WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 2000

ENROLLED
Committee Substitute for
SENATE BILL NO. 614

(By Senators Tomblin (Mr. President, and Sprouse, By Request of the Executive)

PASSED March 10, 2000
In Effect ninety days from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 614

(SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE, original sponsors)

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

AN ACT to amend and reenact sections three, thirteen and twenty-three, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface mining of coal; modifying provisions relating to restoring mined land to its approximate original contour; including commercial forestry as allowable post-mining land use; and establishing requirements for bonding and release of bonds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-3. Definitions.

1 As used in this article, unless used in a context that clearly requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water by physical, chemical or other approved methods in a manner so that the treated water does not violate the effluent limitations or cause a violation of the water quality standards established for the river, stream or drainway into which the water is released.

9 (b) "Affected area" means, when used in the context of surface mining activities, all land and water resources within the permit area which are disturbed or utilized during the term of the permit in the course of surface mining and reclamation activities. "Affected area" means, when used in the context of underground mining activities, all surface land and water resources affected during the term of the permit: (1) By surface operations or facilities incident to underground mining activities; or (2) by underground operations.

19 (c) "Adjacent areas" means, for the purpose of permit application, renewal, revision, review and approval, those land and water resources, contiguous to or near a permit area, upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact. "Adjacent areas" means, for the purpose of conducting surface mining and reclamation operations, those land and water resources contiguous to or near the affected area upon which surface mining and reclamation operations conducted within a permit area during the life of the operations may have an impact.
(d) "Applicant" means any person who has or should have applied for any permit pursuant to this article.

(e) "Approximate original contour" means that surface configuration achieved by the backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated: Provided, That water impoundments may be permitted pursuant to subdivision (8), subsection (b), section thirteen of this article: Provided, however, That minor deviations may be permitted in order to minimize erosion and sedimentation, retain moisture to assist revegetation, or to direct surface runoff.

(f) "Assessment officer" means an employee of the division, other than a surface mining reclamation supervisor, inspector or inspector-in-training, appointed by the director to issue proposed penalty assessments and to conduct informal conferences to review notices, orders and proposed penalty assessments.

(g) "Breakthrough" means the release of water which has been trapped or impounded, or the release of air into any underground cavity, pocket or area as a result of surface mining operations.

(h) "Coal processing wastes" means earth materials which are or have been combustible, physically unstable or acid-forming or toxic-forming, which are wasted or otherwise separated from product coal, and slurried or otherwise transported from coal processing plants after physical or chemical processing, cleaning or concentrating of coal.

(i) "Director" means the director of the division of environmental protection or other person to whom the
64 director has delegated authority or duties pursuant to
65 sections six or eight, article one of this chapter.
66 (j) "Disturbed area" means an area where vegetation,
67 topsoil or overburden has been removed or placed by
68 surface mining operations, and reclamation is incomplete.
69 (k) "Division" means the division of environmental
70 protection.
71 (l) "Imminent danger to the health or safety of the
72 public" means the existence of a condition or practice, or
73 any violation of a permit or other requirement of this
74 article, which condition, practice or violation could
75 reasonably be expected to cause substantial physical harm
76 or death to any person outside the permit area before the
77 condition, practice or violation can be abated. A reason-
78 able expectation of death or serious injury before abate-
79 ment exists if a rational person, subjected to the same
80 conditions or practices giving rise to the peril, would not
81 expose the person to the danger during the time necessary
82 for the abatement.
83 (m) "Minerals" means clay, coal, flagstone, gravel,
84 limestone, manganese, sand, sandstone, shale, iron ore and
85 any other metal or metallurgical ore.
86 (n) "Operation" means those activities conducted by an
87 operator who is subject to the jurisdiction of this article.
88 (o) "Operator" means any person who is granted or who
89 should obtain a permit to engage in any activity covered
90 by this article and any rule promulgated under this article
91 and includes any person who engages in surface mining or
92 surface mining and reclamation operations, or both. The
93 term shall also be construed in a manner consistent with
94 the federal program pursuant to the federal Surface
95 Mining Control and Reclamation Act of 1977, as amended.
(p) "Permit" means a permit to conduct surface mining operations pursuant to this article.

(q) "Permit area" means the area of land indicated on the approved proposal map submitted by the operator as part of the operator's application showing the location of perimeter markers and monuments and shall be readily identifiable by appropriate markers on the site.

(r) "Permittee" means a person holding a permit issued under this article.

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

(t) "Prime farmland" has the same meaning as that prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding and erosion characteristics and which historically have been used for intensive agricultural purposes and as published in the federal register.

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

(1) Activities conducted on the surface of lands for the removal of coal, or, subject to the requirements of section fourteen of this article, surface operations and surface impacts incident to an underground coal mine, including the drainage and discharge from the mine. The activities include: Excavation for the purpose of obtaining coal, including, but not limited to, common methods as contour, strip, auger, mountaintop removal, box cut, open pit and area mining; the uses of explosives and blasting; reclamation; in situ distillation or retorting, leaching or other
chemical or physical processing; the cleaning, concentrating or other processing or preparation and loading of coal for commercial purposes at or near the mine site; and

(2) The areas upon which the above activities occur or where the activities disturb the natural land surface. The areas also include any adjacent land, the use of which is incidental to the activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to the activities. Provided, That the activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article. Surface mining does not include any of the following:

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

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

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

(v) “Underground mine” means the surface effects associated with the shaft, slopes, drifts or inclines connected with excavations penetrating coal seams or strata and the equipment connected therewith which contribute
directly or indirectly to the mining, preparation or handling of coal.

(w) "Significant, imminent environmental harm to land, air or water resources" means the existence of any condition or practice, or any violation of a permit or other requirement of this article, which condition, practice or violation could reasonably be expected to cause significant and imminent environmental harm to land, air or water resources. The term "environmental harm" means any adverse impact on land, air or water resources, including, but not limited to, plant, wildlife and fish, and the environmental harm is imminent if a condition or practice exists which is causing the harm or may reasonably be expected to cause the harm at any time before the end of the abatement time set by the director. An environmental harm is significant if that harm is appreciable and not immediately repairable.

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

(y) "Lands eligible for remining" means those lands that would be eligible for expenditures under section four, article two of this chapter. Surface mining operations on lands eligible for remining do not affect the eligibility of the lands for reclamation and restoration under article two of this chapter. In event the bond or deposit for lands eligible for remining is forfeited, funds available under article two of this chapter may be used to provide for adequate reclamation or abatement. However, if conditions constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, then those federal provisions apply.
(z) “Replacement of water supply” means, with respect to water supplies, contaminated, diminished or interrupted provision of water supply on both a temporary and permanent basis of equivalent quality and quantity. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance cost in excess of customary and reasonable delivery cost for the replaced water supplies.

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


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

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

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

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

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

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

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

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

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

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

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

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set
by applicable state or federal law; (C) constructing an
approved drainage system pursuant to paragraph (B) of
this subdivision, prior to commencement of surface mining
operations, the system to be certified by a person approved
by the director to be constructed as designed and as
approved in the reclamation plan; (D) avoiding channel
deepening or enlargement in operations requiring the
discharge of water from mines; (E) unless otherwise
authorized by the director, cleaning out and removing
temporary or large settling ponds or other siltation
structures after disturbed areas are revegetated and
stabilized, and depositing the silt and debris at a site and
in a manner approved by the director; (F) restoring
recharge capacity of the mined area to approximate
premining conditions; and (G) any other actions prescribed
by the director;

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

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

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

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

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

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

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

(16) Ensure that all reclamation efforts proceed in an
environmentally sound manner and as contemporaneously
as practicable with the surface mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current:

Provided, That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

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

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

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

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

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

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;
258   (B) If the director has promulgated specific rules to
govern the granting of the variances in accordance with
the provisions of this subparagraph and has imposed any
additional requirements as the director considers neces-
sary;

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

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

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

287   (18) Refrain from the construction of roads or other
access ways up a stream bed or drainage channel or in
proximity to the channel so as to significantly alter the
normal flow of water;
(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

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

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

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

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

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

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

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: Provided, That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: Provided, however, That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: Provided further, That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points.
(c)(1) The director may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

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

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential, or public facility including recreational uses is proposed for the post-mining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the
post-mining land use; and (vii) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; (C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

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

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

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: Provided, That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that permit variances from the approximate original contour requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-
nine-a of this code, for the design, location, construction, maintenance, operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: Provided, That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: Provided, however, That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the division for these purposes, and the sums expended shall be recovered from any responsible operator or landowner, individually or jointly, by suit initiated by the attorney general at the request of the director. For purposes of this subsection “operates” or “operated” means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.
§22-3-23. Release of bond or deposits; application; notice; duties of director; public hearings; final maps on grade release.

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

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

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

(1) For all operations except those with an approved
variance from approximate original contour:

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

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

(C) When the operator has completed successfully all
surface mining and reclamation activities, the release of
the remaining portion of the bond, but not before the
expiration of the period specified in subdivision (20),
subsection (b), section thirteen of this article: Provided,
That the revegetation has been established on the regraded
mined lands in accordance with the approved reclamation
Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.

(2) For operations with an approved variance from approximate original contour:

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

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

(C) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section thirteen of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan and if applicable the necessary post-mining infrastructure is established and any necessary financing is completed: Provided, however, That the release may be made where the quality of the untreated post-mining water discharged is better than or equal to the premining water quality discharged from the mining site.
This subsection only states that the release of the bond or deposit may be made under certain conditions:

1. No part of the bond or deposit may be released under this subsection until the following conditions are met:
   - The lands to which the release would be applicable are contributing additional suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by section thirteen of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to section nine of this article.
   - A sediment dam is to be retained as a permanent impoundment pursuant to section thirteen of this article, or where a road or minor deviation is to be retained for sound future maintenance of the operation, the portion of the bond may be released under this subsection so long as provisions for sound future maintenance by the operator or the landowner have been made with the director.
   - Notwithstanding the bond release scheduling provisions of subdivisions (1), (2) and (3) of this subsection, if the operator completes the backfilling and reclamation in accordance with an approved post-mining land use plan that has been approved by the division of environmental protection and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located, and the quality of any untreated post-mining water discharge complies with applicable water quality criteria for bond release, the director may release the entire amount of the bond or deposit. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to govern a bond release pursuant to the terms of this paragraph.
(d) If the director disapproves the application for release of the bond or portion thereof, the director shall notify the permittee, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and notifying the operator of the right to a hearing.

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

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

(g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the director pursuant to this section, the director may hold an informal conference to resolve any written objections and satisfy the hearing requirements of this section thereby.
(h) For the purpose of the hearing, the director has the authority and is hereby empowered to administer oaths, subpoena witnesses and written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence, including, but not limited to, inspections of the land affected and other surface-mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing required by this section shall be made and a transcript made available on the motion of any party or by order of the director at the cost of the person requesting the transcript.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the Senate.
In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor