascend
or descend the same; which ladder, way or flume shall
be constructed only upon plans, in a manner, and at a
place, satisfactory to the division of natural resources:
Provided, That if the director of the division of natural
resources determines that there is no substantial fish life
in such stream or watercourse, or that the installation
of a fish ladder, way or flume would not facilitate the
free and easy passage of fish up or down a stream or
watercourse, or that an industrial development project
requires the construction of such dam or other structure
and the installation of an operational fish ladder, way
or flume is impracticable, the director may, in writing,
permit the construction or maintenance of a dam or
other structure in a stream or watercourse without
providing a suitable fish ladder, way or flume; and in
all navigable and floatable streams provisions shall be
made in such dam or structure for the passage of boats
and other crafts, logs and other materials: Provided,
however, That this section does not relieve such person
from liability for damage to any riparian owner on
account of the construction or maintenance of such dam.

34 Any person who violates any of the provisions of this
section is guilty of a misdemeanor, and, upon conviction
thereof, shall be fined not exceeding one thousand
dollars, or imprisoned in the county jail not exceeding
one year, or both fined and imprisoned, and, whether a
conviction is had under this section or not, such violation
is a nuisance, which may be abated at the suit of any
citizen or taxpayer, the county commission of the county,
or, as to fish ladders, at the suit of the director of the
division of natural resources, and, if the same endangers
county roads, the county commission may abate such
nuisance peaceably without such suit.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Wayne J. Dedrick
Clerk of the House of Delegates

President of the Senate

Clint Boland
Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994

Governor
PRESENT:

GOVERN:

Date: 3/28/94
Time: 4:10 pm