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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



ENROLLED

SENATE BILL NO. 681

(ORIGINATING IN THE COMMITTEE ON
(By Senator ENERGY, INDUSTRY AND MINING)



PASSED MARCH 13, 1999

In Effect NINETY DAYS FROM Passage

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Senate Bill No. 681

(Originating in the Committee on
Energy, Industry and Mining)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-a; to amend and reenact section seven, article one, chapter twenty-two of said code; to amend and reenact sections thirteen, twenty-three and twenty-four, article three of said chapter; to further amend said article by adding thereto three new sections, designated sections thirteen-a, twenty-two-a and thirty-a; to further amend said chapter by adding thereto a new article, designated article three-a; and to amend and reenact section seven-a, article eleven of said chapter, all relating to surface-mining; creating the office of coalfield community development within the West Virginia development office; office of coalfield community development's powers and duties; promulgation of rules; requiring a community impact statement; requiring a coalfield community development statement; determining and developing

needed community assets; addressing land and infrastructure needs; annual reports; land acquisition process; continuation of offices; creating the office of explosives and blasting within the division of environmental protection; office of explosives and blasting's duties, powers and responsibilities; promulgation of rules; enforcement of blasting laws and pre-blast surveys by the office of explosives and blasting; education, training, examination, certification and disciplinary procedures for blasters; establishing a claims process for blasting damage; requirements for a pre-blast survey; recordation of notice of pre-blast survey and waiver; prohibiting production blasting within three hundred feet of a protected structure; requiring site-specific blast designs within one thousand feet of a protected structure; requiring studies by the office of blasting; requiring mining operators to replace an owner's damaged underground water supply within a specific area and within a certain amount of time; provision for an emergency water supply; promulgation of rules; requiring compliance with blasting laws; civil liability and penalties; reducing the acreage and monetary amount for mitigation of watersheds by mining operators; and authorizing a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

That chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article two-a; that section seven, article one, chapter twenty-two of said code be amended and reenacted; that sections thirteen, twenty-three and twenty-four, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections thirteen-a, twenty-two-a and thirty-a; that said chapter be further amended by adding thereto a new article, designated article three-a; and that section seven-a, article eleven of said chapter be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT

§5B-2A-1. Legislative findings and declaration.

1 The Legislature hereby finds and declares the following:

2 (a) Coal mining has made and continues to make signifi-
3 cant contributions to the economy of West Virginia. These
4 contributions include the creation of quality jobs that pay
5 high wages and provide good benefits; the consequent
6 stimulation and support of mining contractors, suppliers
7 of mining equipment and services, other mining-related
8 industries and numerous providers of goods and services
9 that are indirectly related to coal mining and dependent
10 upon its existence and prosperity; the generation of
11 significant severance and other tax revenues that support
12 important economic development, infrastructure and
13 education initiatives in mining communities and through-
14 out the state; the support of civic, education and service
15 groups in mining communities; and in the case of surface-
16 mining operations, including mountaintop mining, the
17 creation of much-needed flat land for economic develop-
18 ment and recreational uses.

19 (b) The development and increasing prominence of
20 surface-mining operations, including mountaintop mining,
21 has brought increasingly high levels of productivity, safety
22 and efficiency to the state's mining industry, enabling the
23 recovery of coal that could not otherwise be mined and
24 marketed profitably, increasing the severance tax revenues
25 and other economic benefits described in subsection (a)
26 above and ensuring the competitiveness of the state's coal
27 industry from a national and international perspective.

28 (c) Where implemented, surface-mining operations,
29 particularly mountaintop mining, tend to extract most, if
30 not all, of the recoverable coal reserves in an accelerated
31 fashion. For a state long dependent on the employment
32 and revenue coal mining provides, this reality should be
33 sobering and there is no place in which the comprehension
34 of this reality is more crucial than the coalfields of West
35 Virginia. Long dependent primarily on mining, this area
36 must plan for a future without coal. The state and its
37 subdivisions have a legitimate interest in securing that
38 future.

39 (d) The coal industry and those related to the extraction
40 of mineral resources benefit from the mining of our state's

41 coal through mining practices which impact its citizens –
42 some in a negative way – and through practices which will
43 extract significant portions of coal reserves in an acceler-
44 ated fashion. Those industries must therefore accept a
45 greater responsibility to help address the long-term needs
46 of the communities and citizens impacted by their activi-
47 ties.

48 (e) Once it becomes public knowledge that a permit is
49 being sought, the marketability of property may change
50 and the relative bargaining power of the parties may
51 change with it. The potential for negative impact on those
52 living in communities near surface-mining operations may
53 limit the options and bargaining power of the property
54 owners.

55 (f) Surface-mining operations, including mountaintop
56 mining, present unique challenges to the coal mining
57 industry and the state and its citizens, especially those
58 living and working in communities that rely heavily upon
59 these methods of mining. This requires that these commu-
60 nities, in conjunction with county commissions, state,
61 local, county and regional development authorities,
62 landowners and civic, community and business groups and
63 interested citizens, develop plans related to the communi-
64 ties' long-term economic viability.

65 (g) The West Virginia development office, as the state
66 agency charged with economic development activities,
67 shall take a more active role in the long-term economic
68 development of communities in which these mining
69 methods are prevalent and shall establish a formal process
70 to assist property owners in the determination of the fair
71 market value where the property owner and the coal
72 company voluntarily enter into an agreement relating to
73 the purchase and sale of such property.

§5B-2A-2. Application of article.

1 (a) The provisions of this article shall apply to all
2 surface-mining operations, except:

3 (1) The surface operations and surface impacts incident
4 to an underground coal mine; and

5 (2) Surface-mining operations of operators that (A)
6 establish that their probable total annual coal production
7 from all locations during any consecutive twelve-month
8 period, either during the term of the permit or during the
9 first five years after issuance of the permit, whichever
10 period is shorter, will not exceed three hundred thousand
11 tons, as determined pursuant to rules promulgated by the
12 division, and (B) otherwise qualify for the small operator
13 assistance program authorized under the federal Surface-
14 Mining Control and Reclamation Act of 1977, as amended,
15 and the federal regulations promulgated thereunder, as
16 amended.

17 (b) The provisions of this article shall not apply (1) to
18 underground coal mining operations or (2) to the extrac-
19 tion of minerals by underground mining methods or the
20 surface impacts thereof.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article, the following terms
2 have the meanings ascribed to them:

3 (1) "Division" means the division of environmental
4 protection established in article one, chapter twenty-two
5 of this code;

6 (2) "Office" means the office of coalfield community
7 development; and

8 (3) "West Virginia development office" means the office
9 established in article two of this chapter.

10 (b) Unless used in a context that clearly requires a
11 different meaning or as otherwise defined herein, terms
12 used in this article shall have the definitions set forth in
13 this section.

§5B-2A-4. Office of coalfield community development.

1 (a) The office of coalfield community development is
2 hereby established within the West Virginia development
3 office.

4 (b) The executive director shall appoint a chief to
5 administer the office, who will serve at the will and

6 pleasure of the executive director of the West Virginia
7 development office.

§5B-2A-5. Powers and duties.

1 (a) The office shall have and exercise the following
2 duties, powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article
5 and to administer the procedure so established;

6 (2) To establish a procedure for developing and imple-
7 menting coalfield community development statements as
8 provided in section seven of this article and to administer
9 the procedure so established;

10 (3) To establish a procedure for determining the assets
11 that could be developed in and maintained by the commu-
12 nity to foster its long-term viability as provided in section
13 eight of this article and to administer the procedure so
14 established;

15 (4) To establish a procedure for determining the land and
16 infrastructure needs in the general area of the surface-
17 mining operations as provided in section nine of this
18 article and to administer the procedure so established;

19 (5) To establish a procedure to develop action reports
20 and annual updates as provided in section ten of this
21 article and to administer the procedure so established;

22 (6) To determine the need for meetings to be held among
23 the various interested parties in the communities impacted
24 by surface-mining operations and, when appropriate, to
25 facilitate such meetings;

26 (7) To establish a procedure to assist property owners in
27 the sale of their property as provided in section eleven of
28 this article and to administer the procedure so established;
29 and

30 (8) In conjunction with the division, to maintain and
31 operate a system to receive and address questions, con-
32 cerns and complaints relating to surface-mining.

§5B-2A-6. Community impact statement.

1 (a) (1) The operator shall develop a community impact
2 statement as described in this section, which shall be
3 submitted to the office within sixty days of the filing of a
4 surface-mining application pursuant to the provisions of
5 article three of chapter twenty-two of this code. Failure to
6 submit a community impact statement to the office shall
7 be considered a violation under the provisions of section
8 seventeen, article three of chapter twenty-two of this code;
9 and

10 (2) The operator shall provide copies of the community
11 impact statement to the division's office of mining reclama-
12 tion and office of explosives and blasting and to the
13 county commissions, county clerks' offices and local or
14 regional economic development authorities of the areas to
15 be affected by the surface-mining operations.

16 (b) The community impact statement, where practicable,
17 shall not be a highly technical or legalistic document, but
18 shall be written in a clear and concise manner understand-
19 able to all citizens. The community impact statement shall
20 include the following:

21 (1) The amount and location of land to be mined or used
22 in the actual mining operations;

23 (2) The expected duration of the mining operations in
24 each area of the community;

25 (3) The extent of anticipated mining-related property
26 acquisitions, to the extent that such acquisitions are
27 known or knowable;

28 (4) The intentions of the surface and mineral owners
29 relative to the acquired property, to the extent that such
30 intentions are known or knowable;

31 (5) A statement of the post-mining land use for all land
32 within the permit boundary;

33 (6) The intended blasting plan and the expected time and
34 duration it will affect each community;

35 (7) Information concerning the extent and nature of
36 valley fills and the watersheds to be affected; and

37 (8) Economic information, such as the number of jobs
38 created and annual coal production resulting from the
39 surface-mining operation, the anticipated life of the
40 mining operation and such other information as may be
41 deemed appropriate.

42 (c) Where the operator makes any significant revision to
43 the permit application under section eighteen, article three
44 of chapter twenty-two of this code, which revision sub-
45 stantially affects any of the information provided in
46 subsection (b) of this section, the operator shall revise the
47 affected provisions of its community impact statement and
48 shall submit such revisions as set forth in subsection (a) of
49 this section.

50 (d) The provisions of this section shall apply as follows:

51 (1) To all surface-mining permits granted after the
52 effective date of this article; and

53 (2) At the first renewal date of all previously issued
54 permits: *Provided*, That the permittee shall be afforded
55 ninety days from said date to comply with the provisions
56 of this section.

§5B-2A-7. Coalfield community development statement.

1 (a) At the time that the operator applies for any permit
2 pursuant to article three of chapter twenty-two of this
3 code, the office shall coordinate the development of a
4 coalfield community development statement as described
5 in this section.

6 (b) The office shall establish a procedure for the develop-
7 ment of the coalfield community development statement,
8 which procedure shall include the following:

9 (1) A method for giving adequate notice to affected
10 persons and entities about the coalfield community
11 development statement process and how they can partici-
12 pate. Notice shall be given to at least the following:

13 (A) The permit applicant;

14 (B) The individuals living in the affected communities;

15 (C) Business owners and operators doing business in the
16 affected communities;

17 (D) Any company owning land or resources on the
18 property to be mined, including the surface and mineral
19 owners of such property; and

20 (E) State and local government agencies such as county
21 commissions, city or town governments and local or
22 regional economic development authorities; and

23 (2) A procedure to follow which provides for fair and
24 reasonable input into the development of the coalfield
25 community development statement by those persons and
26 entities listed in subdivision (1) of this subsection.

27 (c) The office shall determine what information, findings
28 and recommendations shall be contained in the coalfield
29 community development statement, which shall include,
30 but not be limited to the following:

31 (1) An evaluation of the future of the community once
32 mining operations are completed;

33 (2) A method to measure compliance with the provisions
34 of section eight of this article; and

35 (3) A method to measure compliance with the provisions
36 of section nine of this article.

37 (d) The Legislature hereby finds that, while the prepara-
38 tion of a coalfield community development statement is
39 important to addressing the legitimate needs and concerns
40 of the communities, individuals and entities which may be
41 affected by surface-mining operations, such a statement as
42 required by this section is in part subjective in nature. The
43 Legislature further finds that, because of such subjectivity,
44 the development of a coalfield community development
45 statement shall not be an element of or in any way related
46 to the application for and approval of any surface-mining
47 permit under article three of chapter twenty-two of this
48 code. Therefore, the following shall apply to this section:

49 (1) The office alone shall have authority over the coordi-
50 nation and development of the coalfield community
51 development statement; and

52 (2) The development of the coalfield community develop-
53 ment statement shall be a collaborative effort among those
54 persons and entities identified in subdivision (1) of subsec-
55 tion (b) of this section.

**§5B-2A-8. Determining and developing needed community
assets.**

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the
3 office, in a collaborative effort with those persons and
4 entities identified in subdivision (1) of subsection (b) of
5 section seven of this article, shall determine the commu-
6 nity assets that may be developed by the community,
7 county or region to foster its viability when surface-
8 mining operations are completed.

9 (b) Community assets to be identified pursuant to
10 subsection (a) of this section may include the following:

11 (1) Water and waste water services;

12 (2) Developable land for housing, commercial develop-
13 ment or other community purposes;

14 (3) Recreation facilities and opportunities; and

15 (4) Education facilities and opportunities.

16 (c) To assist the office in the development of the coalfield
17 community development statement, the operator shall be
18 required to prepare and submit to the office the informa-
19 tion set forth in this subsection, as follows:

20 (1) A map of the area for which a permit under article
21 three of chapter twenty-two of this code, is being sought
22 or has been obtained;

23 (2) The names of the surface and mineral owners of the
24 property to be mined pursuant to the permit; and

25 (3) A statement of the post-mining land use for all land
26 which may be affected by the mining operations.

27 (d) In determining the nature and extent of the needed
28 community assets, the office shall consider at least the
29 following:

30 (1) An evaluation of the future of the community once
31 mining operations are completed as required to be deter-
32 mined in the coalfield community development statement;

33 (2) The prospects for the long-term viability of any asset
34 developed under this section;

35 (3) The desirability of foregoing some or all of the asset
36 development required by this section in lieu of the require-
37 ments of section nine of this article;

38 (4) The determinations made during the development of
39 the coalfield community development statement of the
40 impacts of the mining operations on the community; and

41 (5) The extent to which the community, local, state or the
42 federal government may participate in the development of
43 assets the community needs to assure its viability.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the
3 office, in a collaborative effort with those persons and
4 entities identified in subdivision (1) of subsection (b) of
5 section seven of this article, shall determine the land and
6 infrastructure needs in the general area of the surface-
7 mining operations.

8 (b) For the purposes of this section, the term “general
9 area” shall mean the county or counties in which the
10 mining operations are being conducted, or any adjacent
11 county.

12 (c) To assist the office in the development of the coalfield
13 community development statement, the operator shall be
14 required to prepare and submit to the office the informa-
15 tion set forth in this subsection, as follows:

16 (1) A map of the area for which a permit under article
17 three of chapter twenty-two of this code is being sought or
18 has been obtained;

19 (2) The names of the surface and mineral owners of the
20 property to be mined pursuant to the permit; and

21 (3) A statement of the post-mining land use for all land
22 which may be affected by the mining operations.

23 (d) In making a determination of the land and infrastruc-
24 ture needs in the general area of the mining operations, the
25 office shall consider at least the following:

26 (1) The availability of developable land in the general
27 area;

28 (2) The needs of the general area for developable land;

29 (3) The availability of infrastructure including, but not
30 limited to access roads, water service, wastewater service,
31 and other utilities;

32 (4) The amount of land to be mined and the amount of
33 valley to be filled;

34 (5) The amount, nature and cost to develop and maintain
35 the community assets identified in section eight of this
36 article; and

37 (6) The availability of federal, state and local grants and
38 low-interest loans to finance all or a portion of the acqui-
39 sition and construction of the identified land and infra-
40 structure needs of the general area.

41 (f) In making a determination of the land and infrastruc-
42 ture needs in the general area of the surface-mining
43 operations, the office shall give significant weight to
44 developable land on or near existing or planned multi-lane
45 highways.

§5B-2A-10. Action report; annual update.

1 (a) Based upon the information developed under sections
2 eight and nine of this article, the office shall prepare an
3 action report which shall make recommendations for
4 achieving economic development initiatives, including
5 identifying sources of potential funding.

6 (b) The office shall prepare an annual status update of
7 the action report which shall describe accomplishments
8 and prospects for continued economic development.

§5B-2A-11. Land acquisitions.

1 The office shall establish a procedure to assist property
2 owners who desire voluntarily to sell their property to the
3 operator or any person, firm or corporation directly or
4 indirectly affiliated with the operator. The procedure
5 developed shall be subject to the following:

6 (1) The procedure only shall apply if all the following
7 conditions are met:

8 (A) The operator or any person, firm or corporation
9 directly or indirectly affiliated with the operator, makes
10 an offer in writing to purchase the property stating all the
11 terms and conditions of the proposed purchase;

12 (B) The property to be purchased is located within one
13 thousand feet of property which actually is or will be
14 mined; and

15 (C) The structures are actually being used for commer-
16 cial purposes or are occupied residences situate on the
17 property to be purchased;

18 (2) Once a permit application has been filed, the operator
19 shall notify the office of any intended property acqui-
20 sitions to which this section applies;

21 (3) The office shall cause notice to be given to potential
22 sellers of the procedure established by this section, but
23 shall provide no other assistance unless requested by the
24 potential seller;

25 (4) If requested by the potential seller, the office shall
26 make a determination as to whether the value of the
27 property intended to be acquired is diminished by ongoing
28 or intended mining operations and that the purchase price
29 offered by the purchaser is less than the value the property
30 would have had prior to any diminution of value. The
31 office only shall provide assistance if it determines that the
32 value of such property is diminished and that the offer

33 made by the operator is less than the value the property
34 would have had prior to any diminution of value; and

35 (5) If the office determines that the value of such prop-
36 erty is diminished and that the offer made by the operator
37 is less than the value the property would have had prior to
38 any diminution of value, then the office shall establish the
39 value of such property prior to any diminution and shall
40 certify the same to the parties.

§5B-2A-12. Rule Making.

1 The office shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of
3 this code, to establish, implement and enforce the provi-
4 sions of this article, which rules shall include, but not be
5 limited to:

6 (1) The development of standards for establishing the
7 value of property by the office; and

8 (2) A process for the development of a coalfield commu-
9 nity development statement when multiple permit applica-
10 tions are applied for by one or more operators in any single
11 county or contiguous area of an adjacent county.

§5B-2A-13. Termination of office.

1 The office of coalfield community development is
2 continued until the first day of July, two thousand two,
3 pursuant to the provisions of article ten, chapter four of
4 this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division; continuation of the office of water resources.

1 (a) Consistent with the provisions of this article the
2 director shall, at a minimum, maintain the following
3 offices within the division:

4 (1) The office of abandoned mine lands and reclamation,
5 which is charged, at a minimum, with administering and

6 enforcing, under the supervision of the director, the
7 provisions of article two of this chapter;

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

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

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

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

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

29 (7) The office of explosives and blasting, which is
30 charged, at a minimum, with administering and enforcing,
31 under the supervision of the director, the provisions of
32 article three-a of this chapter.

33 (b) Pursuant to the provisions of article ten, chapter four
34 of this code, the office of water resources within the
35 division of environmental protection shall continue to
36 exist until the first day of July, two thousand one.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-13. General environmental protection performance standards for surface-mining; variances.

1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface-mining operations shall require

3 that the surface-mining operations will meet all applicable
4 performance standards of this article and other require-
5 ments set forth in legislative rules proposed by the direc-
6 tor.

7 (b) The following general performance standards are
8 applicable to all surface mines and require the operation,
9 at a minimum to:

10 (1) Maximize the utilization and conservation of the
11 solid fuel resource being recovered to minimize re-affecting
12 the land in the future through surface-mining;

13 (2) Restore the land affected to a condition capable of
14 supporting the uses which it was capable of supporting
15 prior to any mining, or higher or better uses of which there
16 is reasonable likelihood so long as the use or uses do not
17 present any actual or probable hazard to public health or
18 safety or pose any actual or probable threat of water
19 diminution or pollution, and the permit applicants'
20 declared proposed land use following reclamation is not
21 considered to be impractical or unreasonable, inconsistent
22 with applicable land use policies and plans, involves
23 unreasonable delay in implementation, or is violative of
24 federal, state or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact where
27 advisable to ensure stability or to prevent leaching of toxic
28 materials, and grade in order to restore the approximate
29 original contour: *Provided*, That in surface-mining which
30 is carried out at the same location over a substantial
31 period of time where the operation transects the coal
32 deposit, and the thickness of the coal deposits relative to
33 the volume of the overburden is large and where the
34 operator demonstrates that the overburden and other spoil
35 and waste materials at a particular point in the permit
36 area or otherwise available from the entire permit area is
37 insufficient, giving due consideration to volumetric
38 expansion, to restore the approximate original contour, the
39 operator, at a minimum, shall backfill, grade and compact,
40 where advisable, using all available overburden and other
41 spoil and waste materials to attain the lowest practicable
42 grade, but not more than the angle of repose, to provide

43 adequate drainage and to cover all acid-forming and other
44 toxic materials, in order to achieve an ecologically sound
45 land use compatible with the surrounding region: *Pro-*
46 *vided, however,* That in surface-mining where the volume
47 of overburden is large relative to the thickness of the coal
48 deposit and where the operator demonstrates that due to
49 volumetric expansion the amount of overburden and other
50 spoil and waste materials removed in the course of the
51 mining operation is more than sufficient to restore the
52 approximate original contour, the operator shall, after
53 restoring the approximate contour, backfill, grade and
54 compact, where advisable, the excess overburden and
55 other spoil and waste materials to attain the lowest grade,
56 but not more than the angle of repose, and to cover all
57 acid-forming and other toxic materials, in order to achieve
58 an ecologically sound land use compatible with the
59 surrounding region and, the overburden or spoil shall be
60 shaped and graded in such a way as to prevent slides,
61 erosion and water pollution and revegetated in accordance
62 with the requirements of this article: *Provided further,*
63 That the director shall propose rules for legislative ap-
64 proval in accordance with article three, chapter twenty-
65 nine-a of this code, governing variances to the require-
66 ments for return to approximate original contour or
67 highwall elimination and where adequate material is not
68 available from surface-mining operations permitted after
69 the effective date of this article for: (A) Underground
70 mining operations existing prior to the third day of
71 August, one thousand nine hundred seventy-seven; or (B)
72 for areas upon which surface-mining prior to the first day
73 of July, one thousand nine hundred seventy-seven, created
74 highwalls;

75 (4) Stabilize and protect all surface areas, including spoil
76 piles, affected by the surface-mining operation to effec-
77 tively control erosion and attendant air and water pollu-
78 tion;

79 (5) Remove the topsoil from the land in a separate layer,
80 replace it on the backfill area, or if not utilized immedi-
81 ately, segregate it in a separate pile from other spoil and,
82 when the topsoil is not replaced on a backfill area within
83 a time short enough to avoid deterioration of the topsoil,

84 maintain a successful vegetative cover by quick growing
85 plants or by other similar means in order to protect topsoil
86 from wind and water erosion and keep it free of any
87 contamination by other acid or toxic material: *Provided*,
88 That if topsoil is of insufficient quantity or of poor quality
89 for sustaining vegetation, or if other strata can be shown
90 to be more suitable for vegetation requirements, then the
91 operator shall remove, segregate and preserve in a like
92 manner any other strata which is best able to support
93 vegetation;

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

96 (7) Ensure that all prime farmlands are mined and
97 reclaimed in accordance with the specifications for soil
98 removal, storage, replacement and reconstruction estab-
99 lished by the United States secretary of agriculture and
100 the soil conservation service pertaining thereto. The
101 operator, at a minimum, shall: (A) Segregate the A horizon
102 of the natural soil, except where it can be shown that other
103 available soil materials will create a final soil having a
104 greater productive capacity, and if not utilized immedi-
105 ately, stockpile this material separately from other spoil,
106 and provide needed protection from wind and water
107 erosion or contamination by other acid or toxic material;
108 (B) segregate the B horizon of the natural soil, or underly-
109 ing C horizons or other strata, or a combination of the
110 horizons or other strata that are shown to be both textur-
111 ally and chemically suitable for plant growth and that can
112 be shown to be equally or more favorable for plant growth
113 than the B horizon, in sufficient quantities to create in the
114 regraded final soil a root zone of comparable depth and
115 quality to that which existed in the natural soil, and if not
116 utilized immediately, stockpile this material separately
117 from other spoil and provide needed protection from wind
118 and water erosion or contamination by other acid or toxic
119 material; (C) replace and regrade the root zone material
120 described in paragraph (B) of this subdivision, with proper
121 compaction and uniform depth over the regraded spoil
122 material; and (D) redistribute and grade in a uniform
123 manner the surface soil horizon described in paragraph (A)
124 of this subdivision;

125 (8) Create, if authorized in the approved surface-mining
126 and reclamation plan and permit, permanent impound-
127 ments of water on mining sites as part of reclamation
128 activities in accordance with rules promulgated by the
129 director;

130 (9) Where augering is the method of recovery, seal all
131 auger holes with an impervious and noncombustible
132 material in order to prevent drainage except where the
133 director determines that the resulting impoundment of
134 water in the auger holes may create a hazard to the
135 environment or the public welfare and safety: *Provided*,
136 That the director may prohibit augering if necessary to
137 maximize the utilization, recoverability or conservation of
138 the mineral resources or to protect against adverse water
139 quality impacts;

140 (10) Minimize the disturbances to the prevailing
141 hydrologic balance at the mine site and in associated off-
142 site areas and to the quality and quantity of water in
143 surface and groundwater systems both during and after
144 surface-mining operations and during reclamation by: (A)
145 Avoiding acid or other toxic mine drainage by such
146 measures as, but not limited to: (i) Preventing or removing
147 water from contact with toxic producing deposits; (ii)
148 treating drainage to reduce toxic content which adversely
149 affects downstream water upon being released to water
150 courses; and (iii) casing, sealing or otherwise managing
151 boreholes, shafts and wells and keep acid or other toxic
152 drainage from entering ground and surface waters; (B)
153 conducting surface-mining operations so as to prevent to
154 the extent possible, using the best technology currently
155 available, additional contributions of suspended solids to
156 streamflow or runoff outside the permit area, but in no
157 event shall contributions be in excess of requirements set
158 by applicable state or federal law; (C) constructing an
159 approved drainage system pursuant to paragraph (B) of
160 this subdivision, prior to commencement of surface-mining
161 operations, the system to be certified by a person approved
162 by the director to be constructed as designed and as
163 approved in the reclamation plan; (D) avoiding channel
164 deepening or enlargement in operations requiring the
165 discharge of water from mines; (E) unless otherwise

166 authorized by the director, cleaning out and removing
167 temporary or large settling ponds or other siltation
168 structures after disturbed areas are revegetated and
169 stabilized, and depositing the silt and debris at a site and
170 in a manner approved by the director; (F) restoring re-
171 charge capacity of the mined area to approximate
172 premining conditions; and (G) any other actions prescribed
173 by the director ;

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

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

190 (13) Refrain from surface-mining within five hundred
191 feet of any active and abandoned underground mines in
192 order to prevent breakthroughs and to protect health or
193 safety of miners: *Provided*, That the director shall permit
194 an operator to mine near, through or partially through an
195 abandoned underground mine or closer to an active
196 underground mine if: (A) The nature, timing and sequenc-
197 ing of the approximate coincidence of specific surface
198 mine activities with specific underground mine activities
199 are coordinated jointly by the operators involved and
200 approved by the director; and (B) the operations will result
201 in improved resource recovery, abatement of water
202 pollution or elimination of hazards to the health and
203 safety of the public: *Provided, however*, That any break-
204 through which does occur shall be sealed;

205 (14) Ensure that all debris, acid-forming materials, toxic
206 materials or materials constituting a fire hazard are
207 treated or buried and compacted, or otherwise disposed of
208 in a manner designed to prevent contamination of ground
209 or surface waters, and that contingency plans are devel-
210 oped to prevent sustained combustion: *Provided*, That the
211 operator shall remove or bury all metal, lumber, equip-
212 ment and other debris resulting from the operation before
213 grading release;

214 (15) Ensure that explosives are used only in accordance
215 with existing state and federal law and the rules promul-
216 gated by the director, which shall include provisions to:

217 (A) Maintain for a period of at least three years and
218 make available for public inspection, upon written re-
219 quest, a log detailing the location of the blasts, the pattern
220 and depth of the drill holes, the amount of explosives used
221 per hole and the order and length of delay in the blasts;
222 and

223 (B) Require that all blasting operations be conducted by
224 persons certified by the office of explosives and blasting.

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

237 (A) If the director finds in writing that:

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

241 (ii) The proposed underground mining operations are
242 necessary or desirable to assure maximum practical

243 recovery of the mineral resource and will avoid multiple
244 disturbance of the surface;

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

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

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

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

258 (B) If the director has promulgated specific rules to
259 govern the granting of the variances in accordance with
260 the provisions of this subparagraph and has imposed any
261 additional requirements as the director considers neces-
262 sary;

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

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

277 (17) Ensure that the construction, maintenance and
278 postmining conditions of access and haul roads into and
279 across the site of operations will control or prevent erosion

280 and siltation, pollution of water, damage to fish or wildlife
281 or their habitat, or public or private property: *Provided*,
282 That access roads constructed for and used to provide
283 infrequent service to surface facilities, such as ventilators
284 or monitoring devices, are exempt from specific construc-
285 tion criteria provided adequate stabilization to control
286 erosion is achieved through alternative measures;

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

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

301 (20) Assume the responsibility for successful revegeta-
302 tion, as required by subdivision (19) of this subsection, for
303 a period of not less than five growing seasons, as defined
304 by the director, after the last year of augmented seeding,
305 fertilizing, irrigation or other work in order to assure
306 compliance with subdivision (19) of this subsection:
307 *Provided*, That when the director issues a written finding
308 approving a long-term agricultural postmining land use as
309 a part of the mining and reclamation plan, the director
310 may grant exception to the provisions of subdivision (19)
311 of this subsection: *Provided, however*, That when the
312 director approves an agricultural postmining land use, the
313 applicable five growing seasons of responsibility for
314 revegetation begins on the date of initial planting for the
315 agricultural postmining land use;

316 On lands eligible for remining assume the responsibility
317 for successful revegetation, as required by subdivision (19)
318 of this subsection, for a period of not less than two grow-
319 ing seasons, as defined by the director after the last year of

320 augmented seeding, fertilizing, irrigation or other work in
321 order to assure compliance with subdivision (19) of this
322 subsection;

323 (21) Protect off-site areas from slides or damage occur-
324 ring during surface-mining operations and not deposit
325 spoil material or locate any part of the operations or waste
326 accumulations outside the permit area: *Provided*, That
327 spoil material may be placed outside the permit area, if
328 approved by the director after a finding that environmen-
329 tal benefits will result from the placing of spoil material
330 outside the permit area;

331 (22) Place all excess spoil material resulting from
332 surface-mining activities in a manner that: (A) Spoil is
333 transported and placed in a controlled manner in position
334 for concurrent compaction and in a way as to assure mass
335 stability and to prevent mass movement; (B) the areas of
336 disposal are within the bonded permit areas and all
337 organic matter is removed immediately prior to spoil
338 placements; (C) appropriate surface and internal drainage
339 system or diversion ditches are used to prevent spoil
340 erosion and movement; (D) the disposal area does not
341 contain springs, natural water courses or wet weather
342 seeps, unless lateral drains are constructed from the wet
343 areas to the main under drains in a manner that filtration
344 of the water into the spoil pile will be prevented; (E) if
345 placed on a slope, the spoil is placed upon the most
346 moderate slope among those upon which, in the judgment
347 of the director, the spoil could be placed in compliance
348 with all the requirements of this article, and is placed,
349 where possible, upon, or above, a natural terrace, bench or
350 berm, if placement provides additional stability and
351 prevents mass movement; (F) where the toe of the spoil
352 rests on a downslope, a rock toe buttress, of sufficient size
353 to prevent mass movement, is constructed; (G) the final
354 configuration is compatible with the natural drainage
355 pattern and surroundings and suitable for intended uses;
356 (H) the design of the spoil disposal area is certified by a
357 qualified registered professional engineer in conformance
358 with professional standards; and (I) all other provisions of
359 this article are met: *Provided*, That where the excess spoil
360 material consists of at least eighty percent, by volume,

361 sandstone, limestone or other rocks that do not slake in
362 water and will not degrade to soil material, the director
363 may approve alternate methods for disposal of excess spoil
364 material, including fill placement by dumping in a single
365 lift, on a site specific basis: *Provided, however,* That the
366 services of a qualified registered professional engineer
367 experienced in the design and construction of earth and
368 rockfill embankment are utilized: *Provided further,* That
369 the approval may not be unreasonably withheld if the site
370 is suitable;

371 (23) Meet any other criteria necessary to achieve reclama-
372 tion in accordance with the purposes of this article,
373 taking into consideration the physical, climatological and
374 other characteristics of the site;

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

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

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

397 (2) Where an applicant meets the requirements of
398 subdivisions (3) and (4) of this subsection, a permit with-
399 out regard to the requirement to restore to approximate

400 original contour set forth in subsection (b) or (d) of this
401 section may be granted for the surface-mining of coal
402 where the mining operation will remove an entire coal
403 seam or seams running through the upper fraction of a
404 mountain, ridge or hill, except as provided in subpara-
405 graph (A), subdivision (4) of this subsection, by removing
406 all of the overburden and creating a level plateau or a
407 gently rolling contour with no highwalls remaining, and
408 capable of supporting postmining uses in accordance with
409 the requirements of this subsection.

410 (3) In cases where an industrial, commercial, woodland,
411 agricultural, residential, public or fish and wildlife habitat
412 and recreation lands use is proposed for the postmining
413 use of the affected land, the director may grant a permit
414 for a surface-mining operation of the nature described in
415 subdivision (2) of this subsection where: (A) The proposed
416 postmining land use is determined to constitute an equal
417 or better use of the affected land, as compared with
418 premining use; (B) the applicant presents specific plans for
419 the proposed postmining land use and appropriate assur-
420 ances that the use will be: (i) Compatible with adjacent
421 land uses; (ii) practicable with respect to achieving the
422 proposed use; (iii) supported by commitments from public
423 agencies where appropriate; (iv) practicable with respect
424 to private financial capability for completion of the
425 proposed use; (v) planned pursuant to a schedule attached
426 to the reclamation plan so as to integrate the mining
427 operation and reclamation with the postmining land use;
428 and (vi) designed by a person approved by the director in
429 conformance with standards established to assure the
430 stability, drainage and configuration necessary for the
431 intended use of the site; (C) the proposed use would be
432 compatible with adjacent land uses, and existing state and
433 local land use plans and programs; (D) the director pro-
434 vides the county commission of the county in which the
435 land is located and any state or federal agency which the
436 director, in his or her discretion, determines to have an
437 interest in the proposed use, an opportunity of not more
438 than sixty days to review and comment on the proposed
439 use; and (E) all other requirements of this article will be
440 met.

441 (4) In granting any permit pursuant to this subsection,
442 the director shall require that: (A) A natural barrier be
443 retained to inhibit slides and erosion on permit areas
444 where outcrop barriers are required: *Provided*, That
445 constructed barriers may be allowed where: (i) Natural
446 barriers do not provide adequate stability; (ii) natural
447 barriers would result in potential future water quality
448 deterioration; and (iii) natural barriers would conflict with
449 the goal of maximum utilization of the mineral resource:
450 *Provided, however*, That, at a minimum, the constructed
451 barrier shall be sufficient in width and height to provide
452 adequate stability and the stability factor shall equal or
453 exceed that of the natural outcrop barrier: *Provided*
454 *further*, That where water quality is paramount, the
455 constructed barrier shall be composed of impervious
456 material with controlled discharge points; (B) the re-
457 claimed area is stable; (C) the resulting plateau or rolling
458 contour drains inward from the outcrops except at
459 specific points; (D) no damage will be done to natural
460 watercourses; (E) spoil will be placed on the mountaintop
461 bench as is necessary to achieve the planned postmining
462 land use: *And provided further*, That all excess spoil
463 material not retained on the mountaintop shall be placed
464 in accordance with the provisions of subdivision (22),
465 subsection (b) of this section; and (F) ensure stability of the
466 spoil retained on the mountaintop and meet the other
467 requirements of this article.

468 (5) All permits granted under the provisions of this
469 subsection shall be reviewed not more than three years
470 from the date of issuance of the permit; unless the appli-
471 cant affirmatively demonstrates that the proposed devel-
472 opment is proceeding in accordance with the terms of the
473 approved schedule and reclamation plan.

474 (d) In addition to those general performance standards
475 required by this section, when surface-mining occurs on
476 slopes of twenty degrees or greater, or on lesser slopes as
477 may be defined by rule after consideration of soil and
478 climate, no debris, abandoned or disabled equipment, spoil
479 material or waste mineral matter will be placed on the
480 natural downslope below the initial bench or mining cut:
481 *Provided*, That soil or spoil material from the initial cut of

482 earth in a new surface-mining operation may be placed on
483 a limited specified area of the downslope below the initial
484 cut if the permittee can establish to the satisfaction of the
485 director that the soil or spoil will not slide and that the
486 other requirements of this section can still be met.

487 (e) The director may propose rules for legislative ap-
488 proval in accordance with article three, chapter twenty-
489 nine-a of this code, that permit variances from the approx-
490 imate original contour requirements of this section:
491 *Provided*, That the watershed control of the area is
492 improved: *Provided, however*, That complete backfilling
493 with spoil material is required to completely cover the
494 highwall, which material will maintain stability following
495 mining and reclamation.

496 (f) The director shall propose rules for legislative ap-
497 proval in accordance with article three, chapter twenty-
498 nine-a of this code, for the design, location, construction,
499 maintenance, operation, enlargement, modification,
500 removal and abandonment of new and existing coal mine
501 waste piles. In addition to engineering and other technical
502 specifications, the standards and criteria developed
503 pursuant to this subsection shall include provisions for
504 review and approval of plans and specifications prior to
505 construction, enlargement, modification, removal or
506 abandonment; performance of periodic inspections during
507 construction; issuance of certificates of approval upon
508 completion of construction; performance of periodic safety
509 inspections; and issuance of notices and orders for re-
510 quired remedial or maintenance work or affirmative
511 action: *Provided*, That whenever the director finds that
512 any coal processing waste pile constitutes an imminent
513 danger to human life, he or she may, in addition to all
514 other remedies and without the necessity of obtaining the
515 permission of any person prior or present who operated or
516 operates a pile or the landowners involved, enter upon the
517 premises where any coal processing waste pile exists and
518 may take or order to be taken any remedial action that
519 may be necessary or expedient to secure the coal process-
520 ing waste pile and to abate the conditions which cause the
521 danger to human life: *Provided, however*, That the cost
522 reasonably incurred in any remedial action taken by the

523 director under this subsection may be paid for initially by
524 funds appropriated to the division for these purposes, and
525 the sums expended shall be recovered from any responsible
526 operator or landowner, individually or jointly, by suit
527 initiated by the attorney general at the request of the
528 director. For purposes of this subsection "operates" or
529 "operated" means to enter upon a coal processing waste
530 pile, or part of a coal processing waste pile, for the purpose
531 of disposing, depositing, dumping coal processing wastes
532 on the pile or removing coal processing waste from the
533 pile, or to employ a coal processing waste pile for retard-
534 ing the flow of or for the impoundment of water.

§22-3-13a. Pre-blast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as
2 defined in section twenty-two-a of this article, an operator
3 or an operator's designee shall make the following notifi-
4 cations in writing to all owners and occupants of man-
5 made dwellings or structures that the operator or opera-
6 tor's designee will perform pre-blast surveys in accordance
7 with subsection (f) of this section:

8 (1) For surface-mining operations that are less than two
9 hundred acres in a single permitted area or less than three
10 hundred acres of contiguous or nearly contiguous area of
11 two or more permitted areas, the required notifications
12 shall be to all owners and occupants of man-made dwell-
13 ings or structures within five tenths of a mile of the
14 permitted area or areas;

15 (2) For all other surface-mining operations, the required
16 notifications shall be to all owners and occupants of man-
17 made dwellings or structures within five tenths of a mile
18 of the permitted area or areas or seven tenths of a mile of
19 the proposed blasting site, whichever is greater.

20 (b) Within thirty days of the effective date of this
21 section, any operator identified in subdivision (2), subsec-
22 tion (a) of this section, that has already completed pre-
23 blast surveys for man-made dwellings or structures within
24 five tenths of a mile of the permit area and has commenced
25 operations by the effective date of this section, shall be
26 required to notify in writing all additional owners and

27 occupants or man-made dwellings or structures within
28 seven tenths of a mile of the proposed blasting site.
29 Except for those dwellings or structures for which the
30 operator secures a written waiver or executes an affidavit
31 in accordance with the requirements of subsection (c) of
32 this section, the operator or the operator's designee must
33 perform the additional pre-blast surveys in accordance
34 with subsection (f) of this section within ninety days of the
35 effective date of this section.

36 (c) An occupant or owner of a man-made dwelling or
37 structure within the areas described in subdivisions (1) or
38 (2) of subsection (a) of this section, may waive the right to
39 a pre-blast survey in writing. If a dwelling is occupied by
40 a person other than the owner, both the owner and the
41 occupant must waive the right to a pre-blast survey in
42 writing. If an occupant or owner of a man-made dwelling
43 or structure refuses to allow the operator or the operator's
44 designee access to the dwelling or structure and refuses to
45 waive in writing the right to a pre-blast survey or to the
46 extent that access to any portion of the structure, under-
47 ground water supply or well is impossible or impractical
48 under the circumstances, the pre-blast survey shall
49 indicate that access was refused, impossible or impractical. The operator or the operator's designee shall execute
50 a sworn affidavit explaining the reasons and circum-
51 stances surrounding the refusals. The office of explosives
52 and blasting shall not determine the pre-blast survey to be
53 incomplete because it indicates that access to a particular
54 structure, underground water supply or well was refused,
55 impossible or impractical. The operator shall send copies
56 of all written waivers and affidavits executed pursuant to
57 this subsection to the office of explosives and blasting.

59 (d) If a pre-blast survey was waived by the owner and
60 was within the requisite area and the property was sold,
61 the new owner may request a pre-blast survey from the
62 operator.

63 (e) An owner within the requisite area may request, from
64 the operator, a pre-blast survey on structures constructed
65 after the original pre-blast survey.

66 (f) The pre-blast survey shall include:

- 67 (1) The names, addresses or description of structure
68 location and telephone numbers of the owner and the
69 residents of the structure being surveyed and the structure
70 number from the permit blasting map;
- 71 (2) The current home insurer of the owner and the
72 residents of the structure;
- 73 (3) The names, addresses and telephone numbers of the
74 surface-mining operator and the permit number;
- 75 (4) The current general liability insurer of the surface-
76 mining operator;
- 77 (5) The name, address and telephone number of the
78 person or firm performing the pre-blast survey;
- 79 (6) The current general liability insurer of the person or
80 firm performing the pre-blast survey;
- 81 (7) The date of the pre-blast survey and the date it was
82 mailed or delivered to the office of explosives and blasting;
- 83 (8) A general description of the structure and its appur-
84 tenances including, but not limited to: (A) the number of
85 stories, (B) the construction materials for the frame and
86 the exterior and interior finish, (C) the type of construction
87 including any unusual or substandard construction, and
88 (D) the approximate age of the structure;
- 89 (9) A general description of the survey methods and the
90 direction of progression of the survey, including a key to
91 abbreviations used;
- 92 (10) Written documentation and drawings, videos or
93 photographs of the pre-blast defects and other physical
94 conditions of all structures, appurtenances and water
95 sources which could be affected by blasting;
- 96 (11) Written documentation and drawings, videos or
97 photographs of the exterior and interior of the structure to
98 indicate pre-blast defects and condition;
- 99 (12) Written documentation and drawings, videos or
100 photographs of the exterior and interior of any appurte-

101 nance of the structure to indicate pre-blast defects and
102 condition;

103 (13) Sufficient exterior and interior photographs or
104 videos, using a variety of angles, of the structure and its
105 appurtenances to indicate pre-blast defects and the
106 condition of the structure and appurtenances;

107 (14) Written documentation and drawings, videos or
108 photographs of any unusual or substandard construction
109 technique and materials used on the structure and/or its
110 appurtenances;

111 (15) Written documentation relating to the type of water
112 supply, including a description of the type of system and
113 treatment being used, an analysis of untreated water
114 supplies, a water analysis of water supplies other than
115 public utilities, and information relating to the quantity
116 and quality of water;

117 (16) When the water supply is a well, written documen-
118 tation, where available, relating to the type of well; the
119 well log; the depth, age and type of casing or lining; the
120 static water level; flow data; the pump capacity; the
121 drilling contractor; and the source or sources of the
122 documentation;

123 (17) A description of any portion of the structure and
124 appurtenances not documented or photographed and the
125 reasons;

126 (18) The signature of the person performing the survey;
127 and

128 (19) Any other information required by the chief which
129 additional information shall be established by rule in
130 accordance with article three, chapter twenty-nine-a of
131 this code.

132 (g) Except for additional pre-blast surveys prepared
133 within one hundred twenty days of the effective date of
134 this section, pursuant to subsection (b) of this section, the
135 pre-blast survey shall be submitted to the office of explo-
136 sives and blasting at least fifteen days prior to the com-
137 mencement of any production blasting. The office of

138 explosives and blasting shall review each pre-blast survey
139 as to form and completeness only and notify the operator
140 of any deficiencies. The office of explosives and blasting
141 shall notify the owner and occupant of the location and
142 availability of the pre-blast survey and a copy of the pre-
143 blast survey shall be provided to the owner and/or occu-
144 pant upon request.

145 (h) The surface-mining operator shall file notice of the
146 pre-blast survey or the waiver in the office of the county
147 clerk of the county commission of the county where the
148 man-made dwelling or structure is located to notify the
149 public that a pre-blast survey has been conducted or
150 waived. The notice shall be on a form prescribed by the
151 office of explosives and blasting.

152 (i) The chief of the office of explosives and blasting shall
153 propose rules for legislative approval in accordance with
154 article three, chapter twenty-nine-a of this code, dealing
155 with pre-blast survey requirements and setting the qualifi-
156 cations for individuals and firms performing pre-blast
157 surveys.

158 (j) The provisions of this section shall not apply to the
159 following: (1) underground coal mining operations; and (2)
160 the extraction of minerals by underground mining meth-
161 ods or the surface impacts of the underground mining
162 methods.

**§22-3-22a. Blasting restrictions; site specific blasting design
requirement.**

1 (a) For purposes of this section, the term "production
2 blasting" means blasting that removes the overburden to
3 expose underlying coal seams and shall not include
4 construction blasting.

5 (b) For purposes of this section, the term "construction
6 blasting" means blasting to develop haul roads, mine
7 access roads, coal preparation plants, drainage structures,
8 or underground coal mine sites and shall not include
9 production blasting.

10 (c) For purposes of this section, the term "protected
11 structure" means any of the following structures that are

12 situated outside the permit area: an occupied dwelling, a
13 temporarily unoccupied dwelling which has been occupied
14 within the past ninety days, a public building, a structure
15 for commercial purposes, a school, a church, a community
16 or institutional building, a public park or a water well.

17 (d) Production blasting is prohibited within three
18 hundred feet of a protected structure or within one
19 hundred feet of a cemetery.

20 (e) Blasting within one thousand feet of a protected
21 structure shall have a site specific blast design approved
22 by the office of explosives and blasting. The site specific
23 blast design shall limit the type of explosives and detonat-
24 ing equipment, the size, the timing and frequency of blasts
25 to do the following:

26 (1) Prevent injury to persons; (2) prevent damage to
27 public and private property outside the permit area; (3)
28 prevent adverse impacts on any underground mine; (4)
29 prevent change in the course, channel or availability of
30 ground or surface water outside the permit area; and (5)
31 reduce dust outside the permit area.

32 In the development of a site specific blasting plan
33 consideration shall be given, but is not limited to, the
34 physical condition, type and quality of construction of the
35 protected structure, the current use of the protected
36 structure and the concerns of the owner or occupant living
37 in the protected structure in the blasting schedule.

38 (f) An owner or occupant of a protected structure may
39 waive the blasting prohibition within three hundred feet
40 or the site specific restriction within one thousand feet in
41 writing. If a protected structure is occupied by a person
42 other than the owner, both the owner and the occupant of
43 the protected structure shall waive the blasting prohibi-
44 tion within three hundred feet or the site specific restric-
45 tion within one thousand feet in writing. The operator
46 shall send copies of all written waivers executed pursuant
47 to this subsection to the office of explosives and blasting.
48 Written waivers executed and filed with the office of
49 explosives and blasting shall be valid during the life of the
50 permit or any renewals of the permit and shall be enforce-

51 able against any subsequent owners or occupants of the
52 protected structure.

53 (g) The provisions of this section shall not apply to the
54 following: (1) Underground coal mining operations; (2) the
55 surface operations and surface impacts incident to an
56 underground coal mine; and (3) the extraction of minerals
57 by underground mining methods or the surface impacts of
58 the underground mining methods: *Provided*, That nothing
59 contained in this section shall be construed to exempt any
60 coal mining operation from the general performance
61 standards as contained in section thirteen of this article
62 and any rules promulgated pursuant thereto.

**§22-3-23. Release of bond or deposits; application; notice; duties
of director; public hearings; final maps on grade
release.**

1 (a) The permittee may file a request with the director for
2 the release of a bond or deposit. The permittee shall
3 publish an advertisement regarding such request for
4 release in the same manner as is required of advertise-
5 ments for permit applications. A copy of such advertise-
6 ment shall be submitted to the director as part of any bond
7 release application and shall contain a notification of the
8 precise location of the land affected, the number of acres,
9 the permit and the date approved, the amount of the bond
10 filed and the portion sought to be released, the type and
11 appropriate dates of reclamation work performed and a
12 description of the results achieved as they relate to the
13 permittee's approved reclamation plan. In addition, as part
14 of any bond release application, the permittee shall submit
15 copies of letters which the permittee has sent to adjoining
16 property owners, local government bodies, planning
17 agencies, sewage and water treatment authorities or water
18 companies in the locality in which the surface-mining
19 operation is located, notifying them of the permittee's
20 intention to seek release from the bond. Any request for
21 grade release shall also be accompanied by final maps.

22 (b) Upon receipt of the application for bond release, the
23 director, within thirty days, taking into consideration
24 existing weather conditions, shall conduct an inspection
25 and evaluation of the reclamation work involved. Such

26 evaluation shall consider, among other things, the degree
27 of difficulty to complete any remaining reclamation,
28 whether pollution of surface and subsurface water is
29 occurring, the probability of continuance or future occur-
30 rence of such pollution and the estimated cost of abating
31 such pollution. The director shall notify the permittee in
32 writing of his or her decision to release or not to release all
33 or part of the bond or deposit within sixty days from the
34 date of the initial publication of the advertisement if no
35 public hearing is requested. If a public hearing is held, the
36 director's decision shall be issued within thirty days
37 thereafter.

38 (c) If the director is satisfied that reclamation covered by
39 the bond or deposit or portion thereof has been accom-
40 plished as required by this article, he or she may release
41 said bond or deposit, in whole or in part, according to the
42 following schedule:

43 (1) When the operator completes the backfilling, regrad-
44 ing and drainage control of a bonded area in accordance
45 with the operator's approved reclamation plan, the release
46 of sixty percent of the bond or collateral for the applicable
47 bonded area: *Provided*, That a minimum bond of ten
48 thousand dollars shall be retained after grade release;

49 (2) Two years after the last augmented seeding, fertiliz-
50 ing, irrigation or other work to ensure compliance with
51 subdivision (19), subsection (b), section thirteen of this
52 article, the release of an additional twenty-five percent of
53 the bond or collateral for the applicable bonded area:
54 *Provided*, That a minimum bond of ten thousand dollars
55 shall be retained after the release provided for in this
56 subdivision; and

57 (3) When the operator has completed successfully all
58 surface-mining and reclamation activities, the release of
59 the remaining portion of the bond, but not before the
60 expiration of the period specified in subdivision (20),
61 subsection (b), section thirteen of this article: *Provided*,
62 That the revegetation has been established on the regraded
63 mined lands in accordance with the approved reclamation
64 plan: *Provided, however*, That such a release may be made
65 where the quality of the untreated post-mining water

66 discharged is better than or equal to the premining water
67 quality discharged from the mining site.

68 No part of the bond or deposit may be released under
69 this subsection so long as the lands to which the release
70 would be applicable are contributing additional suspended
71 solids to streamflow or runoff outside the permit area in
72 excess of the requirements set by section thirteen of this
73 article, or until soil productivity for prime farmlands has
74 returned to equivalent levels of yield as nonmined land of
75 the same soil type in the surrounding area under equivalent
76 management practices as determined from the soil
77 survey performed pursuant to section nine of this article.
78 Where a sediment dam is to be retained as a permanent
79 impoundment pursuant to section thirteen of this article,
80 or where a road or minor deviation is to be retained for
81 sound future maintenance of the operation, the portion of
82 the bond may be released under this subsection so long as
83 provisions for sound future maintenance by the operator
84 or the landowner have been made with the director.

85 Notwithstanding the bond release scheduling provisions
86 of subdivisions (1), (2) and (3) of this subsection, if the
87 operator completes the backfilling and reclamation in
88 accordance with an approved post-mining land use plan
89 that has been approved by the division of environmental
90 protection and accepted by a local or regional economic
91 development or planning agency for the county or region
92 in which the operation is located, provisions for sound
93 future maintenance are assured by the local or regional
94 economic development or planning agency, and the quality
95 of any untreated postmining water discharge complies
96 with applicable water quality criteria for bond release, the
97 director may release the entire amount of said bond or
98 deposit. The director shall propose rules for legislative
99 approval in accordance with the provisions of article three,
100 chapter twenty-nine-a of this code, to govern a bond
101 release pursuant to the terms of this paragraph.

102 (d) If the director disapproves the application for release
103 of the bond or portion thereof, the director shall notify the
104 permittee, in writing, stating the reasons for disapproval
105 and recommending corrective actions necessary to secure

106 said release and notifying the operator of the right to a
107 hearing.

108 (e) When any application for total or partial bond release
109 is filed with the director, he or she shall notify the munic-
110 ipality in which a surface-mining operation is located by
111 registered or certified mail at least thirty days prior to the
112 release of all or a portion of the bond.

113 (f) Any person with a valid legal interest which is or may
114 be adversely affected by release of the bond or the respon-
115 sible officer or head of any federal, state or local govern-
116 mental agency which has jurisdiction by law or special
117 expertise with respect to any environmental, social or
118 economic impact involved in the operation, or is autho-
119 rized to develop and enforce environmental standards with
120 respect to such operations, has the right to file written
121 objections to the proposed bond release and request a
122 hearing with the director within thirty days after the last
123 publication of the permittee's advertisement. If written
124 objections are filed and a hearing requested, the director
125 shall inform all of the interested parties of the time and
126 place of the hearing and shall hold a public hearing in the
127 locality of the surface-mining operation proposed for bond
128 release within three weeks after the close of the public
129 comment period. The date, time and location of such
130 public hearing shall also be advertised by the director in a
131 newspaper of general circulation in the same locality.

132 (g) Without prejudice to the rights of the objectors, the
133 applicant, or the responsibilities of the director pursuant
134 to this section, the director may hold an informal confer-
135 ence to resolve any written objections and satisfy the
136 hearing requirements of this section thereby.

137 (h) For the purpose of such hearing, the director has the
138 authority and is hereby empowered to administer oaths,
139 subpoena witnesses and written or printed materials,
140 compel the attendance of witnesses, or production of
141 materials, and take evidence including, but not limited to,
142 inspections of the land affected and other surface-mining
143 operations carried on by the applicant in the general
144 vicinity. A verbatim record of each public hearing required
145 by this section shall be made and a transcript made

146 available on the motion of any party or by order of the
147 director at the cost of the person requesting the transcript.

§22-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects in any way the rights of
2 any person to enforce or protect, under applicable law, the
3 person's interest in water resources affected by a surface-
4 mining operation.

5 (b) Any operator shall replace the water supply of an
6 owner of interest in real property who obtains all or part
7 of the owner's supply of water for domestic, agricultural,
8 industrial or other legitimate use from an underground or
9 surface source where the supply has been affected by
10 contamination, diminution or interruption proximately
11 caused by the surface-mining operation, unless waived by
12 the owner.

13 (c) There is a rebuttable presumption that a mining
14 operation caused damage to an owner's underground
15 water supply if the inspector determines the following: (1)
16 contamination, diminution or damage to an owner's
17 underground water supply exists; and (2) a pre-blast
18 survey was performed, consistent with the provisions of
19 section thirteen-a of this article, on the owner's property
20 including the underground water supply that indicated
21 that contamination, diminution or damage to the under-
22 ground water supply did not exist prior to the mining
23 conducted at the mining operation. The operator conduct-
24 ing the mining operation shall: (1) provide an emergency
25 drinking water supply within twenty-four hours; (2)
26 provide a temporary water supply within seventy-two
27 hours; (3) provide a permanent water supply within thirty
28 days; and (4) pay all reasonable costs incurred by the
29 owner in securing a water supply.

30 (d) An owner aggrieved under the provisions of subsec-
31 tions (b) or (c) of this section, may seek relief in court or
32 pursuant to the provisions of section five, article three-a of
33 this chapter.

34 (e) The director shall propose rules for legislative
35 approval in accordance with the provisions of article three,

36 chapter twenty-nine-a of this code, to implement the
37 requirements of this section.

38 (f) The provisions of subsection (c) of this section shall
39 not apply to the following: (1) underground coal mining
40 operations; (2) the surface operations and surface impacts
41 incident to an underground coal mine; and (3) the extrac-
42 tion of minerals by underground mining methods or the
43 surface impacts of the underground mining methods.

**§22-3-30a. Blasting requirements; liability and civil penalties in
the event of property damage.**

1 (a) Blasting of overburden and coal shall be conducted in
2 accordance with the rules and laws established to regulate
3 blasting.

4 (b) If the division of environmental protection estab-
5 lishes after an inspection that a blast was not in compli-
6 ance with the regulations governing blasting parameters
7 and resulted in property damage to a protected structure,
8 as defined in section twenty-two-a of this article, other
9 than water wells, the following penalties shall be imposed
10 for each permit area or contiguous permit areas where the
11 blasting was out of compliance:

12 (1) For the first offense, the operator shall be assessed a
13 penalty of not less than one thousand dollars nor more
14 than five thousand dollars.

15 (2) For the second offense and each subsequent offense
16 within one year of the first offense, the surface-mining
17 operator shall be assessed a penalty of not less than five
18 thousand dollars nor more than ten thousand dollars.

19 (3) For the third offense and any subsequent offense
20 within one year of the first offense, or for the failure to pay
21 any assessment set forth within a reasonable time estab-
22 lished by the director, the surface-mining operator's
23 permit shall be subject to an immediate issuance of a
24 cessation order, as set out in section sixteen of this article.
25 The cessation order shall only be released upon written
26 order of the director of the division of environmental
27 protection when the following conditions have been met:

28 (A) A written plan has been established and filed with
29 the director assuring that additional violations will not
30 occur;

31 (B) The permittee has provided compensation for the
32 property damages or the assurance of adequate compensa-
33 tion for the property damages that have occurred; and

34 (C) A permittee shall provide such monetary and other
35 assurances as the director shall determine appropriate to
36 compensate for future property damages. The monetary
37 assurances required shall be in an amount at least equal to
38 the amount of compensation required in paragraph (B),
39 subdivision (3), of this subsection.

40 (4) In addition to the penalties described in subdivisions
41 (1), (2) and (3) of this subsection, for the second and
42 subsequent offenses on any one permitted area regardless
43 of the time period, the owner of the protected structure is
44 entitled to a rebuttable presumption that the property
45 damage is a result of the blast if (A) a pre-blast survey was
46 performed and (B) the blasting site to which the second or
47 subsequent offense relates is within seven tenths of a mile
48 of the protected structure.

49 (5) No more than one offense shall arise out of any one
50 shot. For purposes of this section, "shot" means a single
51 blasting event composed of one or multiple detonations of
52 explosive material, or the assembly of explosive materials
53 for this purpose. One "shot" may be composed of numer-
54 ous explosive charges detonated at intervals measured in
55 milliseconds.

56 (c) Notwithstanding the provisions of subsections (a) and
57 (b) of this section, the division of environmental protection
58 may not impose penalties on an operator for the violation
59 of any rule identified in subsection (a) of this section that
60 is merely administrative in nature.

61 (d) The remedies provided in this section are not exclu-
62 sive and shall not bar an owner or occupant from any
63 other remedy accorded by law.

64 (e) Where inspection by the division of environmental
65 protection establishes that production blasting, in viola-

66 tion of section twenty-two-a of this article, was done
67 within three hundred feet or was not site specific produc-
68 tion blasting within one thousand feet of any protected
69 structure as defined in section twenty-two-a of this article,
70 or within one hundred feet of a cemetery, the monetary
71 penalties and revocation, as set out in subsection (b) of this
72 section, apply.

73 (f) All penalties and liabilities as set forth in this section
74 shall be assessed by the director, collected by the director
75 and deposited with the treasurer of the state of West
76 Virginia, in the "general school fund".

77 (g) The director shall propose rules for legislative
78 approval pursuant to article three, chapter twenty-nine-a
79 of this code for the implementation of this section.

80 (h) The provisions of this section shall not apply to the
81 following: (1) Underground coal mining operations; (2) the
82 surface operations and surface impacts incident to an
83 underground coal mine; and (3) the extraction of minerals
84 by underground mining methods or the surface impacts of
85 the underground mining methods: *Provided*, That nothing
86 contained in this section shall be construed to exempt any
87 coal mining operation from the general performance
88 standards as contained in section thirteen of this article
89 and any rules promulgated pursuant thereto.

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-1. Legislative findings; policy and purposes.

1 (a) The Legislature declares that the establishment of an
2 office within the division of environmental protection to
3 enforce blasting laws pursuant to surface-mining within
4 the state of West Virginia is in the public interest and will
5 promote the protection of the property and citizens of the
6 state of West Virginia without sacrificing economic
7 development. It is the policy of the state of West Virginia,
8 in cooperation with other governmental agencies, public
9 and private organizations, and the citizens of this state, to
10 use reasonable means and measures to prevent harm from
11 the effects of blasting to its property and citizens.

12 (b) It is the purpose of this article to create the office of
13 explosives and blasting within the division of environmen-
14 tal protection, and to vest in the office the authority to
15 enforce all the rules and laws established to regulate
16 blasting consistent with the authority granted in this
17 article.

**§22-3A-2. Office of explosives and blasting created; transfer of
functions; responsibilities.**

1 (a) There is hereby created the office of explosives and
2 blasting within the division of environmental protection.
3 The director shall appoint a chief to administer the office.
4 The chief shall serve at the will and pleasure of the
5 director.

6 (b) As of the effective date of this article, the office of
7 explosives and blasting shall assume responsibility for the
8 enforcement of all the rules and laws established to
9 regulate blasting consistent with the authority granted in
10 this article.

11 (c) Terms used in this article shall have the definitions
12 set forth in article three of this chapter, unless used in a
13 context that clearly requires a different meaning or as
14 otherwise defined herein.

§22-3A-3. Powers and duties.

1 The duties of the office shall include, but are not limited
2 to:

3 (a) Regulating blasting on all surface-mining operations;

4 (b) Implementing and overseeing the pre-blast survey
5 process, as set forth in section thirteen-a, article three of
6 this chapter;

7 (c) Maintaining and operating a system to receive and
8 address questions, concerns and complaints relating to
9 mining operations.

10 (d) Setting the qualifications for individuals and firms
11 performing pre-blast surveys;

12 (e) The education, training, examination and certifica-
13 tion of blasters; and

14 (f) Proposing rules for legislative approval pursuant to
15 article three, chapter twenty-nine-a of this code for the
16 implementation of this article.

**§22-3A-4. Legislative rules on surface-mining blasting; discipli-
nary procedures for certified blasters.**

1 (a) The office of explosives and blasting shall propose
2 rules for legislative approval in accordance with the
3 provisions of article three, chapter twenty-nine-a of this
4 code, for the purposes of implementing this article. The
5 rules shall include, but not be limited to, the following:

6 (1) A procedure for the review, modification and ap-
7 proval, prior to the issuance of any permit, of any blasting
8 plan required to be submitted with any application for a
9 permit to be issued by the director pursuant to article
10 three of this chapter, which sets forth procedures for the
11 inspection and monitoring of blasting operations for
12 compliance with blasting laws and rules, and for the
13 review and modification of the blasting plan of any
14 operator against whom an enforcement action is taken by
15 the division of environmental protection;

16 (2) Specific minimum requirements for pre-blast surveys,
17 as set forth in section thirteen-a, article three of this
18 chapter;

19 (3) A procedure for review of pre-blast surveys required
20 to be submitted under section thirteen-a, article three of
21 this chapter;

22 (4) A procedure for the use of seismographs for produc-
23 tion blasting which shall be made part of the blasting log;

24 (5) A procedure to warn of impending blasting to the
25 owners or occupants adjoining the blasting area;

26 (6) A procedure to limit the type of explosives and
27 detonating equipment, the size, the timing and frequency
28 of blasts based upon the physical conditions of the site so
29 as to: (A) Prevent injury to persons; (B) Prevent damage to
30 public and private property outside the permit area; (C)

31 Prevent adverse impacts on any underground mine; (D)
32 Prevent change in the course, channel or availability of
33 ground or surface water outside the permit area; and (E)
34 Reduce dust outside the permit area.

35 (7) Provisions for requiring mining operators to publish
36 the planned blasting schedule in a newspaper of general
37 circulation in the locality of the mining operation; and

38 (8) Provisions for requiring mining operators to provide
39 adequate advance written notice of the proposed blasting
40 schedule to local governments, owners and occupants
41 living within the distances prescribed in subsection (a),
42 section thirteen-a, article three of this chapter.

43 (b) The office of explosives and blasting shall propose
44 rules for legislative approval in accordance with the
45 provisions of article three, chapter twenty-nine-a of this
46 code. The rules shall include, but not be limited to, the
47 following:

48 (1) Provisions for establishing a process for the educa-
49 tion, training, examination and certification of blasters
50 working on surface-mining operations; and

51 (2) Provisions for establishing disciplinary procedures
52 for all certified blasters responsible for blasting on
53 surface-mining operations conducted within this state in
54 violation of any law or rule promulgated by the division of
55 environmental protection to regulate blasting.

§22-3A-5. Claims process.

1 (a) The office of explosives and blasting shall establish
2 and manage a process for the filing, administration and
3 resolution of claims related to blasting.

4 (b) Claims which may be filed and determined under the
5 provisions of this section shall be those arising from both
6 of the following:

7 (1) Damage to property arising from blasting activities
8 conducted pursuant to a permit granted under article three
9 of this chapter; and

10 (2) The damage is incurred by a claimant who is the
11 owner or occupant of the property.

12 (c) The claims process established by the office of
13 explosives and blasting shall include the following:

14 (1) An initial determination by the office of the merit of
15 the claim; and

16 (2) An arbitration process whereby the claim can be
17 determined and resolved by an arbitrator in a manner
18 which is inexpensive, prompt and fair to all parties.

19 The office shall propose rules for legislative approval in
20 accordance with article three, chapter twenty-nine-a of
21 this code for the development of standards for establishing
22 rules relating to the initial claim determination and the
23 arbitration process provided in this subsection.

24 (d) If the operator disagrees with the initial determina-
25 tion made by the office and requests arbitration, then the
26 following shall apply:

27 (1) Any party may be represented by a representative of
28 their choice;

29 (2) At the request of the claimant, the office shall
30 provide the claimant with representation in the arbitration
31 process, which representation shall not necessarily be an
32 attorney-at-law; and

33 (3) If the claim is upheld in whole or in part, then the
34 operator shall pay the costs of the proceeding, as well as
35 reasonable representation fees and costs of the claimant,
36 in an amount not to exceed one thousand dollars.

37 (e) Participation in the claims process created by this
38 section shall be voluntary for the claimant. However, once
39 the claimant has submitted a claim for determination
40 under the provisions of this section, it is intended that the
41 finding of the office, if not taken to arbitration, shall be
42 final. If arbitration is requested, it is intended that the
43 results of such arbitration shall be final. The office shall
44 provide written notification to the claimant of the provi-
45 sions of this subsection and shall secure a written ac-

46 knowledge from the claimant prior to processing a
47 claim pursuant to the provisions of this section.

48 (f) The operator shall pay any claim for which the
49 operator is adjudged liable within thirty days of a final
50 determination. If the claim is not paid within thirty days,
51 the director shall issue a cessation order pursuant to
52 section sixteen, article three of this chapter for all sites
53 operated by the operator.

54 (g) No permit to mine coal shall be granted unless the
55 permit applicant agrees to be subject to the terms of this
56 section.

57 (h) To fulfill its responsibilities pursuant to this section,
58 the office may retain the services of inspectors, experts
59 and other persons or firms as may be necessary.

§22-3A-6. Rules, orders and permits to remain in effect; proceedings not affected.

1 (a) All orders, determinations, rules, permits, grants,
2 contracts, certificates, licenses, waivers, bonds, authoriza-
3 tions and privileges which have been issued, made, granted
4 or allowed to become effective prior to the enactment of
5 this article shall remain in effect according to their terms
6 until modified, terminated, superseded, set aside or
7 revoked pursuant to this article, by a court of competent
8 jurisdiction, or by operation of law.

9 (b) Any proceedings, including notices of proposed rule-
10 making, or any application for any license, permit or
11 certificate pending before the division are not affected by
12 this enactment.

§22-3A-7. Funding.

1 (a) The office shall assess each operator permitted under
2 the provisions of this chapter a fee on each quantity of
3 explosive material used for any purpose on the surface-
4 mining operations.

5 (b) The office shall propose a legislative rule for promul-
6 gation in accordance with article three, chapter twenty-
7 nine-a of this code, establishing the fees required by this
8 section. The fees shall be calculated to generate sufficient

9 money to provide for the operation of this office and the
10 office of coalfield community development as provided for
11 in article two-a, chapter five-b of this code.

12 (c) The office shall deposit all moneys received from
13 these fees into a special revenue fund to be known as the
14 "mountaintop removal fund" in the state treasury to be
15 expended by the offices in the performance of their duties.
16 The expenditure of moneys in the fund is not authorized
17 from collections, but shall be appropriated by the Legisla-
18 ture.

§22-3A-8. Transfer of personnel and assets.

1 The director shall transfer to the office any personnel
2 and assets presently used to perform or used in the perfor-
3 mance of the duties and functions required by this article.

§22-3A-9. Limitation of article.

1 Except for sections five and seven of this article, all
2 provisions of this article are also applicable to surface
3 blasting activities related to underground mining opera-
4 tions.

§22-3A-10. Office to conduct study.

1 (a) The office shall conduct or participate in studies or
2 research to develop scientifically based data and recom-
3 mendations of the following:

4 (1) Ground vibrations associated with blasting and how
5 the vibrations impact protected structures;

6 (2) The proper size and shot parameters to assure
7 protection of protected structures;

8 (3) The necessity of expanding the parameters where
9 blasting is prohibited in relation to protected structures to
10 assure that the shots do not cause damage to protected
11 structures;

12 (4) The appropriateness of modifying pre-blast survey
13 requirements that reflect a pattern of excessive ground
14 vibration and air blast has occurred within a measured
15 distance;

16 (5) Analysis of the appropriate air blast limitations to
17 determine damage criteria; and

18 (6) Any other data or recommendations the office deems
19 appropriate.

20 (b) The office shall report the data and recommendations
21 to the joint committee on government and finance on or
22 before the first day of January two thousand one, and
23 annually thereafter or as otherwise required.

§22-3A-11. Termination of office.

1 The office of explosives and blasting is continued until
2 the first day of July, two thousand two, pursuant to the
3 provisions of article ten, chapter four of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-7a. Certification agreements; required provisions;
effective date.**

1 (a) Any applicant for the water quality certification that
2 seeks certification of activities covered by the United
3 States army corps of engineers permits issued in accor-
4 dance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330
5 for use at or in conjunction with a surface coal mining
6 operation as defined in section three, article three of this
7 chapter, certification may be issued subject to the follow-
8 ing conditions:

9 (1) If the applicant's surface coal mining operation will
10 not impact waters of the state designated as national
11 resource waters and streams where trout naturally repro-
12 duce and will not impact wetlands of the state in a manner
13 inconsistent with all applicable state or federal standards
14 as the case may be, as required by the federal Clean Water
15 Act, and if the watershed above the toe of the farthest
16 downstream permanent structure authorized pursuant to
17 an United States army corps of engineers permits issued in
18 accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323
19 or 330 is less than two hundred fifty acres, then the
20 director may issue a water quality certification pursuant
21 to the requirements of this section. If the watershed above
22 the toe of the farthest downstream permanent structure
23 impacted is equal to or greater than two hundred fifty

24 acres, the director shall require that mitigation be under-
25 taken. Additionally, the director may require mitigation
26 for temporary impacts to waters of the state as specified in
27 subdivision (2) of this subsection.

28 (2) If the watershed above the toe of the farthest down-
29 stream permanent structure authorized pursuant to the
30 United States army corps of engineers permits issued in
31 accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323
32 or 330 is greater than or equal to two hundred fifty acres
33 and all other necessary requirements are met consistent
34 with this section, the director shall further condition a
35 water quality certification on a requirement that the
36 applicant mitigate the expected water quality impacts
37 under the following conditions:

38 (A) The water quality certification may require mitiga-
39 tion at a ratio appropriate to the type of waters impacted,
40 consistent with state or federal standards as required by
41 the federal Clean Water Act, for the types and locations of
42 waters impacted;

43 (B) For waters of the state isolated as a result of a
44 permanent structure, the maximum mitigation ratio shall
45 be five-tenths acre of mitigation area for every one acre of
46 those isolated waters;

47 (C) The director may accept mitigation on the permitted
48 area, mitigation off the permitted area, mitigation banking
49 of waters of the state, or any combination thereof, or any
50 other mitigation measure acceptable to the director; and

51 (D) Upon completion of the work required by an agree-
52 ment to conduct operations authorized by this subsection
53 the surface coal mining operation shall obtain a certifica-
54 tion from a registered professional engineer that all
55 mitigation work specified in the agreement has been
56 completed in accordance with the conditions of the water
57 quality certification. The director shall promptly review
58 the certification and provide to the surface coal mining
59 operation with notice that all mitigation work has been
60 successfully completed, or that further mitigation work is
61 necessary to meet the conditions imposed by the water
62 quality certification. The mitigation amount may not

63 exceed two hundred thousand dollars per acre of stream
64 disturbed above the toe of the farthest downstream
65 permanent structure. Those moneys shall be deposited in
66 the stream restoration fund under the jurisdiction of the
67 division of environmental protection and any expenditures
68 from this fund after the thirtieth day of June, one thou-
69 sand nine hundred ninety-eight, shall not be authorized
70 from collections but shall only be authorized by appropri-
71 ation by the Legislature. Additionally, the expenditures
72 are only authorized in those counties where the activity
73 leading to the mitigation occurred or in those counties
74 adjacent to the counties where the activity leading to the
75 mitigation occurred. The director shall by the thirty-first
76 day of December of each year provide a report to the joint
77 committee on government and finance on receipts and
78 expenditures from the stream restoration fund, the number
79 of acreage reclaimed by the division through the use of
80 these funds and the effectiveness of achieving stream
81 restoration through the payment of the mitigation
82 amounts into the fund in lieu of reclamation by the
83 certificate holder.

84 (3) The director shall confer with representatives of the
85 surface coal mining industry and representatives of
86 environmental organizations with an interest in water
87 quality in developing a manual of approval options for
88 mitigation on permitted areas, mitigation off permitted
89 areas and mitigation involving banking of waters of the
90 state.

91 (4) The proposed surface coal mining operation shall
92 comply with all applicable state and federal laws, rules
93 and regulations.

94 (5) The director shall propose rules for legislative
95 approval in accordance with article three, chapter twenty-
96 nine-a of this code, for the purpose of implementing the
97 provisions of this section which rules shall include, but not
98 be limited to, the following:

99 (A) Establishing all necessary operational and perfor-
100 mance requirements for an operator undertaking activities
101 covered by this section;

102 (B) Modifying the provisions of this section, when
103 necessary and appropriate to bring the provisions of this
104 section into compliance with state or federal law or
105 regulation; and

106 (C) Establishing the specific operational requirements
107 for mining operations consistent with this section appro-
108 priate to protect the waters of this state during and
109 following mining operations.

110 (b) The joint committee on government and finance may
111 undertake or facilitate a study of the impact of mountain-
112 top mining and valley fills upon the state of West Virginia.

113 (1) To facilitate the study, the joint committee on
114 government and finance is further authorized to coordi-
115 nate with and seek funding from appropriate federal
116 agencies to facilitate the study including, but not limited
117 to: the environmental protection agency, army corps of
118 engineers, office of surface-mining and the fish and
119 wildlife service.

120 (2) In order to facilitate the research, the joint committee
121 on government and finance shall appoint a council to
122 coordinate and direct the research. The composition of the
123 council shall be determined by the joint committee, but
124 shall include representatives from the various interested
125 parties as determined solely by the joint committee.

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

Roddy Johnson

Chairman Senate Committee

Jeff. Smith

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

David C. Clark

Clerk of the Senate

Samuel R. Siz

Clerk of the House of Delegates

Carl Ray Tomlin

President of the Senate

John

Speaker House of Delegates

The within *approved* this the *3/5*
March
 Day of *March*, 1990
Jeff. Smith
 Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 10:55 am