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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



# ENROLLED

*Com. Sub. for*

**House Bill No. 4055**

(By Delegates Linch, Johnson, Dalton,  
Webb, Pino, Faircloth and Smirl)



Passed March 10, 2000

In Effect Ninety Days from Passage

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COMMITTEE SUBSTITUTE

FOR

## **H. B. 4055**

(BY DELEGATES LINCH, JOHNSON, DALTON,  
WEBB, PINO, FAIRCLOTH AND SMIRL)

[Passed March 10, 2000; in effect ninety days from passage.]

AN ACT to amend and reenact article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one and two, article four, chapter twenty-two-b of said code, all relating generally to quarry mining; creating the quarry reclamation act; establishing legislative findings; defining terms; establishing the powers and duties of the director of the division of environmental protection; providing that the quarry reclamation act does not apply to coal mining; authorizing proposal of legislative rules; establishing conditions and requirements for quarry permits; prohibiting quarrying without a permit; establishing five-year term for permits; requiring quarry permit for certain underground quarry operations and requiring performance bond; providing for application review, including public hearing, notice and comment period; providing for approval of quarry permits; authorizing

denial of permit application, modification or transfer under certain conditions; authorizing approval of portion of permit area; providing certain requirements for underground mines; providing for reinstatement under certain conditions; prohibiting quarrying in certain areas; authorizing permit denial in certain situations; allowing permit denial at certain locations; establishing limitations and conditions for permit denials; providing for writ of mandamus to enforce performance of mandatory duty; authorizing permit renewals and revisions; establishing criteria for modification of permits; requiring application for permit modifications; providing for minor permit modifications; requiring public notice but not public hearing for minor modifications; establishing requirements for major permit modifications; requiring applicants for major permit modifications meet same requirements as new permit applicants; authorizing transfer of permits; establishing transfer fee; prohibiting transfer of permits under certain conditions; establishing requirements for pre-blast survey; establishing restrictions on blasting; establishing a blasting formula; requiring pre-blast plan to be filed; establishing site specific blasting requirements; providing penalties; authorizing promulgation of legislative rules for blasting notice; establishing performance standards for quarry operations; establishing applicability of the groundwater protection act to portions of quarry operations; requiring a quarrying and reclamation plan; establishing requirements of quarrying and reclamation plans; establishing land reclamation requirements; providing time period for reclamation; providing that all quarry operations comply with approved quarrying and reclamation plan and this article; requiring blasting insurance; requiring performance bonds for new quarry operations; allowing incremental and other forms of bonding; providing for release of bond; establishing a bond pooling fund; establishing requirements for participation in bond pooling fund; authorizing expenditures from bond pooling fund for reclamation upon forfeiture of bond; creating quarry reclamation fund consisting of forfeited bonds, interest from bond pooling

fund, and civil administrative penalties; providing treble damages for certain offenses; providing funds from quarry reclamation fund to be used for reclamation of abandoned quarries; providing for notice of noncompliance; authorizing suspension or revocation of permit for noncompliance; authorizing revocation of bond; authorizing director to inspect quarry operations; authorizing enforcement actions, civil and criminal penalties; authorizing appeals to surface mine board; assessing fees relating to permits and disposition of those fees; establishing quarry inspection and enforcement fund, requiring permit fees be deposited into fund; providing exceptions for certain existing quarries; declaring certain persons ineligible for permit; exempting certain activities of governmental entities and manufacturers from this article; authorizing quarry mining appeals to surface mining board; adding alternative members to board to hear quarry cases; establishing qualifications and eligibility for alternative surface mine board members; and providing that funds from quarry cases

*the  
Mining M. Board  
Chair of the Mine*

*Be it enacted by the Legislature of West Virginia:*

That article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one and two, article four, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

2 RECLAMATION ACT.

**§22-4-2. Legislative findings.**

1 The Legislature finds that:

2 The extraction of noncoal minerals by quarrying is a basic,  
3 essential and vital industry making an important contribution to  
4 the economic well-being of West Virginia. From the small  
5 family-owned chert pit to the multinational limestone quarry,  
6 quarry aggregate production plays a vital role in West Vir-

7 ginia's economy and the quality of life for its residents; it is in  
8 the public interest to insure the availability and orderly develop-  
9 ment of mineral resources; aggregate minerals are necessary  
10 components in many construction activities, without fine and  
11 coarse aggregates, it would be impossible to build or maintain  
12 the state roadways and airports, with every type of significant  
13 construction activity being dependant on the availability and  
14 reasonable costs of aggregate minerals and aggregate mineral  
15 products; it is not practical to extract minerals required by our  
16 society without disturbing the surface of the earth and produc-  
17 ing waste materials, and the very character of quarry operations  
18 precludes complete restoration of the land to its original  
19 condition.

20 This article also provides requirements intended to protect  
21 wildlife and prevent the pollution to the environment surround-  
22 ing quarries, including rivers, streams, groundwater, aquifers  
23 and lakes, to prevent and eliminate hazards to health and safety,  
24 to protect all property owners' property rights, and to provide  
25 for reclamation of quarried areas so as to assure the continued  
26 use and enjoyment of these lands after quarrying is completed;

27 Further, certain areas in the state are inappropriate for  
28 quarry mining while in most locations of West Virginia,  
29 quarrying can be conducted in a fashion to prevent these  
30 undesirable conditions, while allowing for mining of valuable  
31 minerals.

32 Therefore, the Legislature finds that the quarrying of  
33 minerals and reclamation of quarry lands as provided by this  
34 article will allow the use of valuable minerals and will provide  
35 for the protection of the state's environment and for the  
36 subsequent beneficial use of the quarry and reclaimed land.

**§22-4-3. Definitions.**

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

3 (1) "Abandoned quarry" or "abandoned quarry lands"  
4 means:

5 (A) A quarry which was operated and abandoned without  
6 proper reclamation prior to the effective date of this article; or

7 (B) A permitted quarry where no mineral has been pro-  
8 duced or overburden removed for a period of at least six months  
9 and the permittee has vacated the site covered by the permit  
10 without having complied with all of the requirements of the  
11 permit.

12 Abandoned quarry lands does not mean a quarry which has  
13 been granted inactive status by the director and does not mean  
14 a quarry which has ceased operations and is in the process of  
15 stabilization and reclamation.

16 (2) "Backfill" means overburden, dirt, rock or other  
17 materials that are used as fill material to reduce steepness of  
18 slopes or to fill holes, depressions or excavations.

19 (3) "Berm" means a type of fill or pile used for a specific  
20 purpose other than excess spoil disposal; such purposes may  
21 include, but not necessarily be limited to drainage control,  
22 screening for noise control, screening for aesthetic value, or  
23 safety barriers; provided, however, that a berm of ten vertical  
24 feet or more at any point shall be designed and the construction  
25 certified by an approved person and provided further that any  
26 berm consisting of greater than twenty percent fines or nondu-  
27 rable rock must be protected from wind and water erosion.

28 (4) "Borrow pit" means an area from which soil or other  
29 materials are removed to be used, without further processing, as  
30 fill for activities such as landscaping, building construction or  
31 highway maintenance and construction.

32 (5) "Critical gradient" means the maximum stable inclina-  
33 tion of an unsupported slope as measured from a horizontal  
34 plane.

35 (6) "Director" means the director of the division of environ-  
36 mental protection and his or her authorized agents.

37 (7) "Disturbed area" means the land area from which the  
38 mineral is removed by quarrying and all other land area in  
39 which the natural land surface has been disturbed as a result of  
40 or incidental to quarrying activities of the operator, including  
41 private ways and private roads appurtenant to the area, land  
42 excavations, workings, refuse piles, product stockpiles, areas  
43 grubbed of vegetation, overburden, piles and tailings. The term  
44 does not include manufacturing sites or reclaimed quarry areas.

45 (8) "Division" means the division of environmental  
46 protection.

47 (9) "Fill" means a side of hill fill or valley fill.

48 (10) "Inactive operation" means either:

49 (A) A permitted site where active work has ceased tempo-  
50 rarily due to weather conditions, market conditions or other  
51 reasonable cause; or

52 (B) A permitted site where active quarrying has not yet  
53 begun.

54 (11) "Manufacturing" means the process of converting raw  
55 materials to salable products but does not include crushing or  
56 screening of minerals undertaken in close proximity to active  
57 quarrying operations.

58 (12) "Manufacturing site" means an area of land on which  
59 manufacturing occurs and associated areas.

60 (13) "Minerals" means natural deposits of commercial  
61 value found on or in the earth, whether consolidated or loose,  
62 including clay, flagstone, gravel, sand, limestone, sandstone,

63 shale, chert, flint, dolomite, manganese, slate, iron ore and any  
64 other metal or metallurgical ore. The term does not include coal  
65 or topsoil.

66 (14) "Mulch" means any natural or plant residue, organic  
67 or inorganic material, applied to the surface of the earth to  
68 retain moisture and curtail or limit soil erosion.

69 (15) "Operator" means a person who engages in any  
70 activities regulated by this article and any rules promulgated  
71 hereunder, who as a result is required to hold a permit pursuant  
72 to the provisions herein.

73 (16) "Permit area" means the area of land indicated on the  
74 approved map submitted by the permittee and designated in the  
75 permit including the location of end strip markers, permit  
76 markers and monuments.

77 (17) "Permittee" means any person who holds a valid  
78 permit issued by the division to conduct quarrying activities  
79 pursuant to this article.

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

84 (19) "Protected structure" means any of the following  
85 structures that are situated outside the permit area: An occupied  
86 dwelling, a temporarily unoccupied dwelling which has been  
87 occupied within the past ninety days, a public building, a  
88 structure for commercial purposes, a school, a church, a  
89 community or institutional building, a public park, spring box  
90 or, water well.

91 (20) "Quarrying" means any breaking of the ground surface  
92 in order to facilitate the extraction of minerals. Quarrying also



93 includes any activity constituting all or part of a process for  
94 mineral extraction or removal from their original location as  
95 well as adjacent areas ancillary to the operation, including  
96 preparation and processing activities, storage areas and haulage  
97 ways, roads and trails. The term "quarrying" does not apply to  
98 manufacturing operations, including those operations adjacent  
99 to the permitted area where manufacturing is conducted.

100 (21) "Reclamation" means returning disturbed areas to a  
101 stable condition which does not create health or safety hazards  
102 or adverse environmental impact, and when appropriate or  
103 required by permit, returning disturbed quarry areas to a  
104 designated postmining land use.

105 (22) "Side of hill fill" means overburden, dirt or rock that  
106 is placed on a natural slope of more than twenty degrees.

107 (23) "Spoil pile" means overburden and waste material  
108 displaced by excavating equipment or other methods and placed  
109 on natural ground with an original slope of zero degrees to  
110 twenty degrees.

111 (24) "Surface of regraded bench" means the top portion or  
112 part of any regraded area.

113 (25) "Unreclaimed" means land which has not been  
114 stabilized, or if a permit has been issued pursuant to this  
115 enactment, land that has not been rehabilitated to a useful  
116 purpose in accordance with the quarrying and reclamation plan  
117 approved by the division.

118 (26) "Valley fill" means a fill structure consisting of  
119 material placed in a valley where the natural side slopes  
120 measured at the steepest point are greater than twenty degrees  
121 or the average slopes measured at the steepest point are greater  
122 than twenty degrees or the average slopes or the profile of the  
123 hollow are greater than twenty degrees.

**§22-4-4. Director of the division of environmental protection; powers and duties.**

1 The director of the division of environmental protection is  
2 vested with jurisdiction over all aspects of quarrying and with  
3 jurisdiction and control over land, water and soil aspects  
4 pertaining to quarry operations, and the restoration and reclama-  
5 tion of quarries and areas affected thereby. This article does  
6 not address coal mining activities unless covered by sub-  
7 division (2), subsection (u), section three, article three of this  
8 chapter.

9 In addition to any other powers or duties heretofore or  
10 hereinafter granted, the director has the following powers and  
11 duties:

12 (a) To control and exercise regulatory authority over all  
13 quarry operations in this state and enforce the provisions of this  
14 article;

15 (b) To employ all necessary personnel to carry out the  
16 purposes and requirements of this article;

17 (c) To propose any necessary legislative rules, in accor-  
18 dance with the provisions of chapter twenty-nine-a of this code  
19 to implement the provisions of this article; and

20 (d) To make investigations and inspections necessary to  
21 ensure compliance with the provisions of this article.

22 (e) Nothing in this article may be construed as vesting in  
23 the director the jurisdiction to adjudicate property-rights  
24 disputes.

**§22-4-5. Quarry permit requirements.**

1 (a) It is unlawful for any person to engage in quarrying  
2 without having first obtained from the division a permit as

3 required by this article. The application shall fully state the  
4 information required by the director. Each new quarry permit  
5 shall be issued for a term of five years and is renewable for  
6 subsequent terms of five years. The director may grant an  
7 administrative extension of an existing permit for a period not  
8 to exceed one year. The application may be in writing and on a  
9 form prepared and furnished by the division, or the application  
10 may be submitted electronically. Applicants shall verify  
11 electronic submissions by signed affidavit.

12 (b) The application shall include the following information:

13 (1) The names and addresses of the applicant and every  
14 officer, partner, director, owner of the applicant;

15 (2) The names and mailing addresses of any person owning  
16 of record or beneficially ten percent or more of any class of  
17 stock of the applicant;

18 (3) The name of any person listed in subdivision (1) or (2)  
19 of this subsection who has ever had a quarry permit revoked or  
20 had a quarry bond forfeited;

21 (4) The names and addresses of the owners of the surface  
22 of the land to be quarried;

23 (5) The names and addresses of the owners of the mineral  
24 to be quarried;

25 (6) The source of the applicant's legal right to conduct  
26 quarrying on the land to be covered by the permit;

27 (7) A pre-quarry water assessment to establish the base  
28 level quality and quantity as provided in section fourteen of this  
29 article;

30 (8) The number of acres to be included in the permit area;

31 (9) A list of other quarrying permits previously or currently  
32 held by the applicant, by location and permit number, and any  
33 other type of mining permits being applied for or currently held  
34 by the applicant;

35 (10) The common name and geologic title, where applica-  
36 ble, of the mineral or minerals to be extracted;

37 (11) Provide proof of adequate insurance as required by this  
38 article;

39 (12) A quarrying and reclamation plan as is required by  
40 section seventeen of this article;

41 (13) Any other information required by the director  
42 reasonably necessary to effectuate the purposes of this article.

43 (c) The application for a permit shall be accompanied by  
44 copies of an enlarged United States geological survey topo-  
45 graphic map meeting the requirements of the subdivisions  
46 below. Aerial photographs of the area are acceptable if the plan  
47 for reclamation can be shown to the satisfaction of the director.  
48 Attendant documentation must include:

49 (1) A map prepared and certified by or under the supervi-  
50 sion of a registered professional civil engineer, or a registered  
51 professional mining engineer, or a licensed land surveyor, who  
52 shall submit to the director a certificate of registration as a  
53 qualified engineer or land surveyor, and be in a scale approved  
54 by the director;

55 (2) Identify the area to correspond with application;

56 (3) Show probable limits of adjacent underground mining  
57 operations, probable limits of adjacent inactive or mined-out  
58 areas and the boundaries of surface properties and names of  
59 surface and mineral owners of the surface area within five  
60 hundred feet of any part of the proposed disturbed area;

61 (4) Show the base of the crop line, including appropriate  
62 geologic cross sections, regrading cross sections and attendant  
63 narratives;

64 (5) Show the names and locations of streams, creeks,  
65 tributaries or bodies of public water, roads, buildings, cemeter-  
66 ies, active, abandoned or plugged oil and gas wells, and utility  
67 lines on the area of land to be disturbed and within five hundred  
68 feet of such area;

69 (6) Show by appropriate markings the boundaries of the  
70 area of land to be disturbed and the total number of acres  
71 involved in the area of land to be disturbed;

72 (7) The date on which the map was prepared, the north  
73 point, and the longitude and latitude of the operation;

74 (8) Show the drainage plan on and away from the area of  
75 land to be disturbed. Such plan shall indicate the directional  
76 flow of water, constructed drainage systems, natural waterways  
77 used for drainage, and the streams or tributaries receiving or to  
78 receive this discharge. Upon receipt of such drainage plan, the  
79 director may furnish the office of water resources of the  
80 division a copy of all information required by this subdivision,  
81 as well as the names and locations of streams, creeks, tributar-  
82 ies or bodies of public water within five hundred feet of the area  
83 to be disturbed;

84 (9) Show the presence of known acid-producing materials  
85 which when present in the overburden, may cause spoil with a  
86 pH factor below 5.5, preventing effective revegetation. The  
87 presence of such materials, wherever occurring in significant  
88 quantity, shall be indicated on the map, filed with the applica-  
89 tion for permit. The operator shall also indicate the manner in  
90 which acid-bearing spoil will be suitably prepared for  
91 revegetation and stabilization, whether by application of mulch  
92 or suitable soil material to the surface or by some other type of  
93 treatment, subject to approval of the director.

94 (10) The operator shall also indicate the manner in which  
95 all permanent disposal sites will be stabilized.

96 (11) The certification of the maps shall read as follows: "I,  
97 the undersigned, hereby certify that this map is correct, and  
98 shows to the best of my knowledge and belief all the informa-  
99 tion required by the quarrying laws of this state." The certifica-  
100 tion shall be signed and notarized. The director may reject any  
101 map as incomplete if its accuracy is not so attested.

102 (d) Each applicant shall secure a performance bond or other  
103 appropriate financial assurance and insurance as required by  
104 this article.

105 (e) A permit may cover more than one tract of land, if the  
106 tracts are adjacent or part of the same quarrying complex, and  
107 described in the application.

108 (f) If a permittee has more than one permit at any quarrying  
109 site at an adjacent, or the same quarrying complex, and if the  
110 director deems appropriate, permits may be consolidated into  
111 one permit at the request of the permittee.

112 (g) A permit remains valid until quarrying is completed and  
113 the final inspection and report are approved or until the permit  
114 is revoked by the director.

115 (h) All underground quarry operations which disturb more  
116 than five acres of surface must obtain a quarry permit, including  
117 underground quarry operations located on more than one tract  
118 of land, if the tracts are adjacent or part of the same mining  
119 complex and the total disturbed area exceeds more than five  
120 acres. Those underground operations which disturb less than  
121 five acres of surface must:

122 (1) File a notice of intent to operate with the director at  
123 least sixty days prior to disturbance. The notice of intent to

124 operate shall be made in writing on forms prescribed by the  
125 director and shall be signed and verified by the operator. This  
126 notice shall include the information required by subdivisions  
127 (1) through (11) and subdivision (13) of subsection (b) of this  
128 section;

129 (2) The applicant shall publish a notice of intent to operate  
130 as a Class III legal advertisement in accordance with the  
131 provisions of article three, chapter fifty-nine of this code. The  
132 notice shall contain, in abbreviated form, the following:

133 (A) The name and address of the operator;

134 (B) The name and addresses of the surface and mineral  
135 owners;

136 (C) That written comments on the application will be  
137 accepted until a specified date, within thirty days after the first  
138 date of publication of the notice;

139 (D) A description of the general area where the quarry will  
140 be located;

141 (E) The address of the office of the division to submit  
142 written comments.

143 (3) The director shall issue a decision to approve or deny  
144 the notice of intent to operate, within thirty days of close of the  
145 public comment period, unless the period is extended by the  
146 director to receive additional application information. The  
147 director may deny or limit permission to operate upon the  
148 finding that the underground quarry will cause serious adverse  
149 environmental impacts pursuant to section seven or eight of this  
150 article.

151 (4) A minimum of a ten thousand dollar performance bond  
152 is required for each underground mining intent to operate. This

153 performance bond shall be released if the permittee has  
154 complied with all permit requirements and has begun under-  
155 ground mining. Underground mining must begin within two  
156 years of receipt of a notice of intent to operate.

**§22-4-6. Application review, public notice and comment, and  
permit approval.**

1 (a) The director shall, upon receipt of an application for a  
2 permit, determine if the application is complete and contains  
3 the information required in the application. The director has  
4 thirty days to review the application for technical completeness.  
5 An application is complete when all required information has  
6 been submitted to the director. If the application is determined  
7 incomplete, the applicant shall be notified with written com-  
8 ments stating the deficiencies. If the director finds the applica-  
9 tion has technical deficiencies or other inadequacies which  
10 require further information, the thirty-day review period shall  
11 be interrupted on the date the notice is mailed to the applicant,  
12 and the time period shall resume upon receipt of the corrected  
13 and complete application. Should the applicant disagree with a  
14 decision of the director, the applicant may, by written notice,  
15 request a hearing before the director. The director shall hold the  
16 hearing within thirty calendar days of receipt of this notice.  
17 When a hearing has been held, the director shall notify the  
18 applicant of the decision by certified mail within twenty days  
19 of the hearing. An applicant aggrieved by a final order of the  
20 director may, after the hearing or without a hearing, appeal the  
21 order to the surface mine board. Any appeal to the board shall  
22 be taken without prejudice by the director in the final review of  
23 a permit application.

24 (b) Upon the director's determination that an application is  
25 complete, the applicant shall publish a notice of the application  
26 for a permit as a Class III legal advertisement in accordance  
27 with the provisions of article three, chapter fifty-nine of this



28 code. The notice shall contain, in abbreviated form, the infor-  
29 mation required in the application. The notice shall state that  
30 written comments on the application will be accepted until a  
31 specified date, within thirty days after the first date of publica-  
32 tion of the notice. The notice shall also state that a copy of the  
33 complete application including the quarrying and reclamation  
34 plans and maps will be available for public inspection during  
35 the public comment period at the office of the county clerk in  
36 the county or counties in which the proposed permit area is  
37 located. The publication area of the notice required by this  
38 section is the county or counties in which any portion of the  
39 proposed permit area is located. The cost of all publications  
40 required by this section shall be the responsibility of the  
41 applicant.

42 (c) Prior to approval of any quarry mining permit, the  
43 division shall upon receipt of a written request of a person  
44 having expressed concern or objections to the proposed permit,  
45 cause a public hearing to be held in the locality where the  
46 quarry operation is proposed to be located for the purpose of  
47 receiving comment regarding the expected or perceived impacts  
48 of the quarry operation on the local area: *Provided*, That no  
49 public hearing is required for a notice of intent to operate an  
50 underground quarry with a surface disturbance less than five  
51 acres.

52 (d) The director shall receive and fully consider evidence  
53 or comments submitted during the public comment period by  
54 any member of the public.

55 (e) Within thirty days of close of the public comment  
56 period, upon the determination by the director that proper  
57 public notice has been given and comment has been received by  
58 the agency, and that the quarrying operation will be conducted  
59 consistent with the requirements of this article, then the director  
60 shall issue a quarry permit to the applicant.

61 (f) The director, upon receipt of comments expressing  
62 substantial new questions regarding the application, may reopen  
63 the public comment period.

**§22-4-7. Denial of quarry permit.**

1 (a) The director may deny a permit application, modifica-  
2 tion or transfer for one or more of the following reasons:

3 (1) Any requirement of federal or state environmental law,  
4 rule or regulation would be violated by the proposed permit.

5 (2) The proposed quarry operation will be located in an area  
6 in the state which the director finds ineligible for a permit  
7 pursuant to section eight.

8 (3) The applicant or any person required to be listed on the  
9 application pursuant to section five of this article has not  
10 corrected all violations of any prior permit issued pursuant to  
11 this article which resulted in:

12 (A) Revocation of a permit;

13 (B) Cessation of the operation by order of the director;

14 (C) Forfeiture of all or part of the permit bond or other  
15 surety; or

16 (D) A court order issued against the applicant related to  
17 mining or quarrying;

18 (E) The applicant or any person required to be listed on the  
19 application pursuant to section five of this article has not paid  
20 all fines or fees assessed by the agency or by court judgment  
21 imposed pursuant to the provisions of this article.

22 (b) An applicant whose application for a permit, modifica-  
23 tion or transfer was denied may petition the director for review

24 of the denial decision. The director, in his or her discretion, may  
25 approve an application which was previously denied because of  
26 a past permit revocation or forfeiture if the person whose permit  
27 was revoked or bond forfeited pays into the abandoned quarry  
28 reclamation fund an amount determined by the director as  
29 adequate to reclaim the area disturbed under the prior permit or  
30 completes reclamation of site upon which the permit or bond  
31 was revoked or forfeited, and demonstrates to the director's  
32 satisfaction that he or she will comply with this article and rules  
33 promulgated thereunder.

34 (c) The director may approve a portion of a permit area  
35 upon a finding that approval of the entire permit area would  
36 otherwise be denied pursuant to the provisions of this section.

**§22-4-8. Limitations; mandamus.**

1 The Legislature finds that there are certain areas in the state  
2 of West Virginia which are impossible to reclaim either by  
3 natural growth or by technological activity and that if quarrying  
4 is conducted in these certain areas such operations may  
5 naturally cause stream pollution, landslides, the accumulation  
6 of stagnant water, flooding, the destruction of land for agricul-  
7 tural purposes, the destruction of aesthetic values, the destruc-  
8 tion of recreational areas and future use of the area and sur-  
9 rounding areas, thereby destroying or impairing the health and  
10 property rights of others, and in general creating hazards  
11 dangerous to life and property so as to constitute an imminent  
12 and inordinate peril to the welfare of the state, and that such  
13 areas shall not be mined by the surface-mining process.

14 Therefore, authority is hereby vested in the director to  
15 delete certain areas from all quarrying operations.

16 No application for a permit shall be approved by the  
17 director if there is found on the basis of the information set  
18 forth in the application or from information available to the

19 director and made available to the applicant that the require-  
20 ments of this article or rules hereafter adopted will not be  
21 observed or that there is not probable cause to believe that the  
22 proposed method of operation, backfilling, grading or reclama-  
23 tion of the affected area can be carried out consistent with the  
24 purpose of this article.

25 If the director finds that the overburden on any part of the  
26 area of land described in the application for a permit is such  
27 that experience in the state of West Virginia with a similar type  
28 of operation upon land with similar overburden shows that one  
29 or more of the following conditions cannot feasibly be  
30 prevented: (1) Substantial deposition of sediment in stream  
31 beds; (2) landslides; or (3) acid-water pollution, the director  
32 may delete such part of the land described in the application  
33 upon which such overburden exists.

34 If the director finds that the operation will constitute a  
35 hazard to a dwelling house, public building, school, church,  
36 cemetery, commercial or institutional building, public road,  
37 stream, lake or other public property, then he or she shall delete  
38 such areas from the permit application before it can be ap-  
39 proved.

40 The director shall not give approval to quarry within one  
41 hundred feet of any public road, stream, lake, or state, national  
42 or interstate park or other public property, and shall not approve  
43 the application for a permit where the quarry operation will  
44 cause adverse affects to these locations unless adequate  
45 screening and other measures approved by the director are to be  
46 utilized and the permit application so provides: *Provided*, That  
47 the one-hundred-foot restriction does not include berms,  
48 drainage control structures and ways used for ingress and egress  
49 to and from the minerals as herein defined and the transporta-  
50 tion of the removed minerals, nor does it apply to the dredging  
51 and removal of minerals from the streams or watercourses of

52 this state. The one hundred foot limitation may be waived only  
53 when the director, upon consideration of local land uses, finds  
54 that the land use of and near the permitted area will be signifi-  
55 cantly enhanced by an alteration of the topography within the  
56 one hundred foot barrier. Mineral removal shall be prohibited  
57 within twenty-five feet of all property lines: *Provided, however,*  
58 That the twenty-five foot setback area may, where appropriate,  
59 be used for tree planting, berms, visual barriers, vegetation,  
60 drainage structures, access rights of way or any other purposes  
61 approved by the director: *Provided further,* That existing berms,  
62 barriers, stockpiles, roads and other structures in existence  
63 within the twenty-five foot setback prior to the effective date of  
64 this section may remain in place. The permittee must provide  
65 adequate revegetation within the setback, as is appropriate for  
66 the intended use.

67 Whenever the director finds that ongoing quarry operations  
68 are causing or are likely to cause any of the conditions set forth  
69 in the first paragraph of this section, he or she may order  
70 immediate cessation of such operations and he or she shall take  
71 such other action or make such changes in the permit as he or  
72 she may deem necessary to avoid said described conditions.

73 The failure of the director to discharge the mandatory duty  
74 imposed by this section is subject to a writ of mandamus, in any  
75 court of competent jurisdiction by any private citizen affected  
76 thereby.

#### **§22-4-9. Permit renewals and revisions.**

1 (a) Any valid permit issued pursuant to this article carries  
2 with it the right of successive renewal upon expiration with  
3 respect to areas within the boundaries of the existing permit. All  
4 permittees shall publish a Class I legal advertisement in  
5 accordance with the provisions of article three, chapter fifty-  
6 nine of this code.

7 (b) If an application for renewal of a valid permit includes  
8 a proposal to extend the quarry mining operation beyond the  
9 boundaries authorized in the existing permit, that portion of the  
10 application for renewal which addresses any new land area is  
11 subject to the requirements for permit modifications as pro-  
12 vided in section ten of this article. Application for permit  
13 renewal shall be made at least one hundred twenty days prior to  
14 the expiration of the valid permit.

**§22-4-10. Modification of permits.**

1 (a) Prior to expanding or otherwise altering quarrying  
2 operations beyond the activities authorized under an existing  
3 quarry permit, a permittee shall obtain approval for modifica-  
4 tion from the director. The application shall be in writing on  
5 forms provided by the division, or the application may be  
6 submitted electronically. Applicants shall verify electronic  
7 submissions by signed affidavit. Information that remains  
8 unchanged from the initial application is not required to be  
9 resubmitted. A permit may be modified in any manner, so long  
10 as the director determines that the modification fully meets the  
11 requirements of all applicable federal and state law, regulations  
12 and rules, and that the modifications would be consistent with  
13 the issuance of the original permit.

14 (b) No modification of a permit which has been approved  
15 by the director becomes effective until any required changes  
16 have been made in the performance bond or other security  
17 posted under the provisions of sections twenty or twenty-two of  
18 this article to assure the performance of obligations assumed by  
19 the permittee under the permit and the quarrying and reclama-  
20 tion plan.

21 (c) A minor permit modification is one in which the  
22 proposed modification would not cause a significant departure  
23 from the terms and conditions of the existing permit and would

24 not result in a significant impact to the environment or to  
25 nearby property.

26 (d) An application for a minor permit modification shall  
27 require information related to the modification, any impact it  
28 may have on the original permit area and adjacent property,  
29 quarrying and reclamation plans, and any other information  
30 deemed necessary by the director. An application for a minor  
31 permit modification requires public notice, but does not require  
32 a public hearing.

33 (e) Any application for a permit modification that is not a  
34 minor permit modification is a major permit modification. An  
35 application for a major permit modification must meet the same  
36 requirements as for a new permit application. Modification of  
37 a buffer zone of a quarry operation is always a major modifica-  
38 tion.

39 (f) The director shall act upon the application for a permit  
40 modification pursuant to the provisions of subsection (a) of  
41 section six of this article.

42 (g) The director may deny the application for a permit  
43 modification for the reasons and under the stated procedure as  
44 for new permits set forth in sections seven and eight of this  
45 article.

**§22-4-11. Transfer of permits.**

1 (a) When the interest of a permittee of any quarry operation  
2 is sold, leased, assigned, or otherwise disposed of, the director  
3 may transfer the permit and shall release the transferor from his  
4 or her liabilities imposed by this article or rules issued under  
5 this article if both the transferor and transferee have complied  
6 with the requirements of this article and the transferee in  
7 interest assumes the duties and responsibilities of the permit.  
8 The transferee shall provide applicable information as required

9 by this article and shall meet public notice and comments  
10 requirements as required for major permit modifications.

11 (b) The proposed transferee shall pay a five hundred dollar  
12 fee with the filing of an application for transfer of permit.

13 (c) The director shall act upon the permit transfer as  
14 expeditiously as possible but not later than thirty days after the  
15 application forms and any supplemental information required  
16 are filed with the director.

17 (d) The director may deny the permit transfer for any  
18 reasons and under the same procedure set forth in sections  
19 seven and eight of this article. If the applicant proposes any  
20 change to the permit conditions, the director shall review the  
21 application and treat it as a modification as provided in this  
22 article.

23 (e) The director, for good cause shown, may allow transfer  
24 of a revoked permit if the transferee complies with the require-  
25 ments of this article and assumes the duties and responsibilities  
26 of the permit.

27 (f) If the director denies an application to transfer a permit,  
28 the director shall give the permittee and the proposed transferee  
29 written notice of:

30 (1) The director's determination;

31 (2) Any changes in the application which would make it  
32 acceptable; and

33 (3) The right of the permittee and the proposed transferee  
34 to a hearing before either or both the director or the surface  
35 mine board.

36 (f)(1) If a hearing before the director is not requested within  
37 fifteen days after receipt of the director's notice of the denial,



38 the denial is the director's final order on the matter appealable  
39 to the surface mine board.

40 (2) If a hearing before the director is requested within  
41 fifteen days after receipt of the director's notice, the date for the  
42 hearing may not be less than fifteen days nor more than thirty  
43 days after the date of the request unless the parties mutually  
44 agree on another date.

45 (3) The director shall enter a final order granting or denying  
46 the transfer application within thirty days after the hearing.

**§22-4-12. Pre-blast survey requirements.**

1 (a) For all new permits issued after the effective date of this  
2 section, at least thirty days prior to commencing blasting, an  
3 operator or an operator's designee shall make the following  
4 notifications in writing to all owners and occupants of protected  
5 structures that the operator or operator's designee will perform  
6 pre-blast surveys in accordance with subsection (f) of this  
7 section. The required notifications shall be to all owners and  
8 occupants of protected structures within one thousand five  
9 hundred feet of the blasting area.

10 (b) For quarries in operation as of the effective date of this  
11 section, the quarry operator within one year, shall conduct a  
12 pre-blast survey of the first protected structure within one  
13 thousand feet of the blasting area. Any property owner may, at  
14 their own expense, pay for a pre-blast survey meeting the  
15 provisions of this article, for his or her protected structure to  
16 assess the impact of future blasts to those dwellings or struc-  
17 tures by an existing quarry.

18 (c) An occupant or owner of a man-made dwelling or  
19 structure within the areas described in subsection (a) of this  
20 section, may waive the right to a pre-blast survey in writing. If  
21 a dwelling is occupied by a person other than the owner, both

22 the owner and the occupant must waive the right to a pre-blast  
23 survey in writing. If an occupant or owner of a man-made  
24 dwelling or structure refuses to allow the operator or the  
25 operator's designee access to the protected structure and refuses  
26 to waive in writing the right to a pre-blast survey or to the  
27 extent that access to any portion of the structure, underground  
28 water supply or well is impossible or impractical under the  
29 circumstances, the pre-blast survey shall indicate that access  
30 was refused, impossible or impractical. The operator or the  
31 operator's designee shall execute a sworn affidavit explaining  
32 the reasons and circumstances surrounding the refusals.

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

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

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

40 (1) The names, addresses or description of structure  
41 location and telephone numbers of the owner and the residents  
42 of the structure being surveyed and the structure number from  
43 the permit blasting map;

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

46 (3) The names, addresses and telephone numbers of the  
47 operator and the permit number;

48 (4) The current general liability insurer of the operator;

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

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

53 (7) The date of the pre-blast survey and the date it was  
54 mailed or delivered to the director;

55 (8) A general description of the structure and its appurte-  
56 nances including, but not limited to: (A) The number of stories;  
57 (B) the construction materials for the frame and the exterior and  
58 interior finish; (C) the type of construction including any  
59 unusual or substandard construction; and (D) the approximate  
60 age of the structure;

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

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

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

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

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

78 (14) Written documentation and drawings, videos or  
79 photographs of any unusual or substandard construction

80 technique and materials used on the structure and/or its appurte-  
81 nances;

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

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

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

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

96 (19) Any other information required by the director which  
97 additional information shall be established by rule in accor-  
98 dance with article three, chapter twenty-nine-a of this code.

99 (g) The director may require a pre-blast survey as a  
100 condition of a major permit modification, upon a finding that  
101 the proposed blasting area will occur within one thousand five  
102 hundred feet from a protected structure, and will be of a nature  
103 and intensity to potentially cause blasting damage.

**§22-4-13. Blasting restrictions; blasting formula; filing preplan;  
site specific blasting requirements; penalties; notice.**

1 (a) Where blasting of overburden or mineral is necessary,  
2 the blasting shall be done in accordance with established  
3 principles for preventing injury to persons and damage to

4 residences, buildings and communities, and comply with the  
5 following:

6 (1) The weight in pounds of explosives to be detonated in  
7 any period less than an eight millisecond period without seismic  
8 monitoring shall conform to the following scaled distance  
9 formula:  $W = (D/50)^2$  (to the second power). Where W equals  
10 weight in pounds of explosives detonated at any one instant  
11 time, then D equals distance in feet from nearest point of blast  
12 to nearest residence, building or structure, other than operation  
13 facilities of the mine: *Provided*, That the scaled distance  
14 formulas need not be used if a seismograph measurement is  
15 located at the nearest protected structure is recorded and  
16 maintained for every blast. If access to the structure is refused  
17 by the owner of the protected structure, the measurement may  
18 be taken as close as practicable between the blast site and the  
19 protected structure. The peak particle velocity in inches per  
20 second in any one of the three mutually perpendicular direc-  
21 tions shall not exceed the following values at any protected  
22 structure:

23 **Seismograph Measurement Distance to the Nearest Pro-**  
24 **ected Structure**

25 1.25	0 - 300 feet
26 1.00	301 - 5,000 feet
27 0.75	5,001 feet or greater

28 The maximum ground vibration standards do not apply to  
29 the structures owned by the permittee and not leased to another  
30 person and structures owned by the permittee and leased to  
31 another person, if a written waiver by the lessee is submitted to  
32 the director before blasting.

33 (2) Airblast shall not exceed the maximum limits listed  
34 below at the location of any dwelling, public buildings, school  
35 or community or institutional building outside the permit area:

36 **Lower frequency limit of measuring**

37 **system in Hz(+3dB) Maximum level in db**

38 1Hz or lower-flat response\* 134 peak

39 2Hz or lower-flat response 133 peak

40 6Hz or lower-flat response 129 peak

41 c-weighted-slow response\* 105 peak dBC

42 \* only when approved by the director.

43 (3) Access to the blast area shall be controlled against the  
44 entrance of unauthorized personnel during blasting for a period  
45 thereafter until an authorized person has reasonably determined  
46 that:

47 (A) No unusual circumstances exist such as imminent slides  
48 or undetonated charges, etc.; and

49 (B) Access to and travel in or through the area can be safely  
50 resumed.

51 (4) A plan of each operation's methods for compliance with  
52 this section (blast delay design) for typical blasts which shall be  
53 adhered to in all blasting at each operation, shall be submitted  
54 to the division of environmental protection with the application  
55 for a permit. It shall be accepted if it meets the scaled distance  
56 formula established in subdivision (1) of this section.

57 (5) Records of each blast shall be kept in a log to be  
58 maintained for at least three years, which will show for each  
59 blast the following information:

60 (A) Date and time of blast;

- 61 (B) Number of holes;
- 62 (C) Typical explosive weight per delay period;
- 63 (D) Total explosives in blast at any one time;
- 64 (E) Number of delays used;
- 65 (F) Weather conditions;
- 66 (G) Signature of operator employee in charge of the blast;
- 67 (H) Seismograph data; and
- 68 (I) Date of seismograph calibration.

69 (b) Blasting within one thousand feet of a protected  
70 structure shall have a site specific blast design which may vary  
71 from the requirements of this section as is approved by the  
72 director. The site specific blast plan shall limit the type of  
73 explosive and detonating equipment, the size, timing and  
74 frequency of blasts to: Prevent injury to persons; prevent  
75 damage to public and private property outside the permit area;  
76 prevent adverse impacts to any underground mine; and to  
77 minimize dust outside the permit area: *Provided*, That for  
78 quarries permitted pursuant to section twenty-seven, site  
79 specific blasting plan will not be required if not required as part  
80 of its existing blasting plan, unless the director determines that  
81 based on valid local complaints, the local conditions require a  
82 site specific blasting plan.

83 (c) All assessments as set forth in this section shall be  
84 assessed by the director, collected by the director and deposited  
85 with the treasurer of the state of West Virginia, to the credit of  
86 the quarry reclamation fund.

87 (d) The director shall propose legislative rules pursuant to  
88 article three, chapter twenty-nine-a of this code which shall

89 provide for a warning of impending blasting to the owners,  
90 residents or other persons who may be present on property  
91 adjacent to the blasting area.

92 (e) Where inspection by the division of environmental  
93 protection establishes that the scaled distance formula or the  
94 seismograph results or the approved preplan are not being  
95 adhered to, the following penalties shall be imposed:

96 (1) For the first offense in any one permit year under this  
97 section, the permit holder shall be assessed not less than five  
98 hundred dollars nor more than one thousand dollars;

99 (2) For the second offense in any one permit year under this  
100 section, the permit holder shall be assessed not less than one  
101 thousand dollars nor more than five thousand dollars;

102 (3) For the third offense in any one permit year under this  
103 section or for the failure to pay any assessment herein above set  
104 forth within a reasonable time established by the director, the  
105 permit shall be revoked.

**§22-4-14. Performance standards.**

1 Each permit issued by the director pursuant to this article  
2 shall require the quarry operation, at a minimum, to meet the  
3 following performance standards:

4 (a) The operator shall impound, drain or treat all runoff  
5 water so as to reduce soil erosion, damage to agricultural lands  
6 and prevent unlawful pollution of streams and other waters. The  
7 director shall require as a condition of a new permit, groundwa-  
8 ter testing prior to and during quarrying. Tests shall be for both  
9 quantity and quality of surrounding groundwaters. Groundwater  
10 test sites above and below gradient of the proposed quarry shall  
11 be established prior to quarrying to establish a six months  
12 baseline for area groundwater. Test wells, seeps and springs



13 may be utilized as is appropriate. Monthly testing shall be done  
14 prior to the beginning of quarrying, and quarterly monitoring  
15 the first year of quarrying. Annual testing is to be done for an  
16 additional four years. If no adverse impact to groundwater is  
17 discovered, no further monitoring will be required. However,  
18 upon subsequent discovery of possible adverse impact, the  
19 director may require monthly monitoring and appropriate  
20 remedial actions to be done by the permittee.

21 (b) In the case of storm water accumulations or any  
22 breakthrough of water, adequate treatment shall be undertaken  
23 by the operator so as to prevent pollution occurring from the  
24 release of water. Treatment may include check-dams, settling  
25 ponds and chemical or physical treatment. In the case of a  
26 breakthrough of water, when it is possible, the water released  
27 shall be impounded immediately. All water so impounded shall  
28 receive adequate treatment by the operator before it is released  
29 into the natural drainway.

30 (c) Water leaving the permit area is subject to the require-  
31 ments of article eleven of this chapter.

32 (d) The permittee shall place a monument as prescribed by  
33 the division in an approved location near the operation. If a  
34 quarry operation is under a single permit and is not geographi-  
35 cally continuous, the permittee shall locate additional monu-  
36 ments and submit additional maps, as required by section five  
37 of this article, before mining other permitted areas.

38 (e) The operator shall remove or properly dispose of all  
39 metal, equipment and other refuse resulting from the operation.  
40 No permittee may engage in or allow, the throwing, dumping,  
41 piling or otherwise placing of any overburden, stones, rocks,  
42 coal, mineral, earth, soil, dirt, debris, trees, wood, logs or other  
43 materials or substances of any kind or nature beyond or outside  
44 the area of land which is under permit for which bond has been

45 posted, unless it is placed on a site which has a permit allowing  
46 that activity, nor may any operator place any of the foregoing  
47 listed materials in a way that normal erosion or slides brought  
48 about by natural physical causes will permit the same to go  
49 beyond or outside the area of land which is under permit and for  
50 which bond has been posted.

51 (f) Prior to beginning quarrying operations, the operator  
52 shall install, certify, and maintain a drainage system in accor-  
53 dance with the approved drainage control plan. Lateral drainage  
54 ditches connecting to natural or man-made waterways shall be  
55 constructed to control water runoff, prevent erosion and provide  
56 adequate drainage control. The depth and width of natural  
57 drainage ditches and any other diversion ditches may vary  
58 depending on the length and degree of slope.

59 (g) When the planting of an area has been completed and  
60 full or partial bond release is requested the operator shall file a  
61 planting report with the director on a form to be prescribed and  
62 furnished by the director providing the following information:

63 (1) Identification of the operation;

64 (2) The types and rate of application of planting or seeding,  
65 including mixtures and amounts;

66 (3) Types and rates of fertilizer and any other chemicals  
67 used or added to the soil;

68 (4) The date of planting or seeding;

69 (5) The area of land planted; and

70 (6) Other relevant information required by the director.

71 All planting shall be certified by the permittee, or by the  
72 party with whom the permittee contracted for planting.

73 (h) All fill and cut slopes of the operation and haulage ways  
74 shall be seeded and planted in a manner as prescribed by the  
75 quarrying and reclamation plan.

76 (i) After quarrying is completed, the site will be stabilized  
77 to prevent erosion. Stabilization may be accomplished by  
78 vegetative cover or other means as approved in the quarrying  
79 and reclamation plan. Rules proposed pursuant to this article  
80 shall contain guidelines for establishing the various types of  
81 stabilization.

82 (j) Planting shall be carried out so that it is completed  
83 before the end of the first planting season. Vegetative planting  
84 may be completed by the operator or the permittee may contract  
85 with the local soil conservation district or a private contractor.  
86 A revegetation schedule shall be incorporated into the quarrying  
87 and reclamation plan.

88 (k) The operator may, where appropriate, use visual  
89 screening methods such as berms, plantings, or fences which  
90 may be placed within the buffer where conditions allow and  
91 where the site is readily visible to the general public.

92 (l) If the permittee or other person desires to conduct  
93 underground quarrying upon the premises or use underground  
94 quarry surface haulage ways for other lawful purposes, the  
95 permittee may designate locations to be used for these purposes  
96 where it will not be necessary to backfill if required by the  
97 permit, until the underground quarrying or other uses is  
98 completed, during which time the bond on file for that portion  
99 of that operations may not be released. Locations shall be  
100 described on the map required by the provisions of section five  
101 of this article.

102 (m) The operator shall also comply with all other permit  
103 conditions and requirements of this article and any rules  
104 promulgated thereunder.

**§22-4-15. Groundwater protection.**

1       The Groundwater Protection Act provisions contained in  
2 subsection (b), section four, article twelve of this chapter do not  
3 apply to mineral extraction areas of quarry mining sites  
4 regulated under this article. All other areas of the mine,  
5 including groundwater beneath the mineral extraction area, and  
6 water discharges from the quarry shall meet the requirements of  
7 article twelve of this chapter.

**§22-4-16. Water rights and replacement; waiver of replacement.**

1       (a) Nothing in this article affects the rights of any person to  
2 enforce or protect, under applicable law, that person's interest  
3 in water resources affected by removal of mineral resources.

4       (b) Any permittee shall replace the water supply of an  
5 owner of interest in real property who obtains all or part of the  
6 owner's supply of water for domestic, agricultural, industrial or  
7 other legitimate use from an underground or surface source  
8 where the supply has been affected by contamination, diminu-  
9 tion or interruption proximately caused by the mineral removal  
10 and associated activities, unless right of replacement is waived  
11 by the owner or unless the water supply is furnished by a public  
12 service district, municipality, government entity or some other  
13 third party.

14       (c) A public service district, municipality, government  
15 entity, or other party may contract with a permittee to obtain  
16 water and waive the replacement of water supply if contamina-  
17 tion, diminution, or interruption should occur.

18       (d) If the director determines that: (1) Contamination,  
19 diminution or damage to an owner's underground water supply  
20 exists; and (2) the contamination, diminution, or damage to the  
21 underground water supply could not be due to seasonal varia-  
22 tions, or other possible causes, then the permittee shall upon

23 receiving written notification from the director: (A) Provide an  
24 emergency drinking water supply within twenty-four hours; (B)  
25 provide a temporary water supply within seventy-two hours;  
26 (C) provide a permanent water supply within thirty days; and  
27 (D) pay all reasonable costs incurred by the owner in securing  
28 a water supply: *Provided*, That the permittee is entitled to  
29 recover the cost of replacing an owner's water supply if it is  
30 determined that contamination, diminution, or damage to the  
31 water supply was not caused by mineral removal activity of the  
32 permittee.

**§22-4-17. Quarrying and reclamation plan.**

1 (a) The application for a new permit shall include a  
2 proposed quarrying and reclamation plan. In developing this  
3 complete quarrying and reclamation mining plan all reasonable  
4 measures shall be taken to eliminate damages to members of  
5 the public, their real and personal property, public roads,  
6 streams and all other public property from soil erosion, rolling  
7 stones and overburden, water pollution and hazards dangerous  
8 to life and property.

9 (b) The quarrying and reclamation plan is required to be  
10 completed by a person approved by the director. It shall include  
11 the following information:

12 (1) The purpose for which the land to be permitted was  
13 previously used;

14 (2) The proposed useful purposes of the land following  
15 completion of quarrying;

16 (3) A general description of the manner in which the land  
17 is to be opened for quarrying and how the quarrying activity is  
18 to progress across the permitted area and an approximate time  
19 frame for reclamation of each area or phase of the quarrying;

20 (4) The manner in which topsoil is to be conserved and  
21 used in reclamation and, if conditions do not permit conserva-  
22 tion and restoration of all or part of the topsoil, an explanation  
23 of the conditions and proposed alternative procedures;

24 (5) The description of the proposed final topography for the  
25 applicant's proposed land use after reclamation is completed  
26 and the proposed method of accomplishment;

27 (6) The practices to provide public safety for adjacent  
28 properties and provisions for fencing, berms or other site  
29 improvements reasonably necessary to assure safety at the  
30 permitted site after mining and reclamation is completed; and

31 (7) The manner and type of revegetation or other surface  
32 treatment of the disturbed area; and

33 (c) An application for a permit shall indicate the existence  
34 of known, threatened or endangered species located within the  
35 proposed permit boundary as defined by federal Endangered  
36 Species Act of 1973.

37 (d) The application shall provide the information on slope  
38 gradient and fill plans as required in section eighteen of this  
39 article.

**§22-4-18. Land reclamation requirements.**

1 (a) Quarries shall meet the final design requirements for  
2 slopes and gradients:

3 (1) Final slope gradients of fill areas shall be designed  
4 using recognized standards and certified by a professional  
5 engineer or other approved professional specialist, except for  
6 backfill within the mineral excavation pit area, where no  
7 standard applies.

8           (2) The designed steepness and proposed treatment of the  
9 final slopes shall take into consideration the physical properties  
10 of the slope material, its probable maximum water content,  
11 landscaping requirements and other factors and may range from  
12 ninety degrees in a sound limestone or similar hard rock to less  
13 than twenty degrees in unconsolidated materials.

14           (3) The quarrying and reclamation plan shall specify slope  
15 angles flatter than the critical gradient for the type of material  
16 involved.

17           (4) The toe of the proposed fill will rest on natural slopes  
18 no steeper than twenty degrees unless a detailed geotechnical  
19 study of the toe foundation area is completed. The results of this  
20 study and subsequent stability evaluations must assure a static  
21 safety factor of at least one and one-half. Engineering designs  
22 for fills constructed on natural slopes steeper than twenty  
23 degrees may require over excavation of the toe area to rock,  
24 incorporation of toe buttresses or other engineered configura-  
25 tions to enhance stability. The design and construction of all  
26 fills proposed on natural slopes steeper that twenty degrees  
27 shall be certified by a registered professional engineer.

28           (5) Constructed slope fills steeper than two horizontal to  
29 one vertical must exhibit a static safety factor of one and  
30 one-half.

31           (6) Fills may be constructed so that the outer slope shall be  
32 no steeper than two horizontal to one vertical. A twenty foot  
33 wide bench shall be installed at a maximum of every fifty feet  
34 in vertical height of the fill with a one percent to five percent  
35 slope toward a constructed protected channel or natural  
36 drainway: *Provided*, That constructed fill slopes may be steeper  
37 than two horizontal to one vertical if they meet a static safety  
38 factor of one point five (1.5) and are certified by a registered  
39 professional engineer.

40 (7) Surface water runoff from the area above fills shall be  
41 diverted away from the fill into stabilized diversion channels.  
42 Runoff from the fill surface shall be diverted to stabilized  
43 channels off the fill.

44 (8) During and after construction of a fill area, slope  
45 protection shall be provided to minimize surface erosion. All  
46 disturbed areas of the fill, including diversion channels that are  
47 not riprapped or otherwise protected, shall be revegetated upon  
48 completion of construction.

49 (b) Highwalls which are to be left after completion of  
50 quarrying shall be backfilled or shot down to provide a final  
51 slope in compliance with subsection (d) of this section unless:

52 (1) It is demonstrated that the highwall is stable;

53 (2) Adequate material removed in the process of quarrying  
54 and not located in a permanent disposal area, is not available;  
55 or

56 (3) These actions are precluded by close proximity to  
57 permit boundaries, other physical limitations, or the post quarry  
58 land use requires that the highwall remain.

59 (c) Backfills, fills, cut slopes or highwalls that exist and are  
60 part of a permit area prior to the effective date of this article are  
61 not required to comply with subdivisions (1) through (8),  
62 subsection (a) of this section. Permits issued prior to the  
63 effective date of this section which contain the requirements of  
64 subdivisions (1) and (2), subsection (a) or subsection (b) of this  
65 section are not exempt unless modified by the division.

66 (d) The final land form shall be graded to provide positive  
67 drainage throughout the permit area except areas that are to be  
68 inundated in accordance with the quarrying and reclamation  
69 plan map.



70 (e) Backfill may be exported off the permitted areas only  
71 for beneficial uses as approved by the director.

72 (f) Permanent spoil piles will be stabilized, covered with  
73 suitable material and revegetated.

74 (g) Upon an order of the director, the operator shall, within  
75 sixty days after service of a copy of the order to the operator by  
76 certified United States mail, furnish to the division four copies  
77 of a progress map which is prepared consistent with maps  
78 prepared for permit applications as provided in section five of  
79 this article, which shall show in detail completed reclamation  
80 work, as required by the director. The progress map shall be  
81 within a reasonable degree of accuracy as is required by the  
82 director. When no additional land has been disturbed by  
83 operations during the preceding year and the prior map is still  
84 up to date, in lieu of a progress map, the operator shall provide  
85 a signed statement regarding the status of the operation to the  
86 director. A final map shall be submitted within sixty days after  
87 completion of mining operations. Failure to submit maps or  
88 aerial photographs or notices at specified times shall cause the  
89 permit in question to be suspended.

**§22-4-19. Time period for reclamation.**

1 (a) The operator shall commence the reclamation of the  
2 incremental area of land disturbed by the operator after the  
3 completion of all quarrying of that area in accordance with the  
4 approved quarrying and reclamation plan. The quarrying and  
5 reclamation plan for each operation shall be site specific in  
6 describing how the quarrying and reclamation activities are to  
7 be coordinated to minimize total land disturbance and to keep  
8 reclamation operations as contemporaneous as possible with the  
9 advance of the quarry operations. All quarry operations shall be  
10 conducted in compliance with the approved quarrying and  
11 reclamation plan and the requirements of this article.

12 (b) At the option of the permittee and with the director's  
13 concurrence, a quarry permit may be inactive for a time so  
14 specified by the director, during which no mineral or overbur-  
15 den is removed if the following conditions are met:

16 (1) That economically viable mineral reserves remain in the  
17 permitted area;

18 (2) All disturbed areas are reclaimed or stabilized to  
19 prevent erosion and sedimentation;

20 (3) All drainage and sediment control structures, such as  
21 culverts, ditches, sediment basins and traps are maintained; and

22 (4) All vegetation is maintained and reseeded as necessary.

23 (c) Any permit which is not in operation and has failed to  
24 apply for inactive status within six months is deemed an  
25 abandoned quarry.

**§22-4-20. Fiscal responsibility.**

1 (a) Each applicant must provide a certificate of insurance  
2 issued by an insurance company authorized to do business in  
3 this state for all operators at the site including blasting and  
4 quarrying operators. Blasting insurance is not required of  
5 quarry operations which do not conduct blasting. The coverage  
6 shall include not less than one million dollars for personal  
7 injury per occurrence, and not less than five hundred thousand  
8 dollars for property damage per occurrence. Proof of continuing  
9 insurance coverage shall be required on an annual basis. In  
10 addition, the insurance company shall promptly notify the  
11 director of any lapses, default, nonrenewal, cancellation, or  
12 termination of coverage.

13 (b) Each applicant who makes application for a new permit  
14 under section five of this article shall furnish a performance

15 bond after permit approval but before its issuance, on a form to  
16 be prescribed and furnished by the director, payable to the state  
17 of West Virginia and conditioned that the permittee faithfully  
18 performs all of the requirements of this article. The bond or  
19 bonds shall cover the entire area disturbed by quarrying plus the  
20 estimated number of acres to be disturbed in the upcoming year.  
21 As additional areas outside the bonded acreage are needed to  
22 facilitate the quarry operation, the permittee shall file an  
23 additional bond or bonds to cover the additional acreage with  
24 the director. The bond shall be posted and accepted by the  
25 director prior to disturbing an area for quarrying.

26 (c) The amount of the bond shall be at least one thousand  
27 dollars for each acre or fraction of an acre of land to be dis-  
28 turbed. The director shall determine the amount per acre of the  
29 bond that is required before a permit is issued. The minimum  
30 amount of bond required is ten thousand dollars.

31 (d) In lieu of a performance bond covering the entire  
32 permitted area, the director may accept incremental bonding. If  
33 incremental bonding is used, as succeeding increments of  
34 quarry operations are to be initiated and conducted within the  
35 permit area, the permittee shall file with the director an addi-  
36 tional bond or bonds to cover the increments in accordance with  
37 this section.

38 (e) The applicant may elect to execute the performance,  
39 surety bonding, collateral bonding, establishment of an escrow  
40 account, performance bonding fund participation, self-bonding  
41 or a combination of these methods.

42 (f) If collateral bonding is used, the applicant may elect to  
43 deposit cash, or collateral securities or certificates as follows:  
44 Bonds of the United States or its possessions, of the federal land  
45 bank, or of the homeowners' loan corporation; full faith and  
46 credit general obligation bonds of the state of West Virginia, or

47 other states, and of any county, district or municipality of the  
48 state of West Virginia or other states; or certificates of deposit  
49 in a bank in this state, which certificates shall be in favor of the  
50 division. The cash deposit or market value of such securities or  
51 certificates shall be equal to or greater than the sum of the bond.  
52 The director shall, upon receipt of any such deposit of cash,  
53 securities or certificates, promptly place the same with the  
54 treasurer of the state of West Virginia whose duty it is to  
55 receive and hold the same in the name of the state in trust for  
56 the purpose for which the deposit is made when the permit is  
57 issued. The applicant or permittee making the deposit is entitled  
58 from time to time to receive from the state treasurer, upon the  
59 written approval of the director, the whole or any portion of any  
60 cash, securities or certificates so deposited, upon depositing  
61 with the treasurer in lieu thereof, cash or other securities or  
62 certificates of the classes herein specified having value equal to  
63 or greater than the sum of the bond. Interest received on  
64 financial instruments shall accrue to the applicant or permittee.

65 (g) The director shall authorize release of incremental  
66 portions of a bond or other surety required in this section upon  
67 verification of completion of adequate reclamation of a  
68 previously mined portion of a quarry covered by the bond or  
69 other surety.

70 (h) The performance bond or deposits from the bond  
71 pooling fund shall be forfeited upon failure of the permittee to  
72 perform in the manner set forth in the approved quarrying and  
73 reclamation plan or to reclaim the land as provided for in the  
74 permit or upon revocation of the permit. The director shall  
75 notify the permittee by certified mail, return receipt requested,  
76 of its intention to initiate forfeiture proceedings. The permittee  
77 has thirty days to request a hearing before the director. The  
78 director shall render a decision within thirty days of the hearing.  
79 Where the operation has deposited cash or securities as collat-  
80 eral in lieu of corporate surety, the director shall declare said

81 collateral forfeited and shall direct the state treasurer to pay said  
82 funds into the “quarry reclamation fund” as created in section  
83 twenty-three of this article, to be used by the director to effect  
84 proper reclamation and to defray the cost of administering this  
85 article. Should any corporate surety fail to promptly pay in full  
86 the forfeited bond, it is disqualified from writing any further  
87 surety bonds under this article.

88 (i) Additional bond procedures shall be provided in  
89 legislative rules proposed by the director and promulgated in  
90 accordance with the provisions of chapter twenty-nine-a of this  
91 code.

92 (j) The liability under the bond is for the duration of the  
93 permit and for a period of two years after reclamation unless  
94 previously released, in whole or part, as provided in section  
95 twenty-one of this article.

**§22-4-21. Release of bonds.**

1 On completion of the reclamation, and after the require-  
2 ments of the permit have been fully complied with, the director  
3 shall release the bond. An amount of the bond or cash deposit,  
4 proportioned to the reclaimed portion of the disturbed land in  
5 ratio to all of the disturbed land covered by the permit, may be  
6 released on application by the permittee and inspection and  
7 approval by the director. Performance bonds shall be released  
8 upon acceptance into the bond pooling fund and payment of the  
9 required fees. Performance bonds for the transferor of a permit  
10 shall be released after the transferee posts a bond acceptable to  
11 the director.

**§22-4-22. Bond pooling fund.**

1 (a) Quarry operators who have operated for five years  
2 without a serious violation under previous West Virginia  
3 mining law or the provisions of this article, in lieu of the

4 bonding requirements of section twenty of this article, shall  
5 contribute to the “Bond Pooling Fund,” as provided in this  
6 section.

7 (b) For each quarry, permittees contributing to the pool  
8 shall make an initial payment to the fund of fifty dollars for  
9 each acre currently disturbed plus each acre estimated to be  
10 newly disturbed during the next ensuing year. Thereafter, the  
11 permittee shall make an annual payment of twelve dollars and  
12 fifty cents for each disturbed acre plus each acre estimated to be  
13 newly disturbed during the next ensuing year. The payments  
14 shall continue until the permittee has paid into the bond pooling  
15 fund a total of one thousand dollars for each disturbed acre.

16 (c) There is hereby created in the state treasury a special  
17 revenue fund known as the “Bond Pooling Fund”. The fund  
18 shall operate as a special fund whereby all deposits and  
19 payments thereto do not expire to the general revenue fund, but  
20 shall remain in the fund and be available for expenditure in  
21 succeeding fiscal years. This fund shall consist of fees collected  
22 by the director in accordance with the provisions of this article.  
23 Interests of moneys from this fund shall be deposited in the  
24 quarry reclamation fund as established in section twenty-three  
25 of subsection (b) of this section. Interest earned on moneys in  
26 this fund shall be deposited in the quarry reclamation fund as  
27 established in section twenty-three of this article.

28 (d) No annual bond pooling fund deposits may be collected  
29 from permittees where the permit bond pooling fund deposits  
30 divided by the number of disturbed acres bonded is equal to or  
31 greater than one thousand per acre.

32 (e) Permittee deposits into the bond pooling fund shall be  
33 released under any of the following conditions:

34 (1) On completion of the quarrying and reclamation, and  
35 after all permit requirements have been fully complied with, the

36 director shall return all bond pooling fund deposits to the  
37 permittee consistent with the bonding release requirements of  
38 section twenty-one of this article.

39 (2) When the bond pooling fund balance for a permittee  
40 exceeds one thousand dollars for each disturbed acre and each  
41 acre estimated to be disturbed during the next ensuing year the  
42 director shall return the excess funds to the permittee.

43 (f) The interest transferred to the quarry reclamation fund  
44 under subsection (c) of this section shall be used to reclaim  
45 abandoned quarry lands as provided in section twenty-three of  
46 this article.

47 (g) If a permit is revoked pursuant to this article the  
48 payments that the permittee has made to the bond pooling fund  
49 for that permit shall be forfeited. The director shall use those  
50 forfeited payments for the reclamation of the quarry to which  
51 it applied.

52 (h) If the cost of reclamation exceeds the amount of  
53 payments the permittee shall be liable for the reclamation costs  
54 that exceed the permittee's payments to the bond pooling fund.

**§22-4-23. Quarry reclamation fund.**

1 (a) All funds received by the division from forfeiture of  
2 bonds, civil administrative penalties, or interest from the bond  
3 pooling fund shall be deposited into a special interest-bearing  
4 account in the state treasury designated the "Quarry Reclama-  
5 tion Fund." The quarry reclamation fund shall be used by the  
6 division for reclamation of abandoned quarries.

7 (b) If the forfeiture of a performance bond or bonding pool  
8 fund payments exceeds the cost of reclamation for which the  
9 liability was charged, any excess amount shall be deposited into  
10 the quarry reclamation fund.

11 (c) Reclamation projects that are to be financed by the  
12 quarry reclamation fund shall be designed by the division.

13 (d) The director shall administer and approve all expendi-  
14 tures from the quarry reclamation fund.

15 (e) The division shall compile a list of abandoned quarries  
16 in the state and rank them in order of need for reclamation.

**§22-4-24. Orders, inspections and enforcement; permit revoca-  
tion, damages, civil and criminal penalties.**

1 (a) The director may at reasonable times without prior  
2 notice and upon presentation of appropriate credentials, enter  
3 any quarry and conduct periodic inspections and examine any  
4 required documentation to effectively implement and enforce  
5 the provisions of this article and rules promulgated thereunder.

6 (b) Whenever the director finds that an ongoing quarry  
7 operation is causing or is likely to cause imminent and substan-  
8 tial harm to the environment, public safety, or public health, the  
9 director may order immediate cessation of such operations, or  
10 portions of operations, and shall take other action as is deemed  
11 necessary to avoid adverse impact to the area.

12 (c) If the director, upon inspection or investigation ob-  
13 serves, discovers or learns of a violation of this article, rules  
14 promulgated thereunder, or any permit condition or order issued  
15 under this article, he or she shall:

16 (1) Issue an order stating with reasonable specificity the  
17 nature of the alleged violation and requiring compliance  
18 immediately or within a specified time. An order under this  
19 section includes, but is not limited to, any or all of the follow-  
20 ing: Notice of noncompliance, orders suspending, revoking or  
21 modifying permits, consent agreements which provide opportu-  
22 nity for correction without further agency action, orders



23 requiring a permittee to take remedial action within a specified  
24 time, and cease and desist orders;

25 (2) Seek an injunction in accordance with subsection (g) of  
26 this section;

27 (3) Revoke the permit and pursue an appropriate remedy as  
28 provided in this section;

29 (4) Institute a civil action in accordance with subsection (g)  
30 of this section; or

31 (5) Request the prosecuting attorney of the county wherein  
32 the alleged violation occurred, to bring an appropriate action,  
33 either civil or criminal in accordance with subsection (g) or (h)  
34 of this section.

35 (d) If the operator has not reached an agreement with the  
36 director or has not complied with the requirements set forth in  
37 the notice of noncompliance or order of suspension within the  
38 time limits set therein, the permit may be revoked by order of  
39 the director and the performance bond or contributions to the  
40 bonding pooling fund shall then be forfeited. If an agreement  
41 satisfactory to the director has not been reached within thirty  
42 days after suspension of any permit, any and all suspended  
43 permits shall then be declared revoked and the performance  
44 bonds or contributions to the bond pooling fund with respect  
45 thereto forfeited.

46 (e) Any person who violates any provision of this article,  
47 any permit condition or any rule or order issued pursuant to this  
48 article is subject to a civil administrative penalty, to be levied  
49 by the director, of not more than five thousand dollars for each  
50 day of such violation, not to exceed a maximum of twenty  
51 thousand dollars. The director may accept in kind assessment  
52 by reclamation of an abandoned quarry site in lieu of cash  
53 payment of a civil administrative penalty.

54 In assessing any such penalty, the director shall take into  
55 account the seriousness of the violation and any good faith  
56 efforts to comply with the applicable requirements as well as  
57 any other appropriate factors as may be established by rules  
58 promulgated pursuant to this article and article three, chapter  
59 twenty-nine-a of this code. No assessment shall be levied  
60 pursuant to this subsection until after the alleged violator has  
61 been notified by certified mail or personal service. The notice  
62 shall include a reference to the section of the statute, rule, order  
63 or statement of permit conditions that was allegedly violated, a  
64 concise statement of the facts alleged to constitute the violation,  
65 a statement of the amount of the administrative penalty to be  
66 imposed and a statement of the alleged violator's right to an  
67 informal hearing. The alleged violator has twenty calendar days  
68 from receipt of the notice within which to deliver to the director  
69 a written request for an informal hearing. If no hearing is  
70 requested, the notice becomes a final order after the expiration  
71 of the twenty-day period. If a hearing is requested, the director  
72 shall inform the alleged violator of the time and place of the  
73 hearing.

74 The director may appoint an assessment officer to conduct  
75 the informal hearing and then make a written recommendation  
76 to the director concerning the assessment of a civil administra-  
77 tive penalty. Within thirty days following the informal hearing,  
78 the director shall issue and furnish to the alleged violator a  
79 written decision, and the reasons therefor, concerning the  
80 assessment of a civil administrative penalty. Within thirty days  
81 after notification of the director's decision, the alleged violator  
82 may request a formal hearing before the surface mine board.  
83 The authority to levy a civil administrative penalty is in  
84 addition to all other enforcement provisions of this article and  
85 the payment of any assessment does not affect the availability  
86 of any other enforcement provision in connection with the  
87 violation for which the assessment is levied. No combination of  
88 assessments against a violator under this section shall exceed

89 five thousand dollars for each day of such violation: *Provided*,  
90 That any violation for which the violator has paid a civil  
91 administrative penalty assessed under this section shall not be  
92 the subject of a separate civil penalty action under this article  
93 to the extent of the amount of the civil administrative penalty  
94 paid. All administrative penalties shall be levied in accordance  
95 with this article and rules issued pursuant to this article. The net  
96 proceeds of assessments collected pursuant to this subsection  
97 shall be deposited in the quarry reclamation fund established in  
98 section twenty-three of this article. No assessment levied  
99 pursuant to this subsection becomes due and payable until the  
100 procedures for review of such assessment as set out herein have  
101 been completed.

102 (f) Any person who violates any provision of this article,  
103 any permit condition, rule or order issued pursuant to this  
104 article is subject to a civil penalty not to exceed five thousand  
105 dollars for each day of such violation, which penalty shall be  
106 recovered in a civil action either in the circuit court wherein the  
107 violation occurs or in the circuit court of Kanawha County.

108 (g) The director may seek an injunction, or may institute a  
109 civil action against any person in violation of any provisions of  
110 this article or any permit condition, rule or order issued  
111 pursuant to this article. In seeking an injunction, it is not  
112 necessary for the director to post bond nor to allege or prove at  
113 any stage of the proceeding that irreparable damage will occur  
114 if the injunction is not issued or that the remedy at law is  
115 inadequate. An application for injunctive relief or a civil  
116 penalty action under this section may be filed and relief granted  
117 notwithstanding the fact that all administrative remedies  
118 provided for in this article have not been exhausted or invoked  
119 against the person or persons against whom such relief is  
120 sought.

121 (h) Any person who willfully or negligently violates the  
122 provisions of this article, any permit condition or any rule or

123 order issued pursuant to this article is subject to the same  
124 criminal penalties as set forth in section twenty-four, article  
125 eleven of this chapter.

126 (i) Upon request of the director, the prosecuting attorney of  
127 the county in which the violation occurs shall assist the director  
128 in any civil or criminal action under this section.

129 (j) In any civil action brought pursuant to the provisions of  
130 this section, the state, or any agency of the state which prevails,  
131 may be awarded costs, reasonable attorney's fees, and, when a  
132 permit has been revoked, any actual costs incurred by the  
133 agency to complete reclamation of permitted site above and  
134 beyond moneys received as a result of bond forfeiture.

135 (k) In addition to and notwithstanding any other penalties  
136 provided herein, any operator who directly causes damage to  
137 the property of others as a result of quarrying is liable to them,  
138 in an amount not in excess of three times the provable amount  
139 of such damage, if and only if such damage occurs before or  
140 within one year after such operator has completed all reclama-  
141 tion work with respect to the land on which such quarrying was  
142 carried out and all bonds of such operator with respect to such  
143 reclamation work are released. Such damages are recoverable  
144 in an action at law in any court of competent jurisdiction.

145 (l) The director may reinstate a revoked permit and allow  
146 resumption of quarrying upon a finding that the circumstance  
147 causing the revocation has been abated and the director has  
148 determined that the cause of the revocation will not reoccur  
149 upon reinstatement.

150 (m) It is unlawful for the owner or owners of surface rights  
151 or the owner or owners of mineral rights to interfere with the  
152 operator in the discharge of the operator's obligation to the state  
153 for the reclamation of lands disturbed by the operator. The  
154 director may initiate an action pursuant to either subsection (g)  
155 or (h) of this section, to enforce this prohibition.

**§22-4-25. Appeals to board.**

1 Any person claiming to be aggrieved or adversely affected  
2 by any ruling or order of the director or his or her failure to  
3 enter an order may appeal to the surface mine board, pursuant  
4 to the provisions of article one, chapter twenty-two-b of this  
5 code, for an order vacating or modifying the ruling or order, or  
6 for an order that the director should have entered.

**§22-4-26. Required fees, quarry inspection and enforcement fund.**

1 The permit application fee is one thousand dollars. The fee  
2 for the original permit is one thousand dollars. The permit  
3 renewal fee of five hundred dollars shall be submitted with the  
4 renewal application and a progress report map. The fee for  
5 transferring a permit is five hundred dollars. The fee for a  
6 minor permit modification is two hundred dollars and for major  
7 modifications, five hundred dollars. There is hereby created in  
8 the state treasury a special revenue fund known as the "Quarry  
9 Inspection and Enforcement Fund". The fund shall operate as  
10 a special fund whereby all deposits and payments thereto do not  
11 expire to the general revenue fund, but shall remain in the fund  
12 and be available for expenditure in succeeding fiscal years. This  
13 fund shall consist of fees collected by the director in accordance  
14 with the provisions of this section, as well as interest earned on  
15 investments made from moneys deposited in the fund. Moneys  
16 from this fund shall be expended by the director for the  
17 administration, permitting, enforcement, inspection, monitoring  
18 and other activities required by this article.

**§22-4-27. Exception for certain existing quarries.**

1 (a) Quarries that are in operation on or before the effective  
2 date of this article, shall comply with the following:

3 (1) Within two years of the effective date of this article, all  
4 quarry operations shall submit to the director a quarrying and

5 reclamation plan to bring the facility into compliance with the  
6 requirements of this article and any rules promulgated thereun-  
7 der. These quarrying and reclamation plans shall include a  
8 reasonable schedule, based on site specific conditions and the  
9 nature of the quarry operation, to allow a transitional time  
10 period to bring the operation into compliance with current  
11 reclamation standards. Quarry areas that are disturbed on the  
12 effective date of this article are exempt from further reclama-  
13 tion requirements. For the purpose of this section, disturbed  
14 areas include existing highwalls and all material vertically  
15 below the surface of the area disturbed.

16 (2) Pre-blast survey and blasting plan requirements as  
17 provided for existing quarries as provided by section twelve of  
18 this article.

19 (3) Groundwater protection monitoring required by section  
20 fourteen of this article will not be required if the director  
21 verifies the operator's certification that no groundwater  
22 problems at the quarry have occurred in the previous five years.

23 (b) The exclusions of this section are also applicable to  
24 quarries permitted on or before the effective date of this article  
25 and consolidated or renewed pursuant to subsection (f) of  
26 section five of this article.

27 (c) Quarries in operation as of the effective date of this  
28 article for the past five years without a serious permit violation,  
29 shall participate in the bond pooling fund created in section  
30 twenty-two of this article. All other operations shall comply  
31 with the bonding requirements of section twenty of this article.

**§22-4-28. Persons ineligible for a permit.**

1 No public officer or employee in the division having any  
2 responsibility or duty either directly or of a supervisory nature  
3 with respect to the administration or enforcement of this article  
4 may:

5 (1) Engage in quarrying as a sole proprietor or as a partner;

6 (2) Be an officer, director, stockholder, owner or part owner  
7 of any corporation or other business entity engaged in quarry-  
8 ing; or

9 (3) Be employed as an attorney, agent or in any other  
10 capacity by any person, partnership, firm, association, trust or  
11 corporation engaged in quarrying.

12 Any violation of this section by any public officer or  
13 employee subject to the prohibitions contained in this section is  
14 grounds for removal from office or dismissal from employment,  
15 as the case may be.

**§22-4-29. Exemptions.**

1 (a) The provisions of this article do not apply to activities  
2 of the West Virginia department of transportation or any legally  
3 constituted public governing entities including municipal  
4 corporations or other political subdivisions, including the  
5 federal government, or to activities of any person acting under  
6 contract with any of these public agencies or entities, on  
7 highway rights-of-way or borrow pits owned, operated, or  
8 maintained solely in connection with the construction, repair  
9 and maintenance of the public roads system of the state or other  
10 public facilities. This exemption does not become effective  
11 until the public agencies or entities have adopted reclamation  
12 standards applying to the activities.

13 (b) The provisions of this article do not apply to quarrying  
14 on federal lands when performed under a valid permit from the  
15 appropriate federal agency having jurisdiction over the land.

16 (c) The provisions of this article do not apply to the  
17 following activities:

- 18 (1) Operations engaged only in processing minerals;
- 19 (2) Excavation or grading conducted solely in aid of on-site  
20 farming or on-site construction for purposes other than quarry-  
21 ing;
- 22 (3) Removal of overburden and of limited amounts of any  
23 mineral when done only for the purpose of prospecting and to  
24 the extent necessary to determine the location, quantity or  
25 quality of any natural deposit, if no minerals are sold, processed  
26 for sale or consumed in the regular operation of business;
- 27 (4) The handling, processing or storage of minerals on the  
28 premises of a manufacturer as a part of any manufacturing  
29 process that requires minerals as raw material;
- 30 (5) The removal or deposit of backfill material associated  
31 with construction, farming and noncommercial activities;
- 32 (6) Noncommercial quarry operations by a landowner if the  
33 disturbed area does not exceed one acre in area, upon notice to  
34 the director by the owner of his or her intent to establish the  
35 quarry.

## **CHAPTER 22B. ENVIRONMENTAL BOARDS.**

### **ARTICLE 4. SURFACE MINE BOARD.**

#### **§ 22B-4-1. Appointment and organization of surface mine board.**

- 1 (a) On and after the effective date of this article, the  
2 “reclamation board of review,” heretofore created, shall  
3 continue in existence and hereafter shall be known as the  
4 “surface mine board.”
- 5 (b) The board shall be composed of seven members who  
6 shall be appointed by the governor with the advice and consent  
7 of the Senate. Not more than four members of the board shall



8 be of the same political party. Each appointed member of the  
9 board who is serving in such capacity on the effective date of  
10 this article shall continue to serve on the board until his or her  
11 term ends or he or she resigns or is otherwise unable to serve.  
12 As each member's term ends, or that member is unable to serve,  
13 a qualified successor shall be appointed by the governor with  
14 the advice and consent of the Senate. One of the appointees to  
15 such board shall be a person who, by reason of previous  
16 vocation, employment or affiliations, can be classed as one  
17 capable and experienced in coal mining. One of the appointees  
18 to such board shall be a person who, by reason of training and  
19 experience, can be classed as one capable and experienced in  
20 the practice of agriculture. One of the appointees to such board  
21 shall be a person who by reason of training and experience, can  
22 be classed as one capable and experienced in modern forestry  
23 practices. One of the appointees to such board shall be a person  
24 who, by reason of training and experience, can be classed as  
25 one capable and experienced in engineering. One of the  
26 appointees to such board shall be a person who, by reason of  
27 training and experience, can be classed as one capable and  
28 experienced in water pollution control or water conservation  
29 problems. One of the appointees to such board shall be a person  
30 with significant experience in the advocacy of environmental  
31 protection. One of the appointees to such board shall be a  
32 person who represents the general public interest: *Provided,*  
33 That, in any case brought before the board relating to quarry  
34 operations as regulated by article four of chapter twenty-two of  
35 this code, two alternate board members will serve on the board  
36 who have expertise related to the operation of quarries. These  
37 two alternate members will serve in place of the board member  
38 appointed due to his or her expertise in coal operations and the  
39 board member which has been appointed due to his or her  
40 expertise in forestry. Each alternative member shall have the  
41 identical term as the member which he or she is replacing. The  
42 alternative board member replacing the member with expertise

43 in coal shall be appointed based on his or her expertise in  
44 quarry operations. The alternative board member replacing the  
45 member with expertise in forestry shall be appointed based on  
46 his or her expertise in geology.

47 (c) During his or her tenure on the board, no member shall  
48 receive significant direct or indirect financial compensation  
49 from or exercise any control over any person or entity which  
50 holds or has held, within the two years next preceding the  
51 member's appointment, a permit to conduct activity regulated  
52 by the division, under the provisions of article three or four,  
53 chapter twenty-two of this code, or any similar agency of any  
54 other state or of the federal government: *Provided*, That the  
55 member classed as experienced in coal mining, the member  
56 classed as experienced in engineering, the member classed as  
57 experienced in water pollution control or water conservation  
58 problems and the two alternative board members serving to  
59 hear quarry related cases may receive significant financial  
60 compensation from regulated entities for professional services  
61 or regular employment so long as the professional or employ-  
62 ment relationship is disclosed to the board. No member shall  
63 participate in any matter before the board related to a regulated  
64 entity from which the member receives or has received, within  
65 the preceding two years direct or indirect financial compensa-  
66 tion. For purposes of this section, "significant direct or indirect  
67 financial compensation" means twenty percent of gross income  
68 for a calendar year received by the member, any member of his  
69 or her immediate family or the member's primary employer.

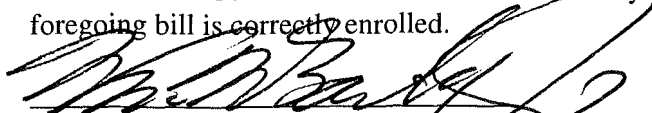
70 (d) The members of the board shall be appointed for terms  
71 of the same duration as their predecessor under the original  
72 appointment of two members appointed to serve a term of two  
73 years; two members appointed to serve a term of three years;  
74 two members to serve a term of four years; and one member to  
75 serve a term of five years. Any member whose term expires  
76 may be reappointed by the governor. In the event a board

77 member is unable to complete the term, the governor shall  
78 appoint a person with similar qualification to complete the  
79 term. The successor of any board member appointed pursuant  
80 to this article must possess the qualification as prescribed  
81 herein. Each vacancy occurring in the office of a member of the  
82 board shall be filled by appointment within sixty days after such  
83 vacancy occurs.

**§22B-4-2. Authority to receive money.**

1 In addition to all other powers and duties of the surface  
2 mine board, as prescribed in this chapter or elsewhere by law,  
3 the board shall have and may exercise the power and authority  
4 to receive any money as a result of the resolution of any case on  
5 appeal. Moneys received from cases arising from the Surface  
6 Mine Reclamation Act, as provided in article three of chapter  
7 twenty-two shall be deposited to the credit of the special  
8 reclamation fund created pursuant to section eleven, article  
9 three, chapter twenty-two of this code. Moneys received from  
10 cases arising from the Quarry Reclamation Act, as provided in  
11 article four of chapter twenty-two of this code, shall be depos-  
12 ited to the credit of the quarry reclamation fund created  
13 pursuant to section twenty-two, article four, chapter twenty-two  
14 of this code.

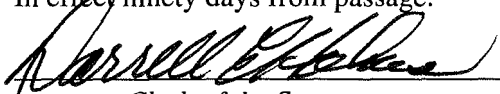
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

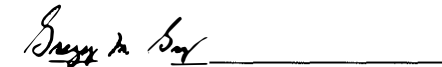
  
Chairman Senate Committee


  
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

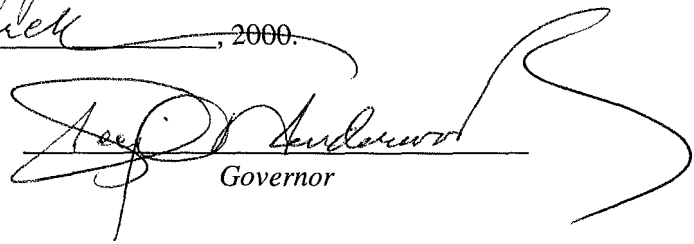
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 24th  
day of March, 2000.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/18/00

Time 12:40pm