WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1999

ENROLLED

SENATE BILL NO. 681

(Originating in the Committee
(By Senator Energy, Industry, and Mining)

PASSED March 13, 1999
In Effect Ninety Days from Passage
ENROLLED

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.
The Legislature hereby finds and declares the following:

(a) Coal mining has made and continues to make significant contributions to the economy of West Virginia. These contributions include the creation of quality jobs that pay high wages and provide good benefits; the consequent stimulation and support of mining contractors, suppliers of mining equipment and services, other mining-related industries and numerous providers of goods and services that are indirectly related to coal mining and dependent upon its existence and prosperity; the generation of significant severance and other tax revenues that support important economic development, infrastructure and education initiatives in mining communities and throughout the state; the support of civic, education and service groups in mining communities; and in the case of surface-mining operations, including mountaintop mining, the creation of much-needed flat land for economic development and recreational uses.

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

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

(d) The coal industry and those related to the extraction of mineral resources benefit from the mining of our state’s
coal through mining practices which impact its citizens—some in a negative way—and through practices which will extract significant portions of coal reserves in an accelerated fashion. Those industries must therefore accept a greater responsibility to help address the long-term needs of the communities and citizens impacted by their activities.

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

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

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

§5B-2A-2. Application of article.

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

(1) The surface operations and surface impacts incident to an underground coal mine; and
(2) Surface-mining operations of operators that (A) establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed three hundred thousand tons, as determined pursuant to rules promulgated by the division, and (B) otherwise qualify for the small operator assistance program authorized under the federal Surface-Mining Control and Reclamation Act of 1977, as amended, and the federal regulations promulgated thereunder, as amended.

(b) The provisions of this article shall not apply (1) to underground coal mining operations or (2) to the extraction of minerals by underground mining methods or the surface impacts thereof.

§5B-2A-3. Definitions.

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

(1) “Division” means the division of environmental protection established in article one, chapter twenty-two of this code;

(2) “Office” means the office of coalfield community development; and

(3) “West Virginia development office” means the office established in article two of this chapter.

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

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

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

(b) The executive director shall appoint a chief to administer the office, who will serve at the will and
pleasure of the executive director of the West Virginia
development office.


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

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

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

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

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

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

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

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

and

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

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

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

(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

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

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

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

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

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

(6) The intended blasting plan and the expected time and duration it will affect each community;
(7) Information concerning the extent and nature of valley fills and the watersheds to be affected; and

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

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

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

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

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

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

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

(b) The office shall establish a procedure for the development of the coalfield community development statement, which procedure shall include the following:

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

(A) The permit applicant;
(B) The individuals living in the affected communities;
(C) Business owners and operators doing business in the affected communities;
(D) Any company owning land or resources on the property to be mined, including the surface and mineral owners of such property; and
(E) State and local government agencies such as county commissions, city or town governments and local or regional economic development authorities; and
(2) A procedure to follow which provides for fair and reasonable input into the development of the coalfield community development statement by those persons and entities listed in subdivision (1) of this subsection.

(c) The office shall determine what information, findings and recommendations shall be contained in the coalfield community development statement, which shall include, but not be limited to the following:
(1) An evaluation of the future of the community once mining operations are completed;
(2) A method to measure compliance with the provisions of section eight of this article; and
(3) A method to measure compliance with the provisions of section nine of this article.

(d) The Legislature hereby finds that, while the preparation of a coalfield community development statement is important to addressing the legitimate needs and concerns of the communities, individuals and entities which may be affected by surface-mining operations, such a statement as required by this section is in part subjective in nature. The Legislature further finds that, because of such subjectivity, the development of a coalfield community development statement shall not be an element of or in any way related to the application for and approval of any surface-mining permit under article three of chapter twenty-two of this code. Therefore, the following shall apply to this section:
(1) The office alone shall have authority over the coordination and development of the coalfield community development statement; and

(2) The development of the coalfield community development statement shall be a collaborative effort among those persons and entities identified in subdivision (1) of subsection (b) of this section.

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

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

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

(1) Water and waste water services;

(2) Developable land for housing, commercial development or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

(c) To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection, as follows:

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

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

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.
(d) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

1. An evaluation of the future of the community once mining operations are completed as required to be determined in the coalfield community development statement;

2. The prospects for the long-term viability of any asset developed under this section;

3. The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of section nine of this article;

4. The determinations made during the development of the coalfield community development statement of the impacts of the mining operations on the community; and

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


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

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

(c) To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection, as follows:

1. A map of the area for which a permit under article three of chapter twenty-two of this code is being sought or has been obtained;
(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

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

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

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

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

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

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

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

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

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

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

(a) Based upon the information developed under sections eight and nine of this article, the office shall prepare an action report which shall make recommendations for achieving economic development initiatives, including identifying sources of potential funding.
The office shall prepare an annual status update of the action report which shall describe accomplishments and prospects for continued economic development.

§5B-2A-11. Land acquisitions.

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

1. The procedure only shall apply if all the following conditions are met:
   2. (A) The operator or any person, firm or corporation directly or indirectly affiliated with the operator, makes an offer in writing to purchase the property stating all the terms and conditions of the proposed purchase;
   3. (B) The property to be purchased is located within one thousand feet of property which actually is or will be mined; and
   4. (C) The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased;

2. Once a permit application has been filed, the operator shall notify the office of any intended property acquisitions to which this section applies;

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

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

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


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

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

(2) A process for the development of a coalfield community development statement when multiple permit applications are applied for by one or more operators in any single county or contiguous area of an adjacent county.


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

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

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

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

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

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

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

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

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

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.


(a) Any permit issued by the director pursuant to this article to conduct surface-mining operations shall require
that the surface-mining operations will meet all applicable
performance standards of this article and other require-
ments set forth in legislative rules proposed by the direc-
tor.

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

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

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

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

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

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

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

(7) Ensure that all prime farmlands are mined and
reclaimed in accordance with the specifications for soil
removal, storage, replacement and reconstruction estab-
lished by the United States secretary of agriculture and
the soil conservation service pertaining thereto. The
operator, at a minimum, shall: (A) Segregate the A horizon
of the natural soil, except where it can be shown that other
available soil materials will create a final soil having a
greater productive capacity, and if not utilized immedi-
ately, stockpile this material separately from other spoil,
and provide needed protection from wind and water
erosion or contamination by other acid or toxic material;
(B) segregate the B horizon of the natural soil, or underly-
ing C horizons or other strata, or a combination of the
horizons or other strata that are shown to be both textur-
ally and chemically suitable for plant growth and that can
be shown to be equally or more favorable for plant growth
than the B horizon, in sufficient quantities to create in the
regraded final soil a root zone of comparable depth and
quality to that which existed in the natural soil, and if not
utilized immediately, stockpile this material separately
from other spoil and provide needed protection from wind
and water erosion or contamination by other acid or toxic
material; (C) replace and regrade the root zone material
described in paragraph (B) of this subdivision, with proper
compaction and uniform depth over the regraded spoil
material; and (D) redistribute and grade in a uniform
manner the surface soil horizon described in paragraph (A)
of this subdivision;
(8) Create, if authorized in the approved surface-mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

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

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface-mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface-mining operations, the system to be certified by a person approved by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface-mining operations, the system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise
authorized by the director, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the director;

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

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

(13) Refrain from surface-mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: Provided, That the director shall permit an operator to mine near, through or partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: Provided, however, That any breakthrough which does occur shall be sealed;
(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: Provided, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

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

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts;

and

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

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

(A) If the director finds in writing that:

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

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical
(iii) The applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

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

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

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

(B) If the director has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the director considers necessary;

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

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

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

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

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

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

On lands eligible for remining assume the responsibility
for successful revegetation, as required by subdivision (19)
of this subsection, for a period of not less than two grow-
ing seasons, as defined by the director after the last year of
augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

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

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

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

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

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

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

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

(3) In cases where an industrial, commercial, woodland, agricultural, residential, public or fish and wildlife habitat and recreation lands use is proposed for the postmining use of the affected land, the director may grant a permit for a surface-mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed postmining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) supported by commitments from public agencies where appropriate; (iv) practicable with respect to private financial capability for completion of the proposed use; (v) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and (vi) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.
(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the re-claimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned postmining land use: And provided further, That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

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

(d) In addition to those general performance standards required by this section, when surface-mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of
The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that permit variances from the approximate original contour requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the
director under this subsection may be paid for initially by funds appropriated to the division for these purposes, and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

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

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

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

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

(b) Within thirty days of the effective date of this section, any operator identified in subdivision (2), subsection (a) of this section, that has already completed pre-blast surveys for man-made dwellings or structures within five tenths of a mile of the permit area and has commenced operations by the effective date of this section, shall be required to notify in writing all additional owners and
occupants or man-made dwellings or structures within
seven tenths of a mile of the proposed blasting site.
Except for those dwellings or structures for which the
operator secures a written waiver or executes an affidavit
in accordance with the requirements of subsection (c) of
this section, the operator or the operator's designee must
perform the additional pre-blast surveys in accordance
with subsection (f) of this section within ninety days of the
effective date of this section.

(c) An occupant or owner of a man-made dwelling or
structure within the areas described in subdivisions (1) or
(2) of subsection (a) of this section, may waive the right to
a pre-blast survey in writing. If a dwelling is occupied by
a person other than the owner, both the owner and the
occupant must waive the right to a pre-blast survey in
writing. If an occupant or owner of a man-made dwelling
or structure refuses to allow the operator or the operator's
designee access to the dwelling or structure and refuses to
waive in writing the right to a pre-blast survey or to the
extent that access to any portion of the structure, under-
ground water supply or well is impossible or impractical
under the circumstances, the pre-blast survey shall
indicate that access was refused, impossible or impracti-
cal. The operator or the operator's designee shall execute
a sworn affidavit explaining the reasons and circum-
cstances surrounding the refusals. The office of explosives
and blasting shall not determine the pre-blast survey to be
incomplete because it indicates that access to a particular
structure, underground water supply or well was refused,
impossible or impractical. The operator shall send copies
of all written waivers and affidavits executed pursuant to
this subsection to the office of explosives and blasting.

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

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

(f) The pre-blast survey shall include:
(1) The names, addresses or description of structure location and telephone numbers of the owner and the residents of the structure being surveyed and the structure number from the permit blasting map;

(2) The current home insurer of the owner and the residents of the structure;

(3) The names, addresses and telephone numbers of the surface-mining operator and the permit number;

(4) The current general liability insurer of the surface-mining operator;

(5) The name, address and telephone number of the person or firm performing the pre-blast survey;

(6) The current general liability insurer of the person or firm performing the pre-blast survey;

(7) The date of the pre-blast survey and the date it was mailed or delivered to the office of explosives and blasting;

(8) A general description of the structure and its appurtenances including, but not limited to: (A) the number of stories, (B) the construction materials for the frame and exterior and interior finish, (C) the type of construction including any unusual or substandard construction, and (D) the approximate age of the structure;

(9) A general description of the survey methods and the direction of progression of the survey, including a key to abbreviations used;

(10) Written documentation and drawings, videos or photographs of the pre-blast defects and other physical conditions of all structures, appurtenances and water sources which could be affected by blasting;

(11) Written documentation and drawings, videos or photographs of the exterior and interior of the structure to indicate pre-blast defects and condition;

(12) Written documentation and drawings, videos or photographs of the exterior and interior of any appurten-
nance of the structure to indicate pre-blast defects and
condition;

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

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

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

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

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

(18) The signature of the person performing the survey;

and

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

(g) Except for additional pre-blast surveys prepared
within one hundred twenty days of the effective date of
this section, pursuant to subsection (b) of this section, the
pre-blast survey shall be submitted to the office of explo-
sives and blasting at least fifteen days prior to the com-
mencement of any production blasting. The office of
explosives and blasting shall review each pre-blast survey as to form and completeness only and notify the operator of any deficiencies. The office of explosives and blasting shall notify the owner and occupant of the location and availability of the pre-blast survey and a copy of the pre-blast survey shall be provided to the owner and/or occupant upon request.

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

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

(j) The provisions of this section shall not apply to the following: (1) underground coal mining operations; and (2) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

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

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

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

(c) For purposes of this section, the term "protected structure" means any of the following structures that are
situated outside the permit area: an occupied dwelling, a
temporarily unoccupied dwelling which has been occupied
within the past ninety days, a public building, a structure
for commercial purposes, a school, a church, a community
or institutional building, a public park or a water well.

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

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

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

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

(f) An owner or occupant of a protected structure may
waive the blasting prohibition within three hundred feet
or the site specific restriction within one thousand feet in
writing. If a protected structure is occupied by a person
other than the owner, both the owner and the occupant of
the protected structure shall waive the blasting prohibi-
tion within three hundred feet or the site specific restric-
tion within one thousand feet in writing. The operator
shall send copies of all written waivers executed pursuant
to this subsection to the office of explosives and blasting.
Written waivers executed and filed with the office of
explosives and blasting shall be valid during the life of the
permit or any renewals of the permit and shall be enforce-
able against any subsequent owners or occupants of the protected structure.

(g) The provisions of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods: Provided, That nothing contained in this section shall be construed to exempt any coal mining operation from the general performance standards as contained in section thirteen of this article 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.

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

(b) Upon receipt of the application for bond release, the director, within thirty days, taking into consideration existing weather conditions, shall conduct an inspection and evaluation of the reclamation work involved. Such
evaluation shall consider, among other things, the degree
of difficulty to complete any remaining reclamation,
whether pollution of surface and subsurface water is
occurring, the probability of continuance or future occur-
rence of such pollution and the estimated cost of abating
such pollution. The director shall notify the permittee in
writing of his or her decision to release or not to release all
or part of the bond or deposit within sixty days from the
date of the initial publication of the advertisement if no
public hearing is requested. If a public hearing is held, the
director's decision shall be issued within thirty days
thereafter.

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

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

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

(3) When the operator has completed successfully all
surface-mining and reclamation activities, the release of
the remaining portion of the bond, but not before the
expiration of the period specified in subdivision (20),
subsection (b), section thirteen of this article: Provided,
That the revegetation has been established on the regraded
mined lands in accordance with the approved reclamation
plan: Provided, however, That such a release may be made
where the quality of the untreated post-mining water
No part of the bond or deposit may be released under this subsection so long as the lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article. Where a sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.

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

(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure
said release and notifying the operator of the right to a
hearing.

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

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

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

(h) For the purpose of such hearing, the director has the
authority and is hereby empowered to administer oaths,
subpoena witnesses and written or printed materials,
compel the attendance of witnesses, or production of
materials, and take evidence including, but not limited to,
inspections of the land affected and other surface-mining
operations carried on by the applicant in the general
vicinity. A verbatim record of each public hearing required
by this section shall be made and a transcript made
available on the motion of any party or by order of the
director at the cost of the person requesting the transcript.

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

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

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

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

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

(e) The director shall propose rules for legislative
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
39 (f) The provisions of subsection (c) of this section shall
40 not apply to the following: (1) underground coal mining
41 operations; (2) the surface operations and surface impacts
42 incident to an underground coal mine; and (3) the extrac-
43 tion of minerals by underground mining methods or the
44 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
13 (1) For the first offense, the operator shall be assessed a
14 penalty of not less than one thousand dollars nor more
15 than five thousand dollars.
16
17 (2) For the second offense and each subsequent offense
18 within one year of the first offense, the surface-mining
19 operator shall be assessed a penalty of not less than five
20 thousand dollars nor more than ten thousand dollars.
21
22 (3) For the third offense and any subsequent offense
23 within one year of the first offense, or for the failure to pay
24 any assessment set forth within a reasonable time estab-
25 lished by the director, the surface-mining operator's
26 permit shall be subject to an immediate issuance of a
27 cessation order, as set out in section sixteen of this article.
28 The cessation order shall only be released upon written
29 order of the director of the division of environmental
30 protection when the following conditions have been met:
(A) A written plan has been established and filed with the director assuring that additional violations will not occur;

(B) The permittee has provided compensation for the property damages or the assurance of adequate compensation for the property damages that have occurred; and

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

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

(5) No more than one offense shall arise out of any one shot. For purposes of this section, “shot” means a single blasting event composed of one or multiple detonations of explosive material, or the assembly of explosive materials for this purpose. One “shot” may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

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

(d) The remedies provided in this section are not exclusive and shall not bar an owner or occupant from any other remedy accorded by law.

(e) Where inspection by the division of environmental protection establishes that production blasting, in viola-
tion of section twenty-two-a of this article, was done
within three hundred feet or was not site specific produc-
tion blasting within one thousand feet of any protected
structure as defined in section twenty-two-a of this article,
or within one hundred feet of a cemetery, the monetary
penalties and revocation, as set out in subsection (b) of this
section, apply.

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

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

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

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

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

(a) The Legislature declares that the establishment of an
office within the division of environmental protection to
enforce blasting laws pursuant to surface-mining within
the state of West Virginia is in the public interest and will
promote the protection of the property and citizens of the
state of West Virginia without sacrificing economic
development. It is the policy of the state of West Virginia,
in cooperation with other governmental agencies, public
and private organizations, and the citizens of this state, to
use reasonable means and measures to prevent harm from
the effects of blasting to its property and citizens.
(b) It is the purpose of this article to create the office of explosives and blasting within the division of environmental protection, and to vest in the office the authority to enforce all the rules and laws established to regulate blasting consistent with the authority granted in this article.

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

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

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

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


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

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

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

(c) Maintaining and operating a system to receive and address questions, concerns and complaints relating to mining operations;

(d) Setting the qualifications for individuals and firms performing pre-blast surveys;
(e) The education, training, examination and certification of blasters; and

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

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

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

(1) A procedure for the review, modification and approval, prior to the issuance of any permit, of any blasting plan required to be submitted with any application for a permit to be issued by the director pursuant to article three of this chapter, which sets forth procedures for the inspection and monitoring of blasting operations for compliance with blasting laws and rules, and for the review and modification of the blasting plan of any operator against whom an enforcement action is taken by the division of environmental protection;

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

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

(4) A procedure for the use of seismographs for production blasting which shall be made part of the blasting log;

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

(6) A procedure to limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent injury to persons; (B) Prevent damage to public and private property outside the permit area; (C)
Prevent adverse impacts on any underground mine; (D) Prevent change in the course, channel or availability of ground or surface water outside the permit area; and (E) Reduce dust outside the permit area.

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

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

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

(1) Provisions for establishing a process for the education, training, examination and certification of blasters working on surface-mining operations; and

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


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

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

(1) Damage to property arising from blasting activities conducted pursuant to a permit granted under article three of this chapter; and
(2) The damage is incurred by a claimant who is the owner or occupant of the property.

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

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

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

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

(d) If the operator disagrees with the initial determination made by the office and requests arbitration, then the following shall apply:

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

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

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

(e) Participation in the claims process created by this section shall be voluntary for the claimant. However, once the claimant has submitted a claim for determination under the provisions of this section, it is intended that the finding of the office, if not taken to arbitration, shall be final. If arbitration is requested, it is intended that the results of such arbitration shall be final. The office shall provide written notification to the claimant of the provisions of this subsection and shall secure a written ac-
knowledgment from the claimant prior to processing a
claim pursuant to the provisions of this section.

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

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

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

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

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

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

§22-3A-7. Funding.

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

(b) The office shall propose a legislative rule for promul-
gation in accordance with article three, chapter twenty-
nine-a of this code, establishing the fees required by this
section. The fees shall be calculated to generate sufficient
money to provide for the operation of this office and the office of coalfield community development as provided for in article two-a, chapter five-b of this code.

(c) The office shall deposit all moneys received from these fees into a special revenue fund to be known as the "mountaintop removal fund" in the state treasury to be expended by the offices in the performance of their duties.

The expenditure of moneys in the fund is not authorized from collections, but shall be appropriated by the Legislature.

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

The director shall transfer to the office any personnel and assets presently used to perform or used in the performance of the duties and functions required by this article.


Except for sections five and seven of this article, all provisions of this article are also applicable to surface blasting activities related to underground mining operations.

§22-3A-10. Office to conduct study.

(a) The office shall conduct or participate in studies or research to develop scientifically based data and recommendations of the following:

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

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

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

(4) The appropriateness of modifying pre-blast survey requirements that reflect a pattern of excessive ground vibration and air blast has occurred within a measured distance;
(5) Analysis of the appropriate air blast limitations to determine damage criteria; and

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

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


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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

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

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

(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to an United States army corps of engineers permits issued in accordance with 33 U.S.C. §1344 and 33 C.F.R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty
acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.

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

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

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

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

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not
exceed two hundred thousand dollars per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the division of environmental protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those counties where the activity leading to the mitigation occurred or in those counties adjacent to the counties where the activity leading to the mitigation occurred. The director shall by the thirty-first day of December of each year provide a report to the joint committee on government and finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.

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

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

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

(A) Establishing all necessary operational and performance requirements for an operator undertaking activities covered by this section;
(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and

(C) Establishing the specific operational requirements for mining operations consistent with this section appropriate to protect the waters of this state during and following mining operations.

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

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

(2) In order to facilitate the research, the joint committee on government and finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the joint committee, but shall include representatives from the various interested parties as determined solely by the joint committee.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within...................this the......

Day of...............................1990

Governor
PRESENTED TO THE
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