WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

SENATE BILL NO. 520

(By Senators Love, Kyncl & Dwyer)

PASSED April 12, 1997

In Effect NINETY Days From Passage
ENROLLED

Senate Bill No. 520

(BY SENATORS LOVE, KIMBLE AND BAILEY)

(Passed April 12, 1997; in effect ninety days from passage.)

AN ACT to amend and reenact sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface coal mining reclamation; adding definitions; allowing for a compliance conference; establishing procedures for reinstatement of revoked permits; allowing coal removal of existing abandoned coal process waste piles under reclamation contract; creating provisions for no cost reclamation contracts, coal extraction under a government financed reclamation contract and coal extraction incidental to land development; and modifying certain bonding requirement.

Be it enacted by the Legislature of West Virginia:
That sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§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
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71 protection.
72 (l) "Imminent danger to the health or safety of the
73 public" means the existence of such condition or practice,
74 or any violation of a permit or other requirement of this
75 article, which condition, practice or violation could
76 reasonably be expected to cause substantial physical harm
77 or death to any person outside the permit area before such
78 condition, practice or violation can be abated. A reason-
79 able expectation of death or serious injury before abate-
80 ment exists if a rational person, subjected to the same
81 conditions or practices giving rise to the peril, would not
82 expose the person to the danger during the time necessary
83 for the abatement.
84 (m) "Minerals" means clay, coal, flagstone, gravel,
85 limestone, manganese, sand, sandstone, shale, iron ore and
86 any other metal or metallurgical ore.
87 (n) "Operation" means those activities conducted by an
88 operator who is subject to the jurisdiction of this article.
89 (o) "Operator" means any person who is granted or who
90 should obtain a permit to engage in any activity covered
91 by this article and any rule promulgated hereunder and
92 includes any person who engages in surface-mining or
93 surface-mining and reclamation operations, or both. The
94 term shall also be construed in a manner consistent with
95 the federal program pursuant to the federal Surface-
96 Mining Control and Reclamation Act of 1977, as amended.
97 (p) "Permit" means a permit to conduct surface-mining
98 operations pursuant to this article.
99 (q) "Permit area" means the area of land indicated on
100 the approved proposal map submitted by the operator as
101 part of the operator's application showing the location of
102 perimeter markers and monuments and shall be readily
103 identifiable by appropriate markers on the site.
104 (r) "Permittee" means a person holding a permit issued
105 under this article.
106 (s) "Person" means any individual, partnership, firm,
107 society, association, trust, corporation, other business
entity or any agency, unit or instrumentality of federal, state or local government.

110 (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.

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

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

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.

Surface-mining may not include any of the following:

(1) Coal extraction authorized pursuant to a government-financed reclamation contract;

(2) Coal extraction authorized as an incidental part of development of land for commercial, residential, industrial, or civic use; or

(3) The reclamation of an abandoned or forfeited mine by a no cost reclamation contract.

"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.

"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.

"Unanticipated event or condition" as used in section eighteen of this article means an event or condition in a remining operation that was not contemplated by the
applicable surface coal mining and reclamation permit.

(y) "Lands eligible for remining" means those lands that would be eligible for expenditures under section four, article two of this chapter. Surface-mining operations on lands eligible for remining may not affect the eligibility of such lands for reclamation and restoration under article two of this chapter. In event the bond or deposit for lands eligible for remining is forfeited, funds available under article two of this chapter may be used to provide for adequate reclamation or abatement. However, if conditions constitute an emergency as provided in section 410 of the federal Surface-Mining Control and Reclamation Act of 1977, as amended, then those federal provisions shall apply.

(z) "Replacement of water supply" means with respect to water supplies contaminated, diminished, or interrupted, provision of water supply on both a temporary and permanent basis of equivalent quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery cost for the replaced water supplies.

Upon agreement by the permittee and the water supply owner, the obligation to pay such costs may be satisfied by a one-time payment in an amount which covers the present annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.


(a) Any permit issued by the director pursuant to this article to conduct surface-mining operations shall require that the 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 operation, at a minimum to:
(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting 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 unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: Provided, That in surface-mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to 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 overburden 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, the 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 promulgated 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 operations 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
(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 devel-
oped 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;

(B) 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 succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved postmining land use plan;

(20) Assume the responsibility for successful
revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: Provided, That when the 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;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two 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 subsection.

(21) Protect off-site areas from slides or damage occurring during surface-mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: Provided, That spoil material may be placed outside the permit area, if approved by the 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 may 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, climatolog-
ical 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, public or fish and wildlife habitat and recreation lands 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) Compati-
(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 re CLAIMED AREA IS STABLE; (C) THE RESULTING PLATEAU OR ROLLING CONTOUR DRAINS INWARD FROM THE OUSLOPES EXCEPT AT SPECIFIC POINTS; (D) NO DAMAGE WILL BE DONE TO NATURAL WATERCOURSES; (E) SPOIL WILL BE PLACED ON THE MOUNTAIN TOP 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 construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the 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 appropriated 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.

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

(a) The director shall cause to be made inspections 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 pre-
mises 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 director 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 any 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 significantly 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. The 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 monument which sets forth the name, business address and telephone number of the permittee and the permit number of the surface-mining operations.

(e) Copies of any records, reports, inspection materials or information obtained under this article by the 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 promul-
gated under this article, the director shall immediately
order state inspection of the surface-mining operation at
which the alleged violation is occurring unless the infor-
mation 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.

(h) When requested by the permittee, the director may
provide for a compliance conference with his or her
authorized representative to review the compliance status
of any coal exploration or surface-coal mining and
reclamation operation. Any such conference may not
constitute an inspection as defined in this section.

§22-3-17. Notice of violation; procedure and actions; enforce-
ment; 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 opera-
tor'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 unattain-
able 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.

Within one year following the notice of permit revocation, subject to the discretion of the director and based upon a petition for reinstatement, the revoked permit may be reinstated. The reinstated permit may be assigned to any person who meets the permit eligibility requirements of this article.

(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 may not exceed five thousand dollars. Each day of continuing violation may be deemed a separate violation for purposes of penalty assessments. In determining the amount of the penalty, consideration shall be given to the operator's history of previous violations at the particular surface-mining operation, the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public, whether the operator was negligent, and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of the violation.

(d) (1) Upon the issuance of a notice or order pursuant to this section, the assessment officer shall, within thirty days, set a proposed penalty assessment and notify the operator in writing of such proposed penalty assessment. The proposed penalty assessment must be paid in full within thirty days of receipt or, if the operator wishes to contest either the amount of the penalty or the fact of violation, an informal 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:

\[\text{Provided,}\] 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 may 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: \[\text{Provided,}\] 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 may not issue a permit to the applicant: \[\text{Provided, however,}\] 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.
The prohibition of subsection (c) of this section may not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface coal mine eligible for remining under a permit held by the applicant.

§22-3-28. Special permits authorization for reclamation of existing abandoned coal processing waste piles; coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use; no cost reclamation contract.

(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 authorization therefor has been first obtained from the director as provided in this section.

Application for a special authorization 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 authorization 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 authorization a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this state affording personal injury protection in accordance with subsection (d), section nine of this article.

The application for the special authorization shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of two thousand dollars per acre, for a maximum disturbance of five acres.

The bond shall be payable to the state of West Virginia and conditioned that the applicant 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 authorization is five hundred dollars. The special authorization is valid for two-years.
(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 authorization may not be issued an additional special authorization on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that such authorization 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 authorization: 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 reclamation contract solely for the removal of existing abandoned coal processing waste piles: Provided, That a bond and a reclamation plan is required for such operations.

(e) No person may engage in coal extraction pursuant to a government financed reclamation contract without a valid surface-mining permit issued pursuant to this article unless such person affirmatively demonstrates that he is eligible to secure special authorization pursuant to this section to engage in a government-financed reclamation contract authorizing incidental and necessary coal extraction. The director shall determine eligibility before entering into a government financed reclamation contract authorizing incidental and necessary coal extraction. The director may provide the special authorization as part of the government financed reclamation contract: Provided,
That the contract contains and does not violate the requirements of this section. The director may not be required to grant a special authorization to any eligible person. The director may, however, in his or her discretion, grant a special authorization allowing incidental and necessary coal extraction pursuant to a government financed reclamation contract in accordance with this section.

Only eligible persons may secure special authorization to engage in incidental and necessary coal extraction pursuant to a government financed reclamation contract. Any eligible person who proposes to engage in coal extraction pursuant to a government-financed reclamation contract may request and secure special authorization from the director to conduct such activities under this section. A special authorization can only be obtained if a clause is inserted in a government financed reclamation contract authorizing such extraction and the person requesting such authorization has affirmatively demonstrated to the director's satisfaction that he or she has satisfied the provisions of this section. A special authorization shall only be granted by the director prior to the commencement of coal extraction on a project area. In order to be considered for a special authorization by the director, an eligible person must meet the permit eligibility requirements of this article and demonstrate a minimum that:

(1) The primary purpose of the operation to be undertaken is the reclamation of abandoned or forfeited mine lands;

(2) The extraction of coal will be incidental and necessary to accomplish the reclamation of abandoned or forfeited mine lands pursuant to a government financed reclamation contract;

(3) Incidental and necessary coal extraction will be confined to the project area being reclaimed; or

(4) All coal extraction and reclamation activity undertaken pursuant to a government financed reclamation project will be accomplished pursuant to the applicable
environmental protection performance standards and conditions included in the government-financed reclamation contract.

Prior to commencing coal extraction pursuant to a government financed reclamation project, the contractor shall file with the director a performance bond conditioned upon the contractor's performance of all the requirements of the government financed reclamation contract pursuant to this article. For a no cost reclamation contract, the criteria for establishing the amount of the performance bond shall be the engineering estimate, determined by the director: Provided, That the director may establish a lesser bond amount for long term, no cost reclamation projects in which the reclamation schedule extends beyond two years. In these contracts, the director may in the alternative establish a bond amount which reflects the cost of the proportionate amount of reclamation which will occur during a specified period. The performance bond which is provided by the contractor under a federally financed or state financed reclamation contract shall be deemed to satisfy the requirements of this section: Provided, however, That the amount of such bond is equivalent to or greater than the amount determined by the criteria set forth in this subsection.

(f) Any person engaging in coal extraction pursuant to this section is subject to the following:

(1) Payment of all applicable taxes and fees related to coal extraction;

(2) Replacement or restoration of 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 coal extraction;

(3) Extraction pursuant to this section cannot be initiated without the consent of the surface owner for right of entry and consent of the mineral owner for extraction of coal.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the day of , 1997.

Governor