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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2000



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COMMITTEE SUBSTITUTE
FOR
House Bill No. 4223

(By Delegates Hunt, Linch, Compton,
Jenkins, Faircloth and Riggs)



Passed March 11, 2000

In Effect from Passage

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H. B. 4223

(BY DELEGATES HUNT, LINCH, COMPTON,
JENKINS, FAIRCLOTH AND RIGGS)

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AN ACT to amend and reenact sections one and two, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the legislature; authorizing certain of the agencies to promulgate certain legisla-

tive rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; disapproving certain legislative rules; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the emission of sulfur oxides; authorizing the division of environmental protection to promulgate a legislative rule relating to the ambient air quality standard for nitrogen dioxide; authorizing the division of environmental protection to promulgate a legislative rule relating to permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits and procedures for evaluation; authorizing the division of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate matter air pollution from materials handling, preparation, storage and other sources of fugitive particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate air pollution from direct meat-firing devices; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate air pollution from the combustion of fuel in indirect heat exchangers; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from municipal solid waste landfills; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of emissions from hospital/medical/infectious waste incinerators; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the division of environmental protection to

promulgate a legislative rule relating to air pollutant emissions banking and trading; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the operation of hot mix asphalt plants; authorizing the division of environmental protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the division of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 63; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the operation of coal preparation plants, coal handling operations and coal refuse disposal areas; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from the combustion of refuse; authorizing the division of environmental protection to promulgate a legislative rule relating to the prevention and control of particulate matter air pollution from manufacturing processes and associated operations; authorizing the division of environmental protection to promulgate a legislative rule relating to ambient air quality standards for sulfur oxides and particulate matter; authorizing the division of environmental protection to promulgate a legislative rule relating to ambient air quality standards for carbon monoxide and ozone; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining blasting; authorizing the division of environmental protection to promulgate a legislative rule relating to surface mining and reclamation; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and restoration for sandstone, limestone and sand; disallowing and not authorizing the division of environmental protection to promulgate a legislative rule relating to mining and reclamation of minerals other than coal, limestone, sandstone and sand; authorizing the division of environmental protection to promulgate a

legislative rule relating to sewage sludge management; authorizing the division of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the division of environmental protection to promulgate a legislative rule relating to a water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to the state water pollution control revolving fund program; authorizing the division of environmental protection to promulgate a rule relating to water pollution control permit fee schedule; authorizing the division of environmental protection to promulgate a legislative rule relating to groundwater protection standards at steam electric generating facilities; repealing a legislative rule relating to preventing and controlling air pollution from coal refuse disposal areas; and authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Division of environmental protection.

- 1 (a) The legislative rule filed in the state register on the sixth
- 2 day of August, one thousand nine hundred ninety-nine, autho-
- 3 rized under the authority of section four, article five, chapter
- 4 twenty-two, of this code, modified by the division of environ-
- 5 mental protection to meet the objections of the legislative
- 6 rule-making review committee and refiled in the state register
- 7 on the twenty-sixth day of October, one thousand nine hundred
- 8 ninety-nine, relating to the division of environmental protection

9 (to prevent and control air pollution from the emission of sulfur
10 oxides, 45 CSR 10), is authorized with the following amend-
11 ments:

12 On page nine, paragraph 8.2.c.3., after the word “Director”
13 by striking out the remainder of the sentence;

14 On page nine, subdivision 8.3.a., in the last sentence, by
15 striking out the word “two” and inserting in lieu thereof the
16 word “five”;

17 On page nine, subdivision 8.3.b., after the words “by the
18 Director” by striking out the remainder of the sentence;

19 On page nine, subdivision 8.3.c., after the words “by the
20 Director” by striking out the remainder of the sentence;

21 And;

22 On page nine, by striking out subdivision 8.3.e in its
23 entirety and inserting in lieu thereof a new subdivision 8.3.e to
24 read as follows:

25 8.3.e.1. The Director shall respond within five working
26 days to requests for information generated or required under
27 this rule. Requests for information not in the Director’s custody
28 shall be promptly forwarded to the appropriate federal or state
29 agency known to have such information.

30 8.3.e.2. Data regarding the compliance reporting of
31 electric utility SO₂ emissions it available from the U.S.
32 Environmental Protection Agency (EPA). Requests for EPA
33 emissions data should be sent to: EPA Clean Air Marketing
34 Division, 501 3rd Street NW, Washington, D.C. 20001 or online
35 at <http://www.epa.gov/acidrain/edata.html>. Data relating to fuel
36 quality and costs of fuels are available at the Federal Energy
37 Regulatory Commission (FERC) and the West Virginia Public

38 Service Commission. Requests for FERC data should be sent to
39 David P. Boergers, Secretary, Federal Energy Regulatory
40 Commission, 888 First Street NE, Washington, D.C. 20426 or
41 online at <http://www.ferc.fed.us/electric/f423/form423.htm>.
42 Requests for PSC data should be sent to: The West Virginia
43 Public Service Commission, Utility Division, P.O. Box 812,
44 Charleston, W. Va. 25323-0812.

45 (b) The legislative rule filed in the state register on the fifth
46 day of August, one thousand nine hundred ninety-nine, autho-
47 rized under the authority of section four, article five, chapter
48 twenty-two, of this code, relating to the division of environmen-
49 tal protection (ambient air quality standard for nitrogen dioxide,
50 45 CSR 12), is authorized.

51 (c) The legislative rule filed in the state register on the
52 seventeenth day of December, one thousand nine hundred
53 ninety-nine, authorized under the authority of section four,
54 article five, chapter twenty-two, of this code, modified by the
55 division of environmental protection to meet the objections of
56 the legislative rule-making review committee and refiled in the
57 state register on the twenty-fifth day of January, two thousand,
58 relating to the division of environmental protection (permits for
59 construction, modification, relocation and operation of station-
60 ary sources of air pollutants, notification requirements, adminis-
61 trative updates, temporary permits, general permits and
62 procedures for evaluation, 45 CSR 13), is authorized with the
63 following amendments:

64 On page 5, paragraph 2.17.f.6, by striking out the words
65 "Upon written request, the Director may determine that a
66 physical change results in";

67 And,

68 On page 5, paragraph 2.17.f.6, at the end of the paragraph,
69 by changing the period to a colon and inserting the words

70 “provided that the owner or operator of the source shall notify
71 the Director of such replacement and the emissions reduction
72 within ten (10) working days of the replacement.”

73 (d) The legislative rule filed in the state register on the fifth
74 day of August, one thousand nine hundred ninety-nine, autho-
75 rized under the authority of section four, article five, chapter
76 twenty-two of this code, relating to the division of environmen-
77 tal protection (standards of performance for new stationary
78 sources, 45 CSR 16), is authorized.

79 (e) The legislative rule filed in the state register on the sixth
80 day of August, one thousand nine hundred ninety-nine, autho-
81 rized under the authority of section four, article five, chapter
82 twenty-two, of this code, modified by the division of environ-
83 mental protection to meet the objections of the legislative
84 rule-making review committee and refiled in the state register
85 on the twenty-fourth day of September, one thousand nine
86 hundred ninety-nine, relating to the division of environmental
87 protection (to prevent and control particulate matter air pollu-
88 tion from materials handling, preparation, storage and other
89 sources of fugitive particulate matter, 45 CSR 17), is autho-
90 rized.

91 (f) The legislative rule filed in the state register on the fifth
92 day of August, one thousand nine hundred ninety-nine, autho-
93 rized under the authority of section four, article five, chapter
94 twenty-two, of this code, relating to the division of environmen-
95 tal protection (to prevent and control particulate air pollution
96 from direct meat-firing devices, 45 CSR 18), is authorized.

97 (g) The legislative rule filed in the state register on the sixth
98 day of August, one thousand nine hundred ninety-nine, autho-
99 rized under the authority of section four, article five, chapter
100 twenty-two, of this code, modified by the division of environ-
101 mental protection to meet the objections of the legislative

102 rule-making review committee and refiled in the state register
103 on the twenty-seventh day of August, one thousand nine
104 hundred ninety-nine, relating to the division of environmental
105 protection (to prevent and control particulate air pollution from
106 combustion of fuel in indirect heat exchangers, 45 CSR 2), is
107 authorized with the following amendments:

108 On page seven, subdivision 8.1.a., in the last sentence, after
109 the words "by the Director" by striking out the remainder of the
110 sentence;

111 On page eight, subdivision 8.3.a, by adding a new sentence
112 at the end of the subdivision to read as follows: Such records
113 shall be retained on-site for a minimum of five years;

114 On page eight, subdivision 8.3.b, in the first sentence, after
115 the words "by the Director" by striking out the remainder of the
116 sentence;

117 On page eight, subdivision 8.3.c, in the first sentence, after
118 the words "by the Director" by striking out the remainder of the
119 sentence;

120 On page eight, subdivision 8.4.c., after the word "subsec-
121 tion" by striking out the number ~~8.4~~ and inserting in lieu
122 thereof the number "2";
8.2

123 And;

124 On page nine, by striking out subsection 8.5. in its
125 entirety and inserting in lieu thereof a new subsection 8.5. to
126 read as follows:

127 8.5.a. The Director shall respond within five working
128 days to requests for information generated or required under
129 this rule. Requests for information not in the Director's custody
130 shall be promptly forwarded to the appropriate federal or state

*at
beginning of the
clause of the*

131 agency known to have such information.

132 8.5.b. Data relating to electric utilities and fuel quality
133 and costs of fuels are available from the Federal Energy
134 Regulatory Commission (FERC) and the West Virginia Public
135 Service Commission (PSC). Requests for FERC data should be
136 sent to David P. Boergers, Secretary, Federal Energy Regula-
137 tory Commission, 888 First Street NE, Washington, D.C. 20426
138 or online at <http://www.ferc.fed.us/electric/f423/form423.htm>.
139 Requests for PSC data should be sent to: The West Virginia
140 Public Service Commission, Utility Division, P.O. Box 812,
141 Charleston, W. Va. 25323-0812.

142 (h) The legislative rule filed in the state register on the sixth
143 day of August, one thousand nine hundred ninety-nine, autho-
144 rized under the authority of section four, article five, chapter
145 twenty-two, of this code, modified by the division of environ-
146 mental protection to meet the objections of the legislative
147 rule-making review committee and refiled in the state register
148 on the twenty-sixth day of October, one thousand nine hundred
149 ninety-nine, relating to the division of environmental protection
150 (to prevent and control emissions from municipal solid waste
151 landfills, 45 CSR 23), is authorized.

152 (i) The legislative ruled filed in the state register on the
153 twenty-second day of December, one thousand nine hundred
154 ninety-nine, authorized under the authority of section four,
155 article five, chapter twenty-two of this code, relating to the
156 division of environmental protection (to prevent and control
157 emissions from hospital, medical, and infectious waste incinera-
158 tors, 45 CSR 24), is authorized.

159 (j) The legislative rule filed in the state register on the fifth
160 day of August, one thousand nine hundred ninety-nine, autho-
161 rized under the authority of section four, article five, chapter
162 twenty-two of this code, relating to the division of environmen-

163 tal protection (to prevent and control air pollution from hazard-
164 ous waste treatment, storage or disposal facilities, 45 CSR 25),
165 is authorized.

166 (k) The legislative rule filed in the state register on the first
167 day of February, one thousand nine hundred ninety-nine,
168 authorized under the authority of section eighteen, article five,
169 chapter twenty-two, of this code, modified by the division of
170 environmental protection to meet the objections of the legisla-
171 tive rule-making review committee and refiled in the state
172 register on the twenty-first day of January, two thousand,
173 relating to the division of environmental protection (air
174 pollutant emissions banking and trading, 45 CSR 28), is
175 authorized.

176 (l) The legislative rule filed in the state register on the sixth
177 day of August, one thousand nine hundred ninety-nine, autho-
178 rized under the authority of section four, article five, chapter
179 twenty-two, of this code, modified by the division of environ-
180 mental protection to meet the objections of the legislative
181 rule-making review committee and refiled in the state register
182 on the twenty-seventh day of August, one thousand nine
183 hundred ninety-nine, relating to the division of environmental
184 protection (to prevent and control air pollution from the
185 operation of hot mix asphalt plants, 45 CSR 3), is authorized.

186 (m) The legislative rule filed in the state register on the fifth
187 day of August, one thousand nine hundred ninety-nine, autho-
188 rized under the authority of section four, article five, chapter
189 twenty-two of this code, relating to the division of environmen-
190 tal protection (acid rain provisions and permits, 45 CSR 33), is
191 authorized.

192 (n) The legislative rule filed in the state register on the fifth
193 day of August, one thousand nine hundred ninety-nine, autho-
194 rized under the authority of section four, article five, chapter

195 twenty-two of this code, relating to the division of environmen-
196 tal protection (emission standards for hazardous air pollutants
197 pursuant to 40 CFR Part 63, 45 CSR 34), is authorized.

198 (o) The legislative rule filed in the state register on the sixth
199 day of August, one thousand nine hundred ninety-nine, autho-
200 rized under the authority of section four, article five, chapter
201 twenty-two, of this code, modified by the division of environ-
202 mental protection to meet the objections of the legislative
203 rule-making review committee and refiled in the state register
204 on the twenty-fourth day of September, one thousand nine
205 hundred ninety-nine, relating to the division of environmental
206 protection (to prevent and control air pollution from the
207 operation of coal preparation plants, coal handling operations
208 and coal refuse disposal areas, 45 CSR 5), is authorized.

209 (p) The legislative rule filed in the state register on the sixth
210 day of August, one thousand nine hundred ninety-nine, autho-
211 rized under the authority of section four, article five, chapter
212 twenty-two, of this code, relating to the division of environmen-
213 tal protection (to prevent and control air pollution from com-
214 bustion of refuse, 45 CSR 6), is authorized.

215 (q) The legislative rule filed in the state register on the sixth
216 day of August, one thousand nine hundred ninety-nine, autho-
217 rized under the authority of section four, article five, chapter
218 twenty-two, of this code, modified by the division of environ-
219 mental protection to meet the objections of the legislative
220 rule-making review committee and refiled in the state register
221 on the twenty-fourth day of September, one thousand nine
222 hundred ninety-nine, relating to the division of environmental
223 protection (to prevent and control particulate matter air pollu-
224 tion from manufacturing processes and associated operations,
225 45 CSR 7), is authorized.

226 (r) The legislative rule filed in the state register on the
227 twenty-second day of December, one thousand nine hundred
228 ninety-nine, authorized under the authority of section four,
229 article five, chapter twenty-two of this code, modified by the
230 division of environmental protection to meet the objections of
231 the legislative rule-making review committee and refiled in the
232 state register on the twenty-fifth day of January, two thousand,
233 relating to the division of environmental protection (ambient air
234 quality standards for sulfur oxides and particulate matter, 45
235 CSR 8), is authorized.

236 (s) The legislative rule filed in the state register on the
237 twenty-second day of December, one thousand nine hundred
238 ninety-nine, authorized under the authority of section four,
239 article five, chapter twenty-two of this code, modified by the
240 division of environmental protection to meet the objections of
241 the legislative rule-making review committee and refiled in the
242 state register on the twenty-fifth day of January, two thousand,
243 relating to the division of environmental protection (ambient air
244 quality standards for carbon monoxide and ozone, 45 CSR 9),
245 is authorized.

246 (t) The legislative rule filed in the state register on the
247 twenty-fourth day of September, one thousand nine hundred
248 ninety-nine, authorized under the authority of section three,
249 article three-a, chapter twenty-two, of this code, modified by
250 the division of environmental protection to meet the objections
251 of the legislative rule-making review committee and refiled in
252 the state register on the twenty-first day of January, two
253 thousand, relating to the division of environmental protection
254 (surface mining blasting, 199 CSR 1), is authorized.

255 (u) The legislative rule filed in the state register on the
256 thirtieth day of July, one thousand nine hundred ninety-nine,
257 authorized under the authority of section three, article one,
258 chapter twenty-two of this code, modified by the division of

259 environmental protection to meet the objections of the legisla-
260 tive rule-making review committee and refiled in the state
261 register on the twenty-first of January, two thousand, relating to
262 the division of environmental protection (surface mining and
263 reclamation rule, 38 CSR 2), is authorized with the following
264 amendments:

265 On page 4, by inserting a new subsection 2.31 to read as
266 followings:

267 '2.31. Commercial Forestry And Forestry.

268 2.31.a. Commercial Forestry, as used in Subsection 7.4
269 of this rule, means a long-term postmining land use designed to
270 accomplish the following: (1) Achieve greater forest productiv-
271 ity than that found on the mine site before mining; (2) Minimize
272 erosion and/or sediment yield and serve the hydrologic func-
273 tions of infiltrating, holding, and yielding water commonly
274 found in undisturbed forests; (3) Result in biodiversity by
275 facilitating rapid recruitment of native species of plants and
276 animals via the process of natural succession; (4) Result in a
277 premium forest that will thrive under stressful conditions; and
278 (5) Result in landscape, vegetation and water resources that
279 create habitat for forest-dwelling wildlife.

280 2.31.b. Forestry, as used in Subsection 7.4 of this rule,
281 means a long-term postmining land use designed to accomplish
282 the following: (1) Achieve forest productivity equal to that
283 found on the mine site before mining; (2) Minimize erosion
284 and/or sediment yield and serve the hydrologic functions of
285 infiltrating, holding, and yielding water commonly found in
286 undisturbed forests; (3) Result in biodiversity by facilitating
287 rapid recruitment of native species of plants and animals via the
288 process of natural succession; and (4) Result in landscape,
289 vegetation and water resources that create habitat for forest-
290 dwelling wildlife.”

291 and renumber the subsequent subsections;

292 On page twelve, by striking subsection 2.136, the definition
293 of 'woodlands' in its entirety and renumber the subsequent
294 subsections;

295 On page 68, section 7.2.i, by striking the word 'Woodland'
296 and inserting in lieu thereof the word 'Forestry.'

297 On page 68, following section 7.3.c., by inserting the
298 following:

299 '7.3.c. A change in postmining land use to grassland uses
300 such as rangeland and/or hayland or pasture is prohibited on
301 operations that obtain an approximate original contour variance
302 described in WV Code §22-3-13(b)(25)(c). Provided, however,
303 That this subdivision is not effective until Sections 7.4 and 7.5
304 of this rule are approved by the federal Office of Surface
305 Mining.

306 7.4. Standards Applicable to Approximate Original Contour
307 Variance Operations With a Postmining Land Use of Commer-
308 cial Forestry and Forestry.

309 7.4.a. Applicability.

310 7.4.a.1. Commercial Forestry and forestry may be
311 approved as a post mining land use for surface mining opera-
312 tions that receive variances from the general requirement to
313 restore the postmining site to its approximate original contour.
314 An applicant may request AOC variance for purposes of this
315 section for the entire permit area or any segment thereof. Either
316 commercial forestry or forestry shall be established on all
317 portions of the permit area. Provided, that the faces of valley
318 fills shall be reclaimed as described in 7.4.b.1.J of this rule.

319 7.4.b. Requirements.

320 7.4.b.1. The Director may authorize commercial
321 forestry and forestry as a postmining use only if the following
322 conditions have been satisfied.

323 7.4.b.1.A. Planting and Management Plan Develop-
324 ment.

325 7.4.b.1.A.1. A registered professional forester
326 shall develop a planting plan and long-term management plan
327 for the permitted area that meets the requirements of the West
328 Virginia Surface Coal Mining and Reclamation Act. These
329 plans shall be made a part of the surface mining permit applica-
330 tion and shall be the basis for determining the capability of the
331 applicant to meet the requirements of this rule. The plans shall
332 be in sufficient detail to demonstrate that the requirements of
333 the commercial forestry and forestry uses can be met. The plans
334 shall contain a signed statement of intent from the landowner
335 demonstrating its commitment to long-term implementation and
336 management in accordance with the plan. Once final bond
337 release is authorized, the permittee's responsibility for imple-
338 menting the long-term management plan ceases. Upon final
339 bond release, the jurisdiction of the Director over the permittee,
340 the operator, the landowner or any other responsible party shall
341 cease. The minimum required content of these plans shall be as
342 follows:

343 7.4.b.1.A.2. The landowner or other responsible
344 party shall submit their objectives for achieving commercial
345 forestry and forestry postmining land uses. The Director may
346 approve the uses only when the planting plan and long term
347 management plan demonstrate that the forest will be managed
348 only for long term forest products, such as sawlogs or veneer,
349 that take 50 to 80 years to mature.

350 7.4.b.1.A.3. A commercial species planting plan
351 and prescription shall be developed by the registered profes-

352 sional forester to achieve the commercial forestry and forestry
353 use. The plan shall include the following:

354 7.4.b.1.A.3.(a) A topographic map of the permit
355 area, 1:12000 or finer, showing the mapped location of
356 premining native soil. A description of each soil mapping unit
357 that includes, at minimum, total depth and volume to bedrock,
358 soil horizons, including the O, A, E, B, C, and Cr horizon
359 depths, soil texture, structure, color, reaction and bedrock type
360 and a site index for common native tree species. An approved
361 certified professional soil scientist shall conduct a detailed on-
362 site survey, create the maps, and provide the written description
363 of the soils. As part of the field survey, the soil scientist shall
364 map and certify the slopes that are 50% or less with a confi-
365 dence level of $\pm 2\%$.

366 7.4.b.1.A.3.(b) An approved geologist shall create
367 a certified geology map showing the location, depth, and
368 volume of all strata in the mined area, the physical and chemi-
369 cal properties of each stratum to include rock texture, pH,
370 potential acidity and alkalinity, total soluble salts, degree of
371 weathering, extractable levels of phosphorus, potassium,
372 calcium, magnesium, manganese, and iron and other properties
373 required by the director to select best available materials for
374 minesoils.

375 7.4.b.1.A.3.(c) A description of the present soils
376 and soil substitutes to be used as the plant medium and the
377 proposed handling, and placement of these materials. The
378 handling plan shall include procedures to:

379 7.4.b.1.A.3.(c)(1) protect native soil organisms
380 and the native seed pool;

381 7.4.b.1.A.3.(c)(2) include organic debris such
382 as litter, branches, small logs, roots, and stumps in the soil;

383 7.4.b.1.A.3.(c)(3) inoculate the minesoil with
384 native soil organisms;

385 7.4.b.1.A.3.(c)(4) increase soil fertility; and

386 7.4.b.1.A.3.(c)(5) encourage plant succession.

387 7.4.b.1.A.3.(d) A surface preparation plan which
388 includes a description of the methods for replacing and grading
389 the soil and other soil substitutes and their preparation for
390 seeding and tree planting.

391 7.4.b.1.A.3.(e) Liming and fertilization plans.

392 7.4.b.1.A.3.(f) Mulching type, rates and proce-
393 dures.

394 7.4.b.1.A.3.(g) Species seeding rates and proce-
395 dures for application of perennial and annual herbaceous, shrub,
396 and vine plant materials for ground cover.

397 7.4.b.1.A.3.(h) A tree planting prescription to
398 establish commercial forestry and forestry, to include species,
399 stems per acre, planting mixes, and site-specific planting
400 arrangements to maximize productivity.

401 7.4.b.1.A.4. A long-term management plan shall be
402 developed by a registered professional forester. The plan shall
403 include:

404 7.4.b.1.A.4.(a) A topographic map, with a
405 minimum scale of 1:12000 shall be used to show the boundaries
406 and extent of the proposed surface mining operation, the
407 boundaries of areas being planned for commercial forestry and
408 forestry land uses, and the proposed postmining surface
409 configuration, stream drainages and wetlands, and the plant
410 species mix that will be planted in each area.

411 7.4.b.1.A.4.(b) A proposed schedule of all
412 silvicultural activities necessary to develop the forest resources
413 for commercial forestry and forestry.

414 7.4.b.1.A.4.(c) A description of activities
415 necessary to protect the forest resources from vandalism,
416 wildfire, insects, diseases, exotic organisms and herbivory
417 detrimental to long-term success.

418 7.4.b.1.A.4.(d) A plan to assure forest access for
419 future management, protection, and eventual utilization of the
420 forest resources. The plan shall be developed to minimize
421 adverse environmental impacts, including additional road
422 building and other land disturbances. Forestry best management
423 practices shall be followed.

424 7.4.b.1.A.4.(e) A plan for using forestry best
425 management practices to minimize silvicultural and harvesting
426 impacts on the permit area and on waters of the State. Best
427 Management Practices shall be sufficient to assure compliance
428 with applicable State and Federal water quality standards.

429 7.4.b.1.A.5. A signed statement from the permittee
430 containing financial information and data sufficient to demon-
431 strate:

432 7.4.b.1.A.5.(a) That achieving the commercial
433 forestry use is practicable with respect to the private financial
434 capability necessary to achieve the use; and

435 7.4.b.1.A.5.(b) That the commercial forestry use
436 will be obtainable according to data regarding expected need
437 and market.

438 7.4.b.1.A.6. Two copies of the planting plan,
439 management plan, pertinent maps and statement of intent shall
440 be submitted to the appropriate Division of Forestry District

441 Forester and two copies of each plan shall be submitted to the
442 Director of the Division of Environmental Protection.

443 7.4.b.1.B. Oversight Procedures for Achieving
444 Commercial Forestry and Forestry.

445 7.4.b.1.B.1. Before approving a commercial
446 forestry and forestry reclamation plan, the Director shall assure
447 that the planting plan, long-term management plan, and
448 statement of intent are reviewed and approved by a registered
449 professional forester employed either by the West Virginia
450 Division of Forestry or the Director of the Division of Environ-
451 mental Protection and that a certified professional soil scientist
452 employed by the Director reviews and field verifies the soil
453 slope and sandstone mapping. Before approving the reclamation
454 plan, the Director shall assure that the reviewing forester has
455 made site-specific written findings adequately addressing each
456 of the elements of the plans and statements. The reviewing
457 forester and soil scientist shall make these findings within 45
458 days of receipt of the plans and maps.

459 7.4.b.1.B.2. If after reviewing the plans, the
460 reviewing forester and soil scientist find that the plans and
461 statements comply with the requirements of this land use, they
462 shall prepare written findings stating the basis of approval. A
463 copy of the findings shall be sent to the Director and to the
464 surface mining permit supervisor for the region in which the
465 permit is located. The written findings shall be made part of the
466 facts and findings section of the surface mining permit applica-
467 tion file. The Director shall assure that the plans and statements
468 comply with the requirements of this rule and other provisions
469 of the approved State surface mining program.

470 7.4.b.1.B.3. If the reviewing forester finds the plans
471 to be insufficient, the forester shall either:

472 7.4.b.1.B.3.(a) Contact the preparing forester or
473 the permittee and provide the permittee with an opportunity to
474 make the changes necessary to bring the reclamation plan into
475 compliance with the regulations, or

476 7.4.b.1.B.3.(b) Notify the Director that the
477 reclamation plan does not meet the requirements of the regula-
478 tions. The Director may not approve the surface mining permit
479 until finding that the reclamation plans satisfy all of the
480 requirements of the regulations.

481 7.4.b.1.C. Landscape Criteria

482 7.4.b.1.C.1. For commercial forestry, the Director
483 shall assure that the postmining landscape is rolling, and
484 diverse. The backfill on the mine bench shall be configured to
485 create a postmining topography that includes the principles of
486 landforming (e.g. the creation of swales) to reflect the
487 premining irregularities in the land. Postmining landform shall
488 provide a rolling topography with slopes of both 5% and 15%
489 with an average slope of 10% to 12.5%. The elevation change
490 between the ridgeline and the valleys shall be varied. The slope
491 lengths shall not exceed 500 feet. The minimum thickness of
492 backfill, including minesoil, placed on the pavement of the
493 basal seam mined in any particular area shall be ten (10) feet.

494 7.4.b.1.C.2. For commercial forestry, the surface
495 drainage pattern shall contain watersheds of various sizes shall
496 exhibit a dendritic drainage pattern that simulates the premining
497 pattern, and shall include the drainage channels, sediment
498 control or other water retention surfaces, which shall remain on
499 the site after bond release.

500 7.4.b.1.C.3. For commercial forestry, in areas
501 where drainage channel design criteria do not mandate erosion
502 control materials, and in other drainage areas where applicable,
503 bioengineering techniques such as fascines, branch packings,

504 live crib walls, and plantings of native herbs and shrubs
505 appropriate for the site shall be used, to the extent possible, to
506 increase the site biodiversity. Only native stone shall be used
507 for erosion control.

508 7.4.b.1.C.4. For commercial forestry, at least 3
509 ponds, permanent impoundments or wetlands totaling at least
510 3.0 acres shall be created on each 200 acres of permitted area.
511 They shall be dispersed throughout the landscape and each
512 water body shall be no smaller than 0.20 acres. All ponds,
513 permanent impoundments or wetlands shall be subject to the
514 requirements of subsection 5.5 of this rule, and shall be left in
515 place after final bond release. The substrate of the ponds and
516 wetlands must be capable of retaining water to support aquatic
517 and littoral vegetation.

518 7.4.b.1.C.5. For forestry, all ponds and impound-
519 ments created during mining shall be left in place after bond
520 release and shall be subject to the requirements of section 5.5
521 of the Rules, except for ponds and impoundments located below
522 the valley fills. The substrate of the ponds and wetlands must be
523 capable of retaining water to support aquatic and littoral
524 vegetation.

525 7.4.b.1.C.6. Before Phase III bond release may be
526 approved, the ponds, permanent impoundments or wetlands
527 used to satisfy parts 7.4.d.1.C.4. and 5. of this rule shall be
528 vegetated on the perimeter with at least six native herbaceous
529 species typical of the region at a density of not less than 1 plant
530 per linear foot of edge, and at least 4 native shrub species at a
531 density of not less than 1 shrub per 6 linear feet of edge. No
532 species of herbaceous or shrub species shall be less than 15%
533 of the total for its life form. This requirement may be met by
534 planted vegetation or that which naturally colonizes the site.

535 7.4.b.1.C.7. The landscape criteria in parts
536 7.4.d.1.C.1., 2., 3., 4., 5., and 6. above, do not apply to valley
537 fills.

538 7.4.b.1.D. Soil and Soil Substitutes.

539 7.4.b.1.D.1. Soil is defined as and shall consist of
540 the O, A, E, B, C and Cr horizons.

541 7.4.b.1.D.2. The Director shall require the
542 operator to recover and use the soil volume equal to the total
543 soil volume on the mined area, as shown on the soil maps and
544 survey except for those areas with a slope of at least 50%. The
545 Director shall assure that all saved soil includes all of the
546 material from the O through Cr horizons.

547 7.4.b.1.D.3. When the soil volume recovered in
548 7.4.b.1.D.2. above, is insufficient to meet the depth require-
549 ments, selected overburden materials may be used as soil
550 substitutes. In such cases, the Director shall require the operator
551 to recover and use all of the weathered, slightly acid brown
552 sandstone from within ten (10) feet of the soil surface on the
553 mined area. This weathered, slightly acid, brown sandstone
554 material may contain or be supplemented with up to 25% by-
555 volume weathered, slightly acid brown shale or siltstone from
556 within ten (10) feet of the soil surface. Material from this layer
557 may be removed with the soil and mixed with the soil in order
558 to meet the depth requirement. Provided, that once the operator
559 has recovered material sufficient to meet the depth require-
560 ments, it may cease recovering such material.

561 7.4.b.1.D.4. When the materials described in
562 7.4.b.1.D.2. and 3. of this rule are insufficient to meet the depth
563 requirements, then the Director shall require the operator to
564 recover and use all of the weathered, slightly acid, brown
565 sandstone from below ten feet of the soil surface on the mined
566 area. Provided, that once the operator has recovered material

567 sufficient to meet the depth requirements, it may cease recover-
568 ing such material.

569 7.4.b.1.D.5. If the applicant affirmatively
570 demonstrates that the materials described in 7.4.b.1.D.2., 3., and
571 4. of this rule within the mined area are insufficient to meet the
572 depth requirements, then up to 2/3 of the minesoil may consist
573 of the best available material or mix of materials.

574 7.4.b.1.D.6. Before approving the use of soil
575 substitutes, the Director shall require the permittee to demon-
576 strate that the selected overburden material is suitable for
577 restoring land capability and productivity. This will be demon-
578 strated by the results of chemical and physical analyses that
579 show that this material is at least 75% sandstone, has at least
580 15% fines (<2mm), has a net acid-base accounting between -3
581 and +3 calcium carbonate equivalent per 1000 tons of material
582 excluding siderite effects, a soluble salt level less than 1.0
583 mmhos/cm, to result in a long-term equilibrium pH of between
584 5.0 and 6.5 and additional analyses as the Director deems
585 necessary. If this spoil is made up of strongly contrasting
586 materials with respect to acid/base accounting these materials
587 shall be blended.

588 7.4.b.1.D.7. The minesoils shall be distributed
589 across the disturbed areas, except the faces of valley fills, in a
590 uniform and consistent mix.

591 7.4.b.1.D.8. For commercial forestry, the final
592 surface material used as the planting and growth medium
593 (hereinafter referred to as commercial forestry minesoil) shall
594 consist of a minimum of four feet, and an average of at least
595 five feet, of soil or a mixture of materials consisting of no less
596 than one-third soil and two-thirds of the materials described in
597 7.4.b.1.D.3. and 4. of this rule.

598 7.4.b.1.D.9. For forestry, the final surface
599 material used as the planting and growth medium (forestry
600 minesoil) shall consist of a minimum of 4 feet of soil, or a
601 mixture of soil and suitable soil substitutes described in
602 7.4.b.1.D.4 through 6 of this rule.

603 7.4.b.1.D.10. Commercial forestry minesoil shall
604 be placed on that portion of the mined area which receives an
605 AOC variance. For a proposed mine permit area or any specifi-
606 cally defined segment of the proposed permit area that does not
607 satisfy the volumetric criteria for AOC, an AOC variance shall
608 be required. In order to define the portion of the permit classi-
609 fied as AOC-compliant or AOC-variant, the permit may be
610 divided into segments. The number of segments shall not
611 exceed the number of excess spoil disposal areas proposed and
612 each segment shall include at least one associated fill. In no
613 event will there be more variance segments than there are
614 excess spoil disposal areas on the permit area. For each
615 segment, the AOC status shall be defined as complying with
616 AOC if that segment meets the backfill volume, valley fill
617 design, backfill inflection point tests and other criteria as
618 described in the AOC policy adopted by the Director.

619 7.4.b.1.D.11. Forestry minesoil shall, at a mini-
620 mum, be placed on all areas achieving AOC.

621 7.4.b.1.D.12. If the applicant does not demonstrate
622 that there is sufficient material available on the permit area to
623 satisfy the requirements of 7.4.d.1.D., then the Director may not
624 authorize this post mining land use.

625 7.4.b.1.D.13. The Director shall require the
626 operator to include, as part of the commercial forestry and
627 forestry minesoil mix, organic debris such as forest litter,
628 branches, small logs, roots and stumps in the soil to help re-
629 seed and resprout the native vegetation, inoculate the minesoil

630 with native soil organisms, increase soil fertility, and encourage
631 plant succession.

632 7.4.b.1.D.14. The Director shall require that soil be
633 removed and re-applied in a manner that minimizes stockpiling
634 to protect seed pools and soil organisms. Only soil removed
635 from the mined area during the one-year period immediately
636 following commencement of soil removal may be placed in a
637 long-term stockpile. Except for soil in a long-term stockpile,
638 soil redistribution shall be done within six months of soil
639 removal. Except for soil in a long-term stockpile, soil shall be
640 stored for less than six months in piles less than six feet high
641 and 24 feet wide in a stable area within the permit area where
642 it will not be disturbed and will be protected from water or wind
643 erosion or contaminants that lessen its capability to support
644 vegetation. Long-term stockpiles shall be seeded with the
645 legumes specified in the ground cover mixes used for reforesta-
646 tion (7.4.d.1.G.1. of this rule).

647 7.4.b.1.E. Soil Placement and Grading.

648 7.4.b.1.E.1. The Director shall require the
649 permittee to place minesoil loosely and in a non-compacted
650 manner while meeting static safety factor requirements.
651 Minesoil shall be graded only when necessary to maintain
652 stability or on slopes greater than 20% unless otherwise
653 approved by the Director. Grading shall be minimized to reduce
654 compaction. When grading is approved by the Director, only
655 light grading equipment may be used to grade the tops off the
656 piles, roughly leveling the area with no more than one or two
657 passes. Tracking in and rubber-tired equipment shall not be
658 used. Non-permanent roads, equipment yards, and other
659 trafficked areas shall be deep-ripped (24" to 36") to mitigate
660 compaction and to allow these areas to be restored to productive
661 commercial forestry. Soil physical quality shall be inadequate
662 if it inhibits water infiltration or prevents root penetration or if

663 their physical properties or water-supplying capacities cause
664 them to restrict root growth of trees common to the area. Slopes
665 greater than 50% shall be compacted no more than is necessary
666 to achieve stability and non-erodability.

667 7.4.b.1.E.2. The Director shall require the
668 permittee to leave soil surfaces rough with random depressions
669 across the entire surface to catch seed and sediment, conserve
670 soil water, and promote revegetation. Organic debris such as
671 forest litter, logs, and stumps shall be left on and in the soil.

672 7.4.b.1.F. Liming and Fertilizing

673 7.4.b.1.F.1. The Director shall require the
674 permittee to apply lime where the average soil pH is less than
675 5.5. Lime rates will be used to achieve a uniform soil pH of 6.0.
676 An alternate maximum or minimum soil pH may be approved,
677 however, based on the optimum pH for the forest revegetation
678 species. Soil pH may vary from 4.5 to a maximum of 7.0 from
679 place to place across the reclaimed area with no more than 10%
680 of the site below pH 5.0 and/or no more than 10% of the site
681 above pH 6.5. Low and high pH levels may be approved only
682 when tree species tolerant of the pH range have been approved
683 for planting.

684 7.4.b.1.F.2. The Director shall require the
685 permittee to fertilize based on the needs of trees and ground
686 cover vegetation. The permittee shall apply up to 300
687 pounds/acre of diammonium phosphate (18-46-0) and up to 100
688 pounds/acre potassium sulfate (0-0-52) with the ground cover
689 seeding. Other fertilizer materials and rates may be used only
690 if the Director finds that the substitutions are appropriate based
691 on soil tests performed by state certified laboratories.

692 7.4.b.1.G. Ground Cover Vegetation.

693 7.4.b.1.G.1. The Director shall require the
694 permittee to establish a temporary erosion control vegetative
695 cover as contemporaneously as practicable with backfilling and
696 grading until a permanent tree cover can be established. This
697 cover shall consist of a combination of native and domesticated
698 non-competitive and non-invasive cool and warm season
699 grasses and other herbaceous vine or shrub species including
700 legume species and ericaceous shrubs. All species shall be slow
701 growing, tolerant of low pH, and compatible with tree establish-
702 ment and growth. The ground cover vegetation shall be capable
703 of stabilizing the soil from excessive erosion, but it should be
704 minimized to control tree-damaging rodent population, and
705 allow the establishment and unrestricted growth of native
706 herbaceous plants and trees. Seeding rates and composition
707 must be in the planting plan. The following ground cover mix
708 and seeding rates (pounds/acre) shall be used: winter wheat (15
709 lbs/acre, fall seeding), foxtail millet (5 lbs/acre, summer
710 seeding), redbud (2 lbs/acre), perennial ryegrass (2 lbs/acre),
711 orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe
712 lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs/acre), and white
713 clover (3 lbs/acre). Kentucky-31 fescue, sericia lespedeza, all
714 vetches, clovers (except ladino and white clover) and other
715 aggressive or invasive species shall not be used. South- and
716 west-facing slopes with a soil pH of 6.0 or greater, the four
717 grasses in the mixture shall be replaced with 20 lbs/acre of
718 warm-season grasses consisting of the following species:
719 Niagara big bluestem (5 lbs/acre), Camper little bluestem (2
720 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1
721 lb/acre), or other varieties of these species approved by the
722 Director. Also, a selection of at least 3 native shrub species
723 native of the area shall be included in the ground cover mix.
724 Provided, that on slopes less than 20%, the Director may
725 approve lesser or no vegetative cover when tree growth and
726 productivity will be enhanced and excessive sedimentation will
727 not result.

728 7.4.b.1.G.2. All mixes shall be compatible with
729 the plant and animal species of the region and the commercial
730 forestry use. The Director shall require the use of a variety of
731 site-specific ground cover treatments so that different ground
732 cover treatments are used on different parts of the reclamation
733 area to add biodiversity and landscape mosaic to the overall
734 plan.

735 7.4.b.1.G.3. The permittee may regrade and
736 reseed only those rills and gullies that are unstable.

737 7.4.b.1.H. Tree Species and Compositions.

738 7.4.b.1.H.1. Commercial tree and nurse tree
739 species selection shall be based on site-specific characteristics
740 and long-term goals outlined in the forest management plan and
741 approved by a registered professional forester. For commercial
742 forestry, the Director shall assure that all areas suitable for
743 hardwoods are planted with native hardwoods at a rate of 500
744 seedlings per acre in continuous mixtures across the permitted
745 area with at least six (6) species from the following list: white
746 and red oaks, other native oaks, white ash, yellow-poplar, black
747 walnut, sugar maple, black cherry, or native hickories. For
748 forestry, the Director shall assure that all areas suitable for
749 hardwoods are planted with native hardwoods at a rate of 450
750 seedlings per acre in continuous mixtures across the permitted
751 area with at least three (3) or four (4) species from the follow-
752 ing list: white and red oaks, other native oaks, white ash,
753 yellow-poplar, black walnut, sugar maple, black cherry, or
754 native hickories.

755 7.4.b.1.H.2. For commercial forestry, each of the
756 species shall be not less than 10% of the total planted composi-
757 tion and at least 75% of the total planted woody plant composi-
758 tion shall be from the list of species in part 7.4.d.1.G.1. Species
759 shall be selected based on their compatibility and expected site-

760 specific long-term dynamics. For forestry, if only three species
761 from the above list are planted, then each of the species shall be
762 not less than 20% of the total planted composition. If four
763 species from the list in part 7.4.d.1.G.1. are planted, then each
764 of the species shall be not less than 15% of the total planted
765 composition. Species shall be selected based on their compati-
766 bility and expected site-specific long-term dynamics.

767 7.4.b.1.H.3. Between 5% and 10% of the required
768 number of woody plants shall be a planted in a continuous mix
769 of three or more nurse tree and shrub species that improve soil
770 quality and habitat for wildlife. They shall consist of black
771 alder, black locust, bristley locust, redbud, or bi-color lespedeza
772 or other non-invasive, native nurse tree or shrub species,
773 approved by the Director. One to five acres within each 100
774 acres of the permit area shall be left unplanted with trees, but
775 left with ponds, wetlands or ground cover vegetation only.
776 These areas may be continuous or divided into 2-4 separate
777 parcels, each at least 0.25 acres large.

778 7.4.b.1.H.4. On areas unsuitable for hardwoods,
779 the Director may authorize the following conifers: Virginia
780 pine, red pine, white pine, pitch pine, or pitch x loblolly hybrid
781 pine. Areas unsuitable for hardwoods shall be limited to
782 southwest-facing slopes greater than 10% or areas where the
783 soil pH is less than 5.5. These conifers shall be planted as
784 single-species stands less than 10 acres in size at the same rate
785 as the hardwood requirements in 7.4.b.1.H.1 of this rule. The
786 Director shall assure that no reclaimed area of the permit area
787 contains a total of more than 15% conifers.

788 7.4.b.1.H.5. The Director shall assure that the
789 specific species and selection of trees and shrubs shall be based
790 on the suitability of the planting site for each species' site
791 requirements based on soil type, degree of compaction, ground
792 cover, competition, topographic position, and aspect.

793 7.4.b.1.H.6. For commercial forestry only, in
794 addition to the trees and shrubs required in the sections above,
795 2-0 white pine seedlings shall be planted across all sites at a
796 rate of 5 to 10 trees per acre. These trees will be used for the
797 productivity check required for Phase III bond release.

798 7.4.b.1.I. Standards of Success

799 7.4.b.1.I.1. The Director shall assure the ability
800 of the commercial forestry and forestry areas to produce a high-
801 quality commercial forest by confirming, after on-site soil
802 testing, that the minesoil selection, placement, and preparation
803 criteria in 7.4.d.1.D.7 through 11 of this rule are met before
804 Phase I bond release may occur. Before approving Phase I bond
805 release, a certified soil scientist shall certify, and the Director
806 shall make a written finding that the minesoil meets these
807 criteria.

808 7.4.b.1.I.2. The Director shall not authorize
809 Phase II bond release for commercial forestry before the end of
810 the fifth tree growing season. The Director may approve Phase
811 II bond release only if the tree survival is equal to or greater
812 than 300 commercial trees per acre (80% of which must be
813 commercial hardwood species listed in 7.4.b.1.H.1 of this rule)
814 or the rate specified in the forest management plan, whichever
815 is greater. For forestry, Phase II bond release may be granted by
816 the Director at the end of the second growing season only if the
817 tree survival is equal to or greater than 300 trees per acre, 60%
818 of which must be commercial hardwood species listed in part
819 7.4.d.1.G.1. of this rule, or the rate specified in the forest
820 management plan, whichever is greater. Furthermore, for both
821 commercial forestry and forestry, where there is potential for
822 excessive erosion on slopes greater than 20%, there shall be
823 70% ground cover where ground cover includes tree canopy,
824 shrub and herbaceous cover, organic litter, and rock cover, and
825 at least 80% of all trees and shrubs used to determine re-

826 vegetation success must have been in place for at least 60% of
827 the applicable minimum period of responsibility. Trees and
828 shrubs counted in determining such success shall be healthy and
829 shall have been in place for not less than two growing seasons
830 with no evidence of die back.

831 7.4.b.1.I.3. The Director may approve Phase III
832 bond release for commercial forestry and forestry only if all
833 criteria for Phase II bond release in 7.4.b.1.I.2 of this rule are
834 still being met at the time Phase III bond release is considered.
835 For forestry, Phase III bond release may not be authorized until
836 at least five growing seasons have passed since the trees were
837 planted. Additionally, for commercial forestry, phase III bond
838 release may not be authorized unless commercial forest
839 productivity has been achieved by the end of the twelfth
840 growing season or, if such productivity has not been achieved,
841 if a commercial forestry mitigation plan is submitted to the
842 Director, approved and completed. Commercial forest produc-
843 tivity is achieved only when annual height increments of the
844 white pine indicator species, based on the average of four or
845 more consecutive annual height increments, is equal to or
846 greater than 1.5 feet. The Director shall measure the average
847 four-year growth increment of all trees along two perpendicular
848 transects across the site that will achieve a tree sample size of
849 no less than two trees per acre.

850 7.4.b.1.I.4. A commercial forestry mitigation
851 plan shall require a permittee who has not achieved commercial
852 forestry productivity requirements by the end of the twelfth
853 growing season to either pay to the Special Reclamation Fund
854 an amount equal to twice the remaining bond amount or to
855 perform an equivalent amount of in-kind mitigation. The
856 Director shall use any money collected under this plan to
857 establish forests on bond forfeiture sites. In-kind mitigation
858 requires establishing forests on AML or bond forfeiture sites.
859 After completion of the mitigation plan, Phase III bond release

860 may be approved if the Director finds that the failure to achieve
861 productivity did not result from a failure to follow the provi-
862 sions of this rule and did not result in environmental damage.

863 7.4.b.1.I.5. The Director may release all or part
864 of the bond for the commercial forestry and forestry variance or
865 increment thereof in accordance with this subsection and 38-2-
866 12.2.d. and 12.2.e. of this rule. The Director may release the
867 variance portion if all appropriate standards have been met
868 without regard to the bonding scheme selected for the permit.

869 7.4.b.1.J. Front Faces of Valley Fills

870 7.4.b.1.J.1. Front faces of valley fills shall be
871 exempt from the requirements of this rule except that:

872 7.4.b.1.J.1.(a) They shall be graded and
873 compacted no more than is necessary to achieve stability and
874 non-erodability;

875 7.4.b.1.J.1.(b) No unweathered shales may be
876 present in the upper four feet of surface material;

877 7.4.b.1.J.1.(c) The upper four feet of surface
878 material shall be composed of soil and the materials described
879 in 7.4.b.1.D. of this rule, when available, unless the Director
880 determines other material is necessary to achieve stability;

881 7.4.b.1.J.1.(d) The groundcover mixes de-
882 scribed in subparagraph 7.4.d.1.G. shall be used unless the
883 Director requires a different mixture;

884 7.4.b.1.J.1.(e) Kentucky 31 fescue, sercia
885 lespedeza, vetches, clovers (except ladino and white clover) or
886 other invasive species may not be used; and

887 7.4.b.1.J.2. Although not required by this rule,
888 native, non-invasive trees may be planted on the faces of fills.

889 7.4.b.1.K. Long-term Monitoring and Adaptive
890 Management. The Director shall under-take, with the assistance
891 of the Division of Forestry or other forestry research units, a
892 performance assessment of all Commercial Forestland permits
893 within 10 years of Phase III bond release. Species composition,
894 biodiversity, productivity, carbon capture, wildlife habitat,
895 stream and wetland biota, and hydrologic function will be
896 assessed. Results will be reported, analyzed, interpreted and
897 used as part of an adaptive management program to improve the
898 regulations and guidelines for Commercial Forestland.

899 7.5. The Homestead land use meets the requirements for
900 a variance from the AOC requirements of the Act (W.Va. Code
901 22-3-13(c)). An appropriately planned Homestead will promote
902 sustainable settlement patterns that protect the environment and
903 support the region's economic development.

904 7.5.a. Operations receiving a variance from AOC for this
905 use shall establish homesteading on at least one-half (1/2) of the
906 permit area. The remainder of the permit area shall support an
907 alternate AOC variance use.

908 7.5.b. The following terms are applicable only to this
909 subsection of this rule.

910 7.5.b.1. Building Pad means an accessible, designated,
911 and properly drained area where the soil and/or mine-spoil has
912 been specially placed and compacted to minimize post-mining
913 surface settlement. After the building pad is completed, a
914 registered professional engineer shall certify that the building
915 pad was constructed as designed. This certification shall
916 accompany the deed of conveyance.

917 7.5.b.2. Civic Parcel means a parcel designated in the
918 Land Plan for public use.

919 7.5.b.3. Commercial Parcel means a parcel retained by
920 the Landowner of record and incorporated within the Home-
921 stead Area on which the landowner or its designee may develop
922 commercial uses. The size and location of commercial parcels
923 shall comply with the requirements of this regulation.

924 7.5.b.4. Community Association means an association
925 of all the homesteaders. This association shall receive title to
926 the civic parcels, conservation easements and nurseries at the
927 time of final bond release.

928 7.5.b.5. Conservation Easement means an area,
929 typically a strip no less than 200 feet wide, designated in the
930 land plan for the purpose of establishing a natural habitat for the
931 development and migration of native species of fauna and flora.
932 These easements shall extend through the mined areas of the
933 land, starting and ending in natural, undisturbed land. These
934 areas shall be permanent easements maintained for conservation
935 and not commercial purposes.

936 7.5.b.6. Entity Administering The Civic Parcels means
937 the Community Association or its designee shall administer the
938 civic parcels.

939 7.5.b.7. Escrow Agent means the Attorney General of
940 the State of West Virginia shall be the Escrow Agent.

941 7.5.b.8. Homesteader means a citizen of the State that
942 fulfills the requirements of this regulation and who is selected
943 by lottery to reside on a designated homestead parcel.

944 7.5.b.9. Homestead Area means the entire area desig-
945 nated for homestead use, including roads.

946 7.5.b.10. Homestead Infrastructure means the facilities
947 necessary to sustain residential use, including roads, electricity,
948 telephone, water and sewage or septic systems.

949 7.5.b.11. Homestead Parcel means an individual
950 segment of a homestead area designated as either a rural or
951 village parcel. The permittee shall assure that each parcel has
952 been surveyed by a licensed land surveyor before Phase I bond
953 release.

954 7.5.b.12. Homestead Plan means all the required
955 documentation, engineered drawings, authorizations, agree-
956 ments and schedules which are to be submitted and approved by
957 the Director.

958 7.5.b.13. Homestead Selection Lottery means a lottery
959 sanctioned by the State, operated under rules established and
960 administered by the Director or the Director's designee as soon
961 as practicable after Phase I bond release.

962 7.5.b.14. Landowner Of Record means the surface
963 estate owner at the time the mining permit is submitted to the
964 Director. More than one Landowner of Record may be involved
965 in a Homestead Plan. The Landowner of Record shall transfer
966 the title to the surface estate of the Homestead Area to the
967 Escrow Agent prior to the beginning of mining. The cost of
968 transfer shall be paid by the Landowner of Record.

969 7.5.b.15. Land Plan means the depiction, with support-
970 ing documentation, including surveys and narratives, of the
971 homestead parcels, building pads, roads, easements, civic
972 parcels, commercial parcels, and other features of the Home-
973 stead Area.

974 7.5.b.16. Machine Passable Grade means the maxi-
975 mum grade that can be safely accommodated by commonly
976 used, self-propelled, rubber-tired farming equipment.

977 7.5.b.17. Rural Parcels means homesteading parcels
978 planned to promote rural uses such as farming, orchard grow-
979 ing, timber management, viticulture, and Morret gardening. The
980 rural parcels shall be an appropriate size for the designated use
981 and may be up to 40 acres. Rural homesteaders may receive
982 title only to that portion of the land that they have improved
983 over the five-year period.

984 7.5.b.18. Service Drop means the overhead service
985 conductors from the last pole or other aerial support to and
986 including the splices, if any, connecting to the service-entrance
987 conductors at the building or other structure.

988 7.5.b.19. Service-Entrance Conductors, Overhead
989 System means the service conductors between the terminals of
990 the service equipment and a point usually outside the building,
991 clear of building walls, where joined by tap or splice to the
992 service drop.

993 7.5.b.20. Service-Entrance Conductors, Underground
994 System means the service conductors between the terminals of
995 the service equipment and the point of connection to the service
996 lateral.

997 7.5.b.21. Service Lateral means the underground
998 service conductors between the street main, including any risers
999 at a pole or other structure or from transformers, and the first
1000 point of connection to the service-entrance conductors in a
1001 terminal box or meter or other enclosure with adequate space,
1002 inside or outside the building wall. Where there is no terminal
1003 box, meter, or other enclosure with adequate space, the point of
1004 connection shall be considered to be the point of entrance of the
1005 service conductors into the building.

1006 7.5.b.22. Soil Plan means the maps and descriptions of
1007 premining and postmining soil included in the Homestead Plan.

1008 7.5.b.23. Village Parcels means homesteading parcels
1009 that provide a higher density of residential population than rural
1010 parcels.

1011 7.5.c. Eligibility Requirements And Responsibilities For
1012 Homesteaders

1013 7.5.c.1. Homesteader shall meet the following eligibil-
1014 ity requirements:

1015 7.5.c.1.A. Be a resident of the State of West
1016 Virginia and be at least 18 years old;

1017 7.5.c.1.B. Apply for a homestead as required by this
1018 rule;

1019 7.5.c.1.C. Abide by the rules of the Homestead
1020 Selection Lottery;

1021 7.5.c.1.D. Reside on the subject parcel within 12
1022 months after the property is certified as ready for use. Provided
1023 that subject to the approval of the Escrow Agent, occupancy
1024 may be delayed up to 6 additional months for good cause
1025 shown.

1026 7.5.d. Rules For The Lottery

1027 7.5.d.1. The rules for the Lottery are as follows:

1028 7.5.d.1.A. Each household may receive no more
1029 than one homestead.

1030 7.5.d.1.B. Homestead parcels shall be distributed by
1031 anonymous lottery.

1032 7.5.d.1.C. For any given Homestead, the lottery shall
1033 first be opened only to West Virginians living within three (3)
1034 miles of the permitted area within five years of the date of the

1035 filing of the permit application. Provided, however, that if
1036 parcels remain after an initial lottery, subsequent lotteries shall
1037 be held in the following order. The first subsequent lottery shall
1038 be open to any resident of a county (or counties, if more than
1039 one) in which the mine is located. Further, lotteries, if neces-
1040 sary, shall be open to any resident of West Virginia, and shall
1041 be held at six (6) month intervals.

1042 7.5.d.1.D. The lottery shall be held as soon as
1043 practicable after Phase I bond release is approved. Adequate
1044 notice shall be provided at least six (6) months in advance of
1045 the lottery.

1046 7.5.d.1.E. The lottery shall be fair, impartial, and
1047 open to the public.

1048 7.5.d.1.F. A lottery participant who receives a parcel
1049 may decline a parcel, but may not sell the right to homestead on
1050 the parcel.

1051 7.5.d.1.G. The right to participate in the lottery is
1052 not assignable or saleable.

1053 7.5.d.1.H. Each lottery participant shall, before the
1054 lottery, apply for either a rural or a village parcel.

1055 7.5.e. Homestead Plan Development

1056 7.5.e.1. The Director may authorize Homesteading as
1057 a post-mining use only if the following conditions have been
1058 satisfied.

1059 7.5.e.1.A. The Homestead Plan and any subsequent
1060 modifications shall be prepared under the direction of and
1061 certified by a professional engineer, a soil scientist, and a
1062 design professional that is either a licensed architect, landscape
1063 architect, or AICP certified land planner.

1064 7.5.e.1.B. The Homestead Plan shall identify each
1065 member of a specialty group that contributed to the plan. The
1066 Plan shall be sufficiently detailed to ensure success in achieving
1067 the designated use of each homestead panel and to ensure sound
1068 future management of the homestead.

1069 7.5.e.1.C. Homestead plan may be used alone or in
1070 conjunction with any other alternate land use plan. The
1071 Homesteading area, minus commercial parcels, shall occupy at
1072 least 50% of the permitted area. In the event that the Homestead
1073 use is used in conjunction with another land use, the Landowner
1074 of Record shall provide for the Homestead use at least as much
1075 land on the mining bench as it retains for alternate land use.

1076 7.5.e.1.D. The Permittee shall submit plans pre-
1077 pared at a preferred scale of at least 1 inch = 200 feet, which
1078 include the following:

1079 7.5.e.1.D.1. A Land Plan showing the homestead
1080 boundaries, homestead parcels, building pads, roads, easements,
1081 civic parcels, and commercial parcels, as applicable.

1082 7.5.e.1.D.2. A Site Plan and description of the
1083 following:

1084 7.5.e.1.D.2.(a) wastewater and sewage systems,

1085 7.5.e.1.D.2.(b) potable water supply,

1086 7.5.e.1.D.2.(c) non-potable water supply (if
1087 applicable)

1088 7.5.e.1.D.2.(d) electrical service, and

1089 7.5.e.1.D.2.(e) telephone service.

1090 7.5.e.1.D.3. A grading plan showing contours at an
1091 interval appropriate for the map scale and slopes, and including

1092 surface drainage and stormwater provisions. The Director shall
1093 require maps at specific scales and contour intervals to satisfy
1094 the designated uses of the homestead parcels and the land plan.

1095 7.5.e.1.D.4. A map showing all off-bench fill areas
1096 and the outcrop of the lowest coal bed.

1097 7.5.e.1.D.5. A Soil Plan showing soil and weath-
1098 ered spoil storage areas. The plan shall describe the methods to
1099 be used to distribute, protect, and enhance the stored material
1100 upon final regrading of the disturbed surfaces. The plan shall
1101 identify the proposed depths of soil and subsoil for each
1102 specific use within the Homestead Area. These specific uses
1103 may include, but shall not be limited to, the following:

1104 7.5.e.1.D.5.(a) Haul roads

1105 7.5.e.1.D.5.(b) Conservation Easements

1106 7.5.e.1.D.5.(c) Building Pads

1107 7.5.e.1.D.5.(d) Garden Plots

1108 7.5.e.1.D.5.(e) Waste Water and Sewage
1109 Disposal Facilities

1110 7.5.e.1.D.5.(f) Storm Drainage Facilities

1111 7.5.e.1.D.5.(g) Wetland Facilities

1112 7.5.e.1.D.5.(h) Utility Easements

1113 7.5.e.1.D.5.(I) Civic/Public Facilities

1114 7.5.e.1.D.5.(j) Commercial Areas

1115 7.5.e.1.D.6. Soil maps.

1116 7.5.f. Financial Commitments

1117 7.5.f.1. A contract between the Permittee and the
1118 Director, binding the Permittee to complete the homestead use
1119 as soon practicable but no later than two years after the comple-
1120 tion of mining, shall be required.

1121 7.5.f.2. The contract between the Permittee and the
1122 Director shall, at a minimum, require the Permittee to follow
1123 the homesteading reclamation plan.

1124 7.5.f.3. To receive approval for a homestead use, the
1125 Permittee shall demonstrate that it has the financial capability
1126 to achieve the use and carry out the reclamation plan. The
1127 Permittee shall submit signed statements containing financial
1128 information and data sufficient to demonstrate that the
1129 Permittee has the financial capability to achieve the
1130 homesteading use.

1131 7.5.f.4. Before approving the Permit, the Director shall
1132 find, in writing, that the Permittee has the financial capability
1133 to achieve the use.

1134 7.5.g. Required Elements For All Homestead Plans

1135 7.5.g.1. Boundary of the homestead area:

1136 7.5.g.1.A. The Homestead Area shall be defined by
1137 a metes and bounds description prepared and certified by a
1138 Professional Engineer or Licensed Land Surveyor registered
1139 with the State of West Virginia.

1140 7.5.g.1.B. Non-mined areas may be included in the
1141 Homestead Area.

1142 7.5.g.1.C. In the event that any portion of the land
1143 transferred to the Escrow Agent is not mined, that land may
1144 revert to the Landowner of Record.

1145 7.5.g.2. General Requirements of all Parcels:

1146 7.5.g.2.A. Each individual parcel shall be delineated
1147 by metes and bounds description prepared by a Professional
1148 Engineer or Licensed Land Surveyor registered with the State
1149 of West Virginia.

1150 7.5.g.2.B. Parcels shall support their designated
1151 land uses.

1152 7.5.g.2.C. Parcels shall be configured and arranged
1153 to minimize adverse environmental impacts.

1154 7.5.g.2.D. The Permittee shall provide adequate
1155 road frontage for access to each Homestead, Public Nursery,
1156 Civic and Commercial Parcel.

1157 7.5.g.2.E. Houses and appurtenant facilities shall be
1158 no closer than 50 feet from the edge of a designated Conserva-
1159 tion Easement.

1160 7.5.g.3. Homestead parcels:

1161 7.5.g.3.A. Homestead Parcels shall be designated as
1162 either rural or village parcels. All parcels shall contain machine
1163 passable land appropriate to the designated use.

1164 7.5.g.3.B. Each rural homestead parcel shall be
1165 provided with a garden area of at least 5,000 square feet. Each
1166 village homestead parcel shall be provided with a garden area
1167 of at least 600 square feet. The garden areas shall be con-
1168 structed in compliance with the soil requirements set forth in
1169 subdivision 7.5.j. of this rule.

1170 7.5.g.3.C. Each rural and village homestead parcel
1171 shall contain a building pad of a minimum of 2,500 square feet
1172 for a dwelling. Each rural homestead parcel shall also contain
1173 a building pad of a minimum of 2,500 square feet for an
1174 outbuilding.

1175 7.5.g.4. Civic Parcels:

1176 7.5.g.4.A. The Homestead Plan shall delineate one
1177 or more appropriate sites within the total proposed Homestead
1178 area for Civic Parcels. These uses may include, but are not
1179 limited to, the following: park land, playing fields, schools, post
1180 office, and community administrative facilities. This area shall
1181 occupy at least 10% of the post-mining permit area.

1182 7.5.g.4.B. The Civic Parcels may be one contiguous
1183 parcel or appropriately sized non-contiguous parcels.

1184 7.5.g.4.C. The Civic Parcels shall be deeded at no
1185 charge to the duly recognized Community Association.

1186 7.5.g.4.D. The Civic Parcels shall be provided with
1187 an access road and utilities that are consistent with the proposed
1188 civic land use.

1189 7.5.g.5. Commercial Parcels:

1190 7.5.g.5.A. The Landowner of Record may elect to
1191 retain up to 15% of the land in the proposed Homestead Area
1192 for the purpose of commercial development; provided that the
1193 Landowner of Record may retain no more than 50% of the
1194 permitted area.

1195 7.5.g.5.B. The retained commercial area may be
1196 comprised of one or more parcels and shall be indicated on the
1197 Land Plan.

1198 7.5.g.5.C. In the area for the Commercial Parcel the
1199 mine-spoil shall be placed, compacted, and regraded in a
1200 manner consistent with the proposed commercial land use.

1201 7.5.g.6. Approval:

1202 7.5.g.6.A. Before approving a homesteading
1203 reclamation plan, the Director shall assure that Homestead Plan
1204 is reviewed and approved by either a licensed architect,
1205 landscape architect, or AICP certified land planner employed
1206 by or under contract to the Director. In addition, the Director
1207 shall assure that the plans for Rural Parcels are reviewed and
1208 approved by an agronomist employed by or under contract with
1209 the Director. The applicants shall pay for any review under this
1210 subsection.

1211 7.5.h. Construction And Conveyance Of Homestead
1212 Parcels. All construction projects not performed by the home-
1213 steaders on Homestead Areas shall be performed by the
1214 Permittee, using a West Virginia licensed contractor.

1215 7.5.h.1. STABILIZATION OF THE HOMESTEAD
1216 AREA:

1217 7.5.h.1.A. The Homestead Plan shall describe the
1218 methods that will be used during the placement of mine spoil to
1219 minimize mine spoil consolidation and its associated ground
1220 settlement, where such settlement will adversely affect the use
1221 of the homestead. Conditions relating to the placement of
1222 structures on the mine-spoil shall be clearly identified in the
1223 Plan.

1224 7.5.h.1.B. The Plan must delineate the areas on each
1225 parcel where the mine-spoil will be placed in a manner to
1226 minimize post-mining land surface settlement on Building
1227 Pads, roads and other appropriate areas.

1228 7.5.h.1.C. The placement methodology shall be
1229 specified by a qualified engineer. The Plan shall indicate the
1230 type and style of structure appropriate for each building pad.
1231 The Plan shall include the requirement that a professional
1232 engineer will monitor the construction of the building pads to
1233 certify compliance with the specifications of the plan.

1234 7.5.h.2. Construction Of The Building Pad:

1235 7.5.h.2.A. Building Pads shall be designed by a
1236 registered professional engineer.

1237 7.5.h.2.B. The registered professional engineer shall
1238 supervise the placement of the uppermost 20 feet of spoil for
1239 Building Pads to minimize consolidation.

1240 7.5.h.2.C. The engineer shall certify the integrity of
1241 the Building Pad and that the Building Pads will not settle more
1242 than 2 inch after the expected structure is in place.

1243 7.5.h.2.D. Building Pads shall be designed to
1244 accommodate the type of building expected to be placed on the
1245 pad.

1246 7.5.h.2.E. Building Pads shall not be placed on
1247 valley fills.

1248 7.5.h.3. Conveyance Of Homestead Parcels:

1249 7.5.h.3.A. Estimated short and long-term costs to
1250 Homesteaders shall be designated in the Homestead Plan and
1251 presented to Homesteaders immediately after the Lottery on a
1252 parcel specific basis.

1253 7.5.h.3.B. The rights to the surface estate shall be
1254 deeded to each Homesteader free and clear of all liens and
1255 encumbrances as soon after bond release as the Escrow Agent

1256 determines that the property is ready for use. The deeds shall
1257 not retain right of entry onto the homestead parcels to conduct
1258 future surface mining activities.

1259 7.5.h.3.C Consistent with State and federal law, the
1260 transfer of the surface to the Escrow Agent may be for surface
1261 rights only and need not include any minerals, oil or gas and
1262 shall be subject to usual and customary mining or extraction
1263 rights.

1264 7.5.h.3.D. Before receiving the Homestead Parcel,
1265 each homesteader shall:

1266 7.5.h.3.D.1 Install and reside in a dwelling whose
1267 structure complies with the Homestead Plan community
1268 association rules, and all applicable local, county and state
1269 laws;

1270 7.5.h.3.D.2 Reside on the parcel for at least
1271 forty-five weeks each year for five (5) consecutive years prior
1272 to receipt of title to the land;

1273 7.5.h.3.D.3. Use and improve the parcel by
1274 completing a dwelling that complies with this rule, installing an
1275 approved septic system and maintaining vegetative cover on all
1276 parts of the homestead parcel and plant trees from the Public
1277 Nursery in accordance with subdivision 7.5.1.4. of this rule.

1278 7.5.h.3.E. In the event extreme hardship causes a
1279 homesteader to be forced to sell his property before the
1280 five-year occupancy period has expired, the Escrow Agent shall
1281 convey title early. The Escrow Agent's determination of
1282 extreme hardship shall be reasonable by the Circuit Court of
1283 County in which the homestead parcel is located.

1284 7.5.i. Required Infrastructure

1285 7.5.i.1. Roads:

1286 7.5.i.1.A. The Land Plan shall designate an
1287 all-weather road connecting the Homestead Area to a public
1288 road or highway. The road shall meet State Department of
1289 Highways' standards, and shall be certified as safe for passen-
1290 ger car traffic by registered professional engineer.

1291 7.5.i.1.B. The Land Plan shall incorporate adequate
1292 road frontage to all parcels. Such roads shall be designated in
1293 the plan and referred to as "main roads." Main roads shall meet
1294 State Department of Highways standards, and shall be certified
1295 as built as safe for passenger car traffic by registered civil
1296 engineer. Before the Director may approve a surface mining
1297 application for this use, the County or State road authority shall
1298 conditionally agree to accept responsibility for maintaining the
1299 all-weather and main roads after mining is complete.

1300 7.5.i.1.C. The Land Plan shall provide an entrance
1301 from the main road to each parcel, complete with culvert as
1302 needed. The Homesteader shall be responsible for extending the
1303 driveway from the entrance to the building pad.

1304 7.5.i.2. Wastewater And Sewage:

1305 7.5.i.2.A. The Homestead Plan shall incorporate a
1306 wastewater and sewage disposal plan conditionally approved by
1307 the Director, the West Virginia Bureau of Public Health or the
1308 public health authority of the county. The wastewater/sewage
1309 disposal system shall be approved by the appropriate entities
1310 before Phase II bond release shall be authorized. No such
1311 approval may be granted unless the system meets local health
1312 department standards.

1313 7.5.i.2.B. A variety of wastewater and sewage
1314 disposal systems, including individual septic systems, may be
1315 proposed. Alternative/innovative systems shall be consistent

1316 with all State and federal regulations. The reclamation, topsoil-
1317 ing, grading, and revegetation plan of each parcel shall be
1318 designed to accommodate the proposed wastewater/sewage
1319 system.

1320 7.5.i.2.C. The Homestead Plan shall provide a
1321 functional wastewater and sewage system for each Civic,
1322 Commercial or Homestead Parcel. The system shall describe an
1323 approved hookup/cleanout point no more than 50 feet from such
1324 homestead and civic Building Pads.

1325 7.5.i.2.D. Each Homesteader shall be responsible for
1326 all costs incurred to connect structures on the Homestead parcel
1327 to the wastewater and sewage system. Additionally, if neces-
1328 sary, each homesteader shall be responsible for all costs
1329 incurred to install an individual septic system.

1330 7.5.i.2.E. The entity administering the Civic Parcel
1331 shall be responsible for all costs incurred to connect structures
1332 on the Civic Parcel to the wastewater and sewage system.

1333 7.5.i.2.F. The Homestead Plan shall describe the
1334 maintenance and upkeep demands of any proposed sewage
1335 disposal system, and shall designate the entity responsible for
1336 such maintenance. Phase III bond release may not be approved
1337 until the designated entity has accepted responsibility for such
1338 maintenance.

1339 7.5.i.3. Water Supply:

1340 7.5.i.3.A. The Homestead Plan shall include a potable
1341 water supply source or sources adequate for each Homestead
1342 Parcel. The supply of water shall be provided by one of the
1343 following methods in the following order of priority: a) water
1344 piped from an existing public water supply; b) from wells; or c)
1345 from reservoirs with catchment basins adequate to supply the
1346 homestead area. Before authorizing any system of potable water

1347 supply that is not piped from an existing water supply, the
1348 Director shall find, in writing, that the higher order methods of
1349 delivery of potable water are not feasible. The Director may
1350 rely on the sewers if an appropriate Public Health Authority.

1351 7.5.i.3.B. The Permittee shall establish and pay for
1352 the potable water supply system.

1353 7.5.i.3.C. The water shall be delivered at a constant
1354 rate and at water industry accepted pressure and flow.

1355 7.5.i.3.D. The Homestead Plan shall describe the
1356 future maintenance of the water supply system. If the water
1357 system is public, the plan shall designate the entity responsible
1358 for its upkeep. Homesteaders may be required to pay a fair
1359 market price for the water. Homesteaders shall not be charged
1360 for water from their own individual well, although Homestead-
1361 ers shall be responsible for maintenance of their own wells.

1362 7.5.i.3.E. Individual supply systems shall, at a
1363 minimum, meet all applicable health standards, comply with all
1364 state and federal laws, and be approved by the appropriate
1365 public health authority. Appropriate wellhead protection or
1366 watershed protection practices shall be incorporated into the
1367 Homestead Plan, and shall be protect water from potential
1368 vulnerability from future land use.

1369 7.5.i.3.F. The source or sources of potable water
1370 must be identified within the Homesteading Plan, along with a
1371 demonstration of the adequacy of quantity and quality. Upon
1372 completion of the reclamation plan, the Permittee shall install
1373 and demonstrate the quality and adequacy of the supply. If the
1374 originally proposed water supply system proves to be inade-
1375 quate or unsuitable, the Permittee shall immediately make
1376 application with the Director for approval of alternate supplies
1377 or adequate improvements to the water supply system. The
1378 resulting improvements and/or alternate supplies shall comply

1379 with the requirements in this rule and shall be subject to the
1380 approval of the appropriate public health authority. Phase I
1381 bond release may not be approved until the Director finds that
1382 the installed water supply complies with this rule and applicable
1383 State and federal law.

1384 7.5.i.3.G. The Homestead Plan shall describe a water
1385 supply plan that is adequate to meet the needs of the Homestead
1386 Area. The water supply plan shall address the anticipated future
1387 land use of the Homestead Area, and must be reviewed and
1388 approved by the Director and the appropriate public health
1389 authorities.

1390 7.5.i.3.H. The potable water supply sources shall
1391 meet the Federal Primary Drinking Water Maximum Contami-
1392 nant Level standards. (40 CFR 141, Subpart B). Verification of
1393 such quality shall be provided to the appropriate public health
1394 authority.

1395 7.5.i.3.I. The supply source means the contiguous
1396 water body or contiguous aquifer from which supplies are
1397 drawn. If multiple homestead unit supplies are withdrawn from
1398 the same source, determination of water quality of the source
1399 shall be made at points that are representative of the water that
1400 will be withdrawn from the source.

1401 7.5.i.3.J. The potable water supply shall provide for
1402 a minimum quantity of 12,500 gallons per month per homestead
1403 unit. The supply may incorporate one or a combination of
1404 sources and storage facilities demonstrated to provide an
1405 adequate supply for each homestead parcel.

1406 7.5.i.3.K. If a ground water source is to be used, the
1407 plan and the confirmation of the installed ground water supply
1408 system shall be conducted under the direction of a qualified
1409 ground water professional. The locations of drilled wells shall
1410 be consistent with appropriate public health requirements.

1411 7.5.i.3.L. The water supply shall be developed (or
1412 extended as applicable) free of charge to the homesteader to a
1413 point within 50 feet of the designated residence and civic parcel
1414 construction pads for each homestead unit.

1415 7.5.i.3.M. After initial establishment of compliant
1416 water quality and quantity, responsibility for maintenance of the
1417 water supply shall revert to the homesteader or, in the event that
1418 the supply is community- or publicly-controlled, to the appro-
1419 priate and capable public authority.

1420 7.5.i.3.N. When the potable water supply is insuffi-
1421 cient to meet the needs of the proposed use for rural homestead
1422 parcels, the Homestead Plan shall include nonpotable water
1423 supplies for uses that do not require potable water. Before
1424 approving Phase I bond release, the Director shall find that the
1425 non-potable water supply is sufficient in both quality and
1426 quantity for such uses, including agricultural uses. The plan for
1427 the system shall indicate the provisions that will be taken to
1428 assure that the potable water supply shall not be compromised.
1429 The approval of nonpotable water supplies distribution and
1430 handling system shall be consistent with State and federal law.

1431 7.5.i.3.O. Each Homesteader shall be responsible for
1432 costs incurred to connect dwellings to water facilities.

1433 7.5.i.3.P. The entity administering the civic parcel
1434 shall be responsible for costs incurred to connect structures on
1435 the civic parcel to water facilities.

1436 7.5.i.3.Q. If a reservoir is used, a registered profes-
1437 sional engineer shall certify its integrity. The engineer shall also
1438 certify that, taking account of inflow, seepage and evaporation,
1439 the reservoir will provide the amount of water and water
1440 pressure required by the Homestead use.

1441 7.5.i.4. Electrical Utilities:

1442 7.5.i.4.A. The Homestead Plan shall provide access
1443 to electrical power for all Homestead Parcels and for all Civic
1444 Parcels requiring electric power. The quantity of electricity
1445 supplied shall be sufficient to support the proposed use. Phase
1446 II bond release may not be approved until all the necessary
1447 facilities have been rendered operational and extended to a
1448 point where the service drop for the Homestead or Civic Parcel
1449 can be accomplished in no more than one span. If a service
1450 lateral is proposed, access to electrical power shall be deemed
1451 to have been satisfactorily provided when the service lateral is
1452 no more than 50 feet in length. Such electrical power facilities
1453 shall be designated in the plan and referred to as “main electri-
1454 cal power facilities”.

1455 7.5.i.4.B. All line work shall conform to the practices
1456 of the electric power utility servicing the area. The installed
1457 main utilities and associated equipment shall be conveyed to the
1458 electric power utility servicing the area.

1459 7.5.i.4.C. Each Homesteader shall be responsible for
1460 all costs incurred to install a service drop or service lateral the
1461 building pads.

1462 7.5.i.4.D. The entity administering the Civic Parcel
1463 shall be responsible for all costs incurred to install a service
1464 drop or service lateral to structures on the Civic Parcel.

1465 7.5.i.4.E. Each Homesteader shall be responsible for
1466 cost of electrical service.

1467 7.5.i.5. Communication Services:

1468 7.5.i.5.A. The Permittee shall provide access to
1469 telephone service for all Homestead Parcels and for all Civic
1470 Parcels requiring telephone service. Phase II bond release may
1471 not be approved until access to telephone service has been
1472 rendered operational and extended to a point within 50 feet of

1473 the Parcel's building pads. Such telephone or equivalent
1474 utilities shall be designated in the plan and referred to as "main
1475 telephone facilities".

1476 7.5.i.5.B. All service line work shall conform to the
1477 practices of the telephone service provider of the area. All line
1478 work and associated equipment shall be conveyed to the local
1479 telephone service provider.

1480 7.5.i.5.C. Each Homesteader shall be responsible for
1481 all costs incurred to extend and connect main telephone
1482 facilities to the building pads.

1483 7.5.i.5.D. The entity administering the Civic Parcel
1484 shall be responsible for all costs incurred to extend and connect
1485 main telephone facilities to the Civic Parcels.

1486 7.5.i.5.E. Each Homesteader shall be responsible for
1487 the cost of telephone service.

1488 7.5.i.6. Solid Waste:

1489 7.5.i.6.A. The Homestead Plan shall contain a plan
1490 for the off-site disposal of solid waste that is acceptable to the
1491 Director and the appropriate public health authority.

1492 7.5.i.7. Surface Drainage And Stormwater:

1493 7.5.i.7.A. The Homestead Plan shall contain a
1494 detailed surface drainage pattern and stormwater runoff control
1495 plan. This plan shall be certified by a registered professional
1496 engineer.

1497 7.5.i.7.B. The surface drainage pattern and storm-
1498 water plan shall be consistent with a surface drainage pattern
1499 that would be found on natural topography similar to the
1500 post-mining topography proposed in the Homestead Plan. The

1501 beds of the surface and stormwater drainways shall contain
1502 material that is as natural as practicable.

1503 7.5.i.8. Reforested Conservation Easements:

1504 7.5.i.8.A. The Homestead Plan shall identify areas
1505 within the Homestead Area reserved for reforested Conserva-
1506 tion Easements. These areas shall be reforested by the Permittee
1507 at no cost to Homesteaders.

1508 7.5.i.8.B. In the event that an isolated forest patch
1509 exists as a result of mining activities, the Conservation Ease-
1510 ment shall serve as a corridor to establish a wind break and a
1511 forested connection with the isolated forest patch and to
1512 facilitate the adequate movement of fauna out of and into the
1513 isolated forest patch.

1514 7.5.i.8.C. Conservation Easements may serve the
1515 purpose of a stormwater management systems. In such case, the
1516 technical specifications applicable to the design and construc-
1517 tion of the storm water channels and their associated structures
1518 shall be satisfied.

1519 7.5.i.8.D. Conservation Easement shall compromise
1520 at least 10% of the Homestead Area, including the Commercial
1521 Parcels.

1522 7.5.i.8.E. The Director shall assure that all areas
1523 suitable for hardwoods in the Conservation Easement are
1524 planted with native hardwoods at a rate of 500 seedings per acre
1525 in continuous mixtures across the conservation easement with
1526 at least six (6) species from the following list: white and red
1527 oaks, other native oaks, white ash, yellow-poplar, black walnut,
1528 sugar maple, black cherry, or native hickories. Plants shall be
1529 a minimum of :” in diameter at breast height at planting.

1530 7.5.i.8.F. Each of the species shall not be less than
1531 10% of the total planted composition and at least 75% of the
1532 total planted woody plant composition shall be from the above
1533 list of species. Species shall be selected based on their compati-
1534 bility and expected site-specific long-term dynamics.

1535 7.5.i.8.G. At least 10% of the required number of
1536 woody plants shall be a planted continuous mix of three or
1537 more nurse tree and shrub species that improve soil quality and
1538 habitat for wildlife. They shall consist of black alder, black
1539 locust, bristley locust, redbud, or bi-color lespedeza.

1540 7.5.i.8.H. On areas unsuitable for hardwoods, the
1541 Director may authorize the following conifers: Virginia pine,
1542 red pine, white pine, pitch pine, or pitch x loblolly hybrid pine.
1543 Areas unsuitable for hardwoods shall be limited to south-
1544 west-facing slopes of greater than 10% or areas where the soil
1545 pH is less than 5.5. These conifers shall be planted as sin-
1546 gle-species stands less than 10 acres in size at the same rate as
1547 the hardwood requirements in this rule. The Director shall
1548 assure that no Conservation Easement area contains a total of
1549 more than 15% conifers.

1550 7.5.i.8.I. The Director shall assure that the specific
1551 species and selection of trees and shrubs shall be based on the
1552 suitability of the planting site for each species site requirements
1553 based on soil type, degree of compaction, ground cover,
1554 competition, topographic position, and aspect.

1555 7.5.i.8.J. The Director shall assure that the total
1556 planting rate of trees and nurse plants is not less than 500 stems
1557 per acre.

1558 7.5.i.9. Perpetual Easements:

1559 7.5.i.9.A. The Homestead Plan shall describe areas
1560 within the Homestead reserved for perpetualeasements relating

1561 to storm water management, protection of outcrops and steep
1562 slopes, protection of water sources, public roads of all kinds,
1563 and utilities. These areas shall be included within Home-
1564 steader's deeded parcels and may have permanent development
1565 restrictions included within the Homesteader's deeds of
1566 conveyance.

1567 7.5.i.9.B. Fill faces shall be placed under perpetual
1568 easements that prohibit activities that may lead to instability or
1569 erodability. Trees may be planted on the faces of the fills.

1570 7.5.i.10. Wetlands: Each Homestead Plan may
1571 describe areas within the Homestead Area reserved for created
1572 wetlands. These created wetlands may be ponds, permanent
1573 impoundments or wetlands created during mining. They may be
1574 left in place after final bond release.

1575 7.5.j. Soils, Soil Placement And Grading

1576 7.5.j.1. General Requirements:

1577 7.5.j.1.A. Phase I bond release shall not be approved
1578 until a soil scientist certifies and the Director finds that the soil
1579 meets the criteria established in this rule and has been placed in
1580 accordance with this rule.

1581 7.5.j.1.B. The Homestead Plan shall include a
1582 topographic map of the permit area, 1:12000 or finer, showing
1583 the location of pre-mining native solids, weathered
1584 slightly-acidic brown sandstone and drainages which includes
1585 site index for common native tree species. A profile description
1586 of each soil mapping unit that includes, at minimum, soil
1587 horizons, including the O. horizon depths, soil texture, struc-
1588 ture, color, reaction and bedrock type. A certified professional
1589 soil scientist shall conduct a detailed on-site survey, create the
1590 maps, and provide the written description of the soils and
1591 sandstones.

1592 7.5.j.1.C. The Homesteading Plan shall include a
1593 description of the present soils and soil substitutes to be used as
1594 the plant medium, and a description of the proposed handling,
1595 and placement of these materials. The handling plan shall
1596 include procedures to:

1597 7.5.j.1.C.1. Protect native soil organisms and the
1598 native seed pool;

1599 7.5.j.1.C.2. Include organic debris such as litter,
1600 branches, small logs, roots and stumps in the soil;

1601 7.5.j.1.C.3. Inoculate the minesoil with native soil
1602 organisms; and

1603 7.5.j.1.C.4. Increase soil fertility.

1604 7.5.j.1.D. A surface preparation plan which includes
1605 a description of the methods for replacing and grading the soil
1606 and other soil substitutes and their preparation for
1607 homesteading.

1608 7.5.j.2. Landscape Criteria:

1609 7.5.j.2.A. The Director shall assure that the
1610 postmining landscape is rolling, and diverse. The backfill on the
1611 mine bench, shall be configured to create a postmining topogra-
1612 phy that includes the principles of landforming to reflect the
1613 premining irregularities in the land. Postmining landform shall
1614 provide a rolling topography with slopes of between 5% and
1615 15%. The elevation change between the ridgeline and the
1616 valleys shall be varied. The slope lengths shall not exceed 500
1617 feet. The minimum thickness of backfill, including minesoil,
1618 placed on the pavement of the basal seam mined in any
1619 particular area shall be 10 feet.

1620 7.5.j.2.B. At least 3 ponds, permanent impoundments
1621 or wetlands totaling at least 3.0 acres shall be created on each
1622 200 acres of permitted area. They shall be dispersed throughout
1623 the landscape and each water body shall be no smaller than 0.20
1624 acres. All ponds, permanent impoundments or wetlands shall
1625 comply with all requirements of this rule, and shall be left in
1626 place after final bond release.

1627 7.5.j.2.C. All ponds and impoundments created
1628 during mining shall be left in place after bond release and shall
1629 comply with all the requirements of this rule.

1630 7.5.j.2.D. The ponds, permanent impoundments,
1631 surface water channels and wetlands on the Permit Area shall
1632 be vegetated on the perimeter with at least six native herba-
1633 ceous species typical of the region at a density of not less than
1634 1 plant per linear foot of edge, and at least 4 native shrub
1635 species at a density of not less than 1 shrub per 6 linear feet of
1636 edge. No species of herbaceous or shrub species shall be less
1637 than 15% of the total for its life form.

1638 7.5.j.2.E. The landscape criteria in this rule do not
1639 apply to valley fills.

1640 7.5.j.3. Soil:

1641 7.5.j.3.A. Soil is defined as and shall consist of the O,
1642 A, B, C, and Cr horizons.

1643 7.5.j.3.B. The Director shall require the operator to
1644 recover and use all the soil on the mined area, as shown on the
1645 soil maps, except for those areas with a slope of at least 50%,
1646 and other areas from which the applicant affirmatively demon-
1647 strates and the Director finds that soil cannot reasonably be
1648 recovered. The Director shall assure that all saved soil includes
1649 all of the material from the O and A horizons.

1650 7.5.j.3.C. When the Director determines that avail-
1651 able soil volume on the permit area is not sufficient to meet the
1652 depth requirements, selected overburden materials may be used
1653 as soil substitutes. Soil substitutes shall consist of weathered,
1654 slightly acid, brown sandstone from within 10 feet of the soil
1655 surface if the Director determines that such material is avail-
1656 able. Material from this layer maybe removed with the soil and
1657 mixed with the soil in order to meet the depth requirement.

1658 7.5.j.3.D. If the applicant affirmatively demonstrates
1659 and the Director finds that weathered, slightly acid, brown
1660 sandstone from within 10 feet of the soil surface cannot
1661 reasonably be recovered, weathered, slightly acid, brown
1662 sandstone taken from below 10 feet of the soil surface from
1663 anywhere in the permit area may be substituted. Materials may
1664 be suitable for this purpose only if their bulk pH in water is
1665 between 5.0 and 7.0. Materials with net potential acidity greater
1666 than 5 tons of calcium carbonate equivalence per 1000 tons may
1667 not be used.

1668 7.5.j.3.E. Before approving the use of soil substi-
1669 tutes, the Director shall require the permittee to demonstrate
1670 that the selected overburden material is suitable for restoring
1671 land capability and productivity. This will be demonstrated by
1672 the results of chemical and physical analyses, including pH,
1673 total soluble salts, phosphorus, potassium, calcium, texture
1674 class, acid-base accounting, and other such analyses as neces-
1675 sary.

1676 7.5.j.3.F. The final surface material used on all parts
1677 of the permit area except roads, building pads, and valley fill
1678 faces shall consist of a minimum of 4 feet of soil, or a mixture
1679 of soil and suitable soil substitutes.

1680 Homesteading soil depth shall contain at least 33% soil. If the
1681 applicant affirmatively demonstrate and the Director finds, that

1682 sufficient weathered slightly acid brown sandstone cannot
1683 reasonably be recovered from the mined area to satisfy the mine
1684 soil depth requirement, then up to one quarter of the total
1685 volume of the minesoil may consist of highly-fractured
1686 sandstone, as long as it has been demonstrated that the physical
1687 and chemical quality of this material is suitable.

1688 7.5.j.3.G. If the applicant does not demonstrate that
1689 there is sufficient material available on the permit area to
1690 satisfy the requirements of this rule, then the Director may not
1691 authorize a Homesteading variance.

1692 7.5.j.3.H. The Director may require the operator to
1693 include as part of the minesoil mix organic debris such as forest
1694 litter, branches, small logs, roots and stumps in the soil to help
1695 reseed the native vegetation, inoculate the minesoil with native
1696 soil organisms and increase soil fertility.

1697 7.5.j.3.I. The Director shall require that soil be
1698 removed and reapplied in a manner that minimizes stockpiling
1699 such that seed pools and soil organisms remain biological
1700 viable. No more than 10% of the available soil, described in the
1701 Director's findings, may be placed in a long-term stockpile, soil
1702 redistribution shall be done within one month of soil removal.
1703 Except for soil in a long-term stockpile, soil shall be stored for
1704 less than one month in piles less than six feet high and 24 feet
1705 wide in a stable area within the permit area where it will not be
1706 disturbed and will be protected from water or wind erosion or
1707 contaminants that lessen its capability to support vegetation.
1708 Long-term stockpiles shall be seeded with ground cover mixes
1709 used for reforestation.

1710 7.5.j.4. Soil Placement And Grading:

1711 7.5.j.4.A. Except for valley fill faces, building pads,
1712 roads, and other areas that must be compacted, the Director
1713 shall require the Permittee to place minesoil loosely and in a

1714 non-compacted manner while meeting static safety factor
1715 requirements. Grading the final surface shall be minimized to
1716 reduce compaction. Once the material is placed, light grading
1717 equipment shall be used to grade the tops of the piles, roughly
1718 leveling the area with no more than one or two passes. Tracking
1719 in and rubber-tired equipment shall not be used. Non-permanent
1720 roads, equipment yards and other trafficked areas shall be
1721 deep-ripped (24" to 36") to mitigate compaction.

1722 7.5.j.4.B. Soil physical quality shall be inadequate if
1723 it inhibits water infiltration or prevents root penetration or if
1724 their physical properties or water-supplying capacities cause
1725 them to restrict root growth of trees. Slopes greater than 50%
1726 shall be compacted no more is necessary to achieve stability
1727 and non-erodability.

1728 7.5.j.4.C. The Director shall require the permittee to
1729 leave soil surfaces rough with random depressions across the
1730 entire surface to catch seed and sediment, conserve soil water.
1731 Organic debris such as forest litter, logs, and stumps may be left
1732 on and in the soil.

1733 7.5.j.5. Limiting And Fertilizing: The Permittee shall
1734 submit a liming and fertilizing plan. The Director shall assure
1735 that the liming and fertilizing plan is appropriate for establish-
1736 ing the ground cover vegetation.

1737 7.5.j.6. Ground Cover Vegetation:

1738 7.5.j.6.A. The Director shall require the permittee to
1739 establish a temporary vegetative cover as contemporaneously
1740 as practicable with backfilling and grading. This cover shall
1741 consist of a combination of native and domesticated
1742 non-invasive cool and warm season grasses and other herba-
1743 ceous vine or shrub species including legume species and
1744 ericaceous shrubs. All species shall be slow growing. The
1745 ground cover vegetation shall be capable of stabilizing the soil

1746 from excessive erosion. Seeding rates and composition must be
1747 in the Homestead Plan. The following ground cover mix and
1748 seeding rates (pounds/acre) shall be used: winter wheat (15
1749 lbs/acre, fall seeding), foxtail millet (5 lbs./acre, summer
1750 seeding), redtop (2 lbs/acre), perennial ryegrass (2 lbs/acre),
1751 orchardgrass (5 lbs/acre), weeping lovegrass (2 lbs/acre) kobe
1752 lespedeza (5 lbs/acre), birdsfoot trefoil (10 lbs./acre), and white
1753 clover (3 lbs/acre). Kentucky-31 fescue, sercia lespedeza, all
1754 vetches, clovers (except ladino and white clover) and other
1755 aggressive or invasive species shall not be used. On south- and
1756 west-facing slopes with a soil pH of 6.0 or greater, the four
1757 grasses in the mixture shall be replaced with 20 lbs/acre of
1758 warm-season grasses consisting of the following species:
1759 Niagara big bluestem 95 lbs/acre), Camper little bluestem (2
1760 lbs/acre), Indian grass (2 lbs/acre), and Shelter switch grass (1
1761 lb/acre), or other varieties of these species approved by the
1762 Director. Also, a selection of at least 3 ericaceous shrub species
1763 shall be included in the ground cover mix.

1764 7.5.j.6.B. The Permittee may regrade and reseed only
1765 those rills and gullies that are unstable.

1766 7.5.j.7. Front Faces Of Valley Fills:

1767 7.5.j.7.A. Front faces of valley fills shall be exempt
1768 from the requirements of this rule except that:

1769 7.5.j.7.A.1. They shall be graded and compacted no
1770 more than is necessary to achieve stability and non-erodability.;

1771 7.5.j.7.A.2. No shales may be present in the upper
1772 four feet of surface material;

1773 7.5.j.7.A.3. The upper four feet of surface material
1774 shall be composed of soil and weathered brown sandstone when
1775 available, unless the Director determines other material is
1776 necessary to achieve stability;

1777 7.5.j.7.A.4. The groundcover mixes described in
1778 subparagraph shall be used unless the Director requires a
1779 different mixture.

1780 7.5.j.7.A.5. Kentucky 31 fescue, sercia lepedeza,
1781 vetches, clovers (except ladino and white clover) or other
1782 invasive species may not be used; and

1783 7.5.j.7.B. Although not required by this rule, native,
1784 non-invasive trees may be planted on the faces of fills.

1785 7.5.k. Requirements For Reclamation Maps. An
1786 appropriately scaled, “as-built” topographic map of the Home-
1787 stead Area shall be prepared and submitted as part of the permit
1788 application. An identically scaled *overlay* map showing the
1789 elevation contours at the base of all mined areas as well as the
1790 original ground contour of all excess mine spoil storage areas
1791 shall accompany the as-built map. The overlay map shall
1792 identify all backfilled mine sites and excess mine-spoil storage
1793 areas. The overlay map shall depict the boundaries of all
1794 parcels, areas of mine spoil specifically compacted for the
1795 placement of structures, easements, and areas that the Director
1796 may designate for special or limited uses. All post-reclamation
1797 maps shall be prepared under the direction of and certified by
1798 a registered professional engineer and shall be recorded with
1799 the county within one year following the final reclamation of
1800 the proposed Homestead Area.

1801 7.5.l. Homestead Village

1802 7.5.l.1. Homestead Village: The Homestead Village
1803 provides for a residential development at a higher density than
1804 in rural Homestead parcels. The Village is intended to:

1805 7.5.l.1.A. Encourage mixed residential and commer-
1806 cial land uses, and

1807 7.5.1.1.B. At least 20% of the Homestead Area shall
1808 be composed of Village parcels.

1809 7.5.1.2. Village Parcel Requirements:

1810 7.5.1.2.A. Each Village homestead parcel shall be no
1811 larger than one acre in size.

1812 7.5.1.2.B. Each parcel shall have a minimum road
1813 frontage of 40 feet. No pipe stem parcel arrangements are
1814 permitted.

1815 7.5.1.2.C. Each parcel shall be graded evenly to 5%
1816 maximum.

1817 7.5.1.3. Common Lands: In addition to the Civic
1818 Parcels and Conservation Easements, each Homestead Area
1819 shall include a reserve of 10% of the land as a common area.
1820 The Common Land shall be conveyed to the Community
1821 Association. The planning and maintenance of the Common
1822 Land shall be the responsibility of the Community Association.

1823 7.5.1.4. Public Nursery: Each Village Homestead
1824 shall designate an area for a Public Nursery constructed and
1825 planted by the Permittee at no cost to the Homesteaders. The
1826 nursery may be located adjacent to the Common Land but shall
1827 not constitute the required Common Land area. The Nursery
1828 shall provide woody plants of high quality and appearance for
1829 the use of the Homesteaders as specified below.

1830 7.5.1.4.A. The nursery shall be 1 acre per 30 acres of
1831 Homestead Area. The Public Nursery shall be a civil parcel.
1832 The Permittee shall plant the nursery with the same species and
1833 to the same standards as required in the Conservation Easement.
1834 Once bond is released, the Community Association shall be
1835 responsible for maintaining the nursery. Success standards shall
1836 be the same as for the conservation easements.

1837 7.5.1.4.B. The nursery plants shall consist of at least
1838 six species from the following list: white oak, red oak, other
1839 native oaks, white ash, yellow poplar, black walnut, sugar
1840 maple, black cherry, or native hickories.

1841 7.5.1.4.C. Adequate water supply shall be provided
1842 for the nursery. This may be achieved through any of the water
1843 supply means specified or through the stormwater drainage
1844 system.

1845 7.5.1.4.D. The nursery shall be maintained in manner
1846 consistent with the healthy development of the plants. The
1847 nursery plants shall meet the following criteria upon convey-
1848 ance: 1) in regular form for the species, 2) 80% live branches,
1849 and 3) color consistent with the species. Materials not meeting
1850 the specifications shall be replaced with like species by the
1851 permittee. After final bond release, the nursery shall be con-
1852 veyed to the Community Association.

1853 7.5.1.4.E. Each Homesteader shall be allowed to take
1854 trees from the nursery as determined by the Community
1855 Association. The remainder of the trees shall be for the com-
1856 mon landscapes.

1857 7.5.m. Community Association:

1858 7.5.m.1. At the completion of the lottery, a Community
1859 Association shall be established among the designated Home-
1860 steaders for each Homestead Area. The Association shall
1861 maintain and administer the public areas, Conservation Ease-
1862 ments and Civic Parcels of the Homestead and may levy
1863 membership fees.

1864 7.5.m.2. By-laws for the Community Association shall
1865 be developed by the Escrow Agent, working with the Home-
1866 steaders and a qualified design professional as defined by this
1867 rule. The permittee shall pay the qualified land designer for

1868 such services. The by-laws may establish rules for building
1869 standards and other Homestead Area rules, as appropriate.

1870 7.5.m.3. Membership in the association is mandatory
1871 for all Homesteaders and their successors.

1872 7.5.m.4. The association shall obtain liability insur-
1873 ance for its property and shall be responsible for maintenance
1874 of insurance and taxes on undivided open space. The associa-
1875 tion may place liens on the homes or houselots of its members
1876 who fail to pay their association dues in a timely manner. Such
1877 liens may require the imposition of penalty interest charges.

1878 7.5.m.5. The association shall administer common
1879 facilities and pay for maintaining and developing such facilities.

1880 7.5.n. Interim Homestead Management

1881 7.5.n.1. The Director or the Director's designee shall
1882 administer the Homestead Selection Lotteries.

1883 7.5.n.2. The Escrow Agent shall monitor the 5-year
1884 occupancy requirement for each Homestead Parcel and transfer
1885 of the titles of the surface estates to the qualified Homesteaders.

1886 7.5.n.3. The Escrow Agent shall manage and administer
1887 the homestead between final bond release and the time when all
1888 of the titles to the Homestead Parcels have been transferred and
1889 duly recorded with the Clerk of the County.

1890 7.5.n.4. Funding these services shall be guaranteed by
1891 an insured Bank account established by the Permittee.

1892 7.5.n.5. Before approving any Homestead variance, the
1893 Director shall find, in writing, that the funds in the account are
1894 sufficient to pay for these services.

1895 7.5.n.6. After final bond release, this account shall be
1896 administered by the Escrow Agent.

1897 7.5.n.7. The Escrow Agent shall receive the surface
1898 rights to the entire Homestead Area and all-weather and main
1899 roads before mining begins.

1900 7.5.n.8. The Escrow Agent shall be charged with
1901 responsibility for transferring the surface rights in escrow to the
1902 Homesteaders, the Community Association, or the State or
1903 county road authority.

1904 7.5.n.9. Such transfers shall promptly occur upon
1905 certification by the Escrow Agent that the Homesteader has met
1906 the requirements of this rule.

1907 7.5.n.10. Before the homesteader receives title,
1908 property may revert to the Escrow Agent, when after notice and
1909 hearing, the Escrow Agent determines that the homesteader has
1910 not abided by this rule. The Escrow Agent's determination shall
1911 be reviewable by the Circuit Court of the County in which the
1912 homestead parcel is located.

1913 7.5.n.11. If developed property reverts to Escrow, the
1914 Escrow Agent shall promptly sell the property and remit
1915 proceeds, less costs, to the homesteader, up to the value of the
1916 homesteader's investment.

1917 7.5.n.12. Because deeds to Homestead Parcels will not
1918 be transferred to Homesteaders before a Homesteader has lived
1919 on a parcel for five years, lending institutions may be reluctant
1920 to make loans to Homesteaders before the five-year period has
1921 expired. Accordingly, to assure that lending institutions are
1922 willing to make loans to Homesteaders during this period, the
1923 Escrow Agent shall establish a system to provide mortgage
1924 insurance to homesteaders so that lenders will be able to finance
1925 private development of homestead parcels. The Escrow Agent

1926 shall have all powers necessary to structure loans and other
1927 necessary transactions so lenders are reasonably secure.

1928 7.5.o. Bond Release:

1929 7.5.o.1. Before approving Phase I bond release, the
1930 Director shall assure that the soil is in place, the vegetative
1931 cover has been established, that the water system has been
1932 completed, that the roads have been completed and transferred
1933 to the State or county road authority, and that the main electric-
1934 ity transmission line is in place.

1935 7.5.o.2. Phase II bond release may not occur before two
1936 years have passed since Phase I bond release. Before approving
1937 Phase II bond release, the Director shall assure that the vegeta-
1938 tive cover is still in place. The Director shall further assure that
1939 the tree survival on the Conservation Easements and Public
1940 Nurseries are no less than 300 trees per acre (80% of which
1941 must be species from the approved list). Furthermore, in the
1942 Conservation Easement and Public Nursery areas, there shall be
1943 a 70% ground cover where ground cover includes tree canopy,
1944 shrub and herbaceous cover, organic litter, and rock cover.
1945 Trees and shrubs counted in considering success shall be
1946 healthy and shall have been in place at least two years, and no
1947 evidence of inappropriate dieback. Phase II bond release shall
1948 not occur until the service drops for the utilities and communi-
1949 cations have been installed to each Homestead Parcel.

1950 7.5.o.3. The Director may authorize Phase III bond
1951 release only after all parcels in the Homestead Areas are
1952 certified and ready for occupancy.

1953 7.5.o.4. Once final bond release is authorized, the
1954 Permittee's responsibility for implementing the Homestead
1955 Plan shall cease.'

1956 And,

1957 On page 129, subsection 14.12.a.1, by following the words
1958 ‘industrial, commercial, residential’ by striking the word
1959 ‘woodlands’ and inserting in lieu thereof ‘commercial
1960 forestry’.”

1961 (v) The legislative rule filed in the state register on the sixth
1962 day of August, one thousand nine hundred ninety-nine, autho-
1963 rized under the authority of section two, article four, chapter
1964 twenty-two, of this code, modified by the division of environ-
1965 mental protection to meet the objections of the legislative
1966 rule-making review committee and refiled in the state register
1967 on the twenty-fifth day of January, two thousand, relating to the
1968 division of environmental protection (mining and restoration for
1969 sandstone, limestone and sand, 38 CSR 2A), is disallowed and
1970 not authorized.

1971 (w) The legislative rule filed in the state register on the
1972 sixth day of August, one thousand nine hundred ninety-nine,
1973 authorized under the authority of section two, article four,
1974 chapter twenty-two, of this code, modified by the division of
1975 environmental protection to meet the objections of the legisla-
1976 tive rule-making review committee and refiled in the state
1977 register on the twenty-fifth day of January, two thousand,
1978 relating to the division of environmental protection (mining and
1979 reclamation of minerals other than coal, limestone, sandstone
1980 and sand, 38 CSR 2B), is disallowed and not authorized.

1981 (x) The legislative rule filed in the state register on the fifth
1982 day of August, one thousand nine hundred ninety-nine, autho-
1983 rized under the authority of section twenty, article fifteen,
1984 chapter twenty-two of this code, modified by the division of
1985 environmental protection to meet the objections of the legisla-
1986 tive rule-making review committee and refiled in the state
1987 register on the twenty-first day of January, two thousand,
1988 relating to the division of environmental protection (sewage
1989 sludge management, 33 CSR 2), is authorized.

1990 (y) The legislative rule filed in the state register on the
1991 fourth day of August, one thousand nine hundred ninety-nine,
1992 authorized under the authority of section six, article eighteen,
1993 chapter twenty-two of this code, modified by the division of
1994 environmental protection to meet the objections of the legisla-
1995 tive rule-making review committee and refiled in the state
1996 register on the twenty-first day of January, two thousand,
1997 relating to the division of environmental protection (hazardous
1998 waste management, 33 CSR 20), is authorized.

1999 (z) The legislative rule filed in the state register on the
2000 twenty-eighth day of July, one thousand nine hundred
2001 ninety-nine, authorized under the authority of section ten,
2002 article eleven, chapter twenty-two, of this code, relating to the
2003 division of environmental protection (water pollution control
2004 permit fee schedule, 47 CSR 26), is authorized.

2005 (aa) The legislative rule filed in the state register on the
2006 twenty-eighth day of July, one thousand nine hundred ninety-
2007 nine, authorized under the authority of section three, article two,
2008 chapter twenty-two-c of this code, relating to the division of
2009 environmental protection (state water pollution control revolv-
2010 ing fund program, 47 CSR 31), is authorized.

2011 (bb) The legislative rule filed in the state register on the
2012 third day of August, one thousand nine hundred ninety-nine,
2013 authorized under the authority of section five, article twelve,
2014 chapter twenty-two, of this code, relating to the division of
2015 environmental protection (groundwater protection standards at
2016 steam electric generating facilities, 47 CSR 57A), is authorized.

2017 (cc) The legislative rule filed in the state register on the first
2018 day of January, one thousand nine hundred sixty-five, autho-
2019 rized under the authority of section seven, article five, chapter
2020 twenty-two, of this code relating to the division of environmen-

2021 tal protection (to prevent and control air pollution from coal
2022 refuse disposal areas, 45 CSR 1), is repealed.

§64-3-2. Environmental quality board.

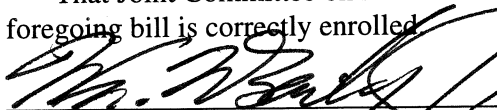
1 The emergency rule relating to the environmental quality
2 board (requirements governing water quality standards, 46 CSR
3 1) filed in the state register on the eighteenth day of October,
4 one thousand nine hundred ninety-nine, and subsequently
5 refiled in the state register on the fourteenth day of January, two
6 thousand is repealed and not authorized. The legislative rule
7 filed in the state register on the sixth day of August, one
8 thousand nine hundred ninety-nine, authorized under the
9 authority of section four, article three, chapter twenty-two-b, of
10 this code, modified by the environmental quality board to meet
11 the objections of the legislative rule-making review committee
12 and refiled in the state register on the twenty-first day of
13 January, two thousand, relating to the environmental quality
14 board.(requirements governing water quality standards, 46 CSR
15 1), is authorized, with the following amendment:

16 “On page ten, at the end of subdivision 6.2.d by adding a
17 new sentence to read as follows:

18 ‘The manganese human health criteria shall not apply
19 where the discharge point of the manganese is located more
20 than five miles upstream from a known drinking water source’.”

Enr. Com. Sub. for H. B. 4223] 72

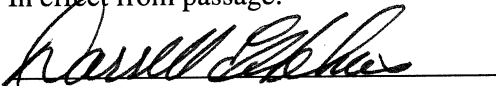
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

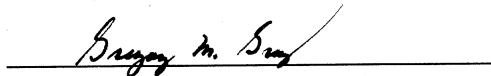

Chairman Senate Committee

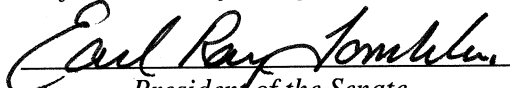

Chairman House Committee

Originating in the House.

In effect from passage.

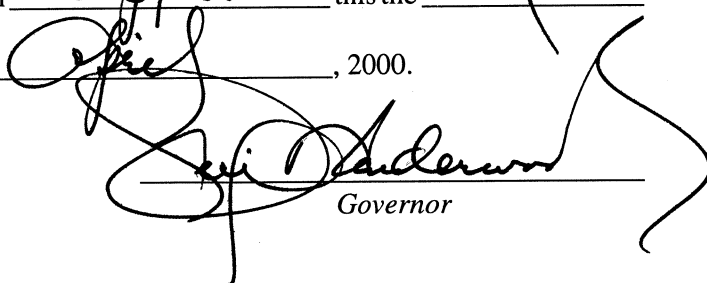

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 3rd
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/27/10

Time 3:05pm