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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

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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
2 clearly requires a different meaning, the term:

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

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

19 (c) "Adjacent areas" means, for the purpose of permit
20 application, renewal, revision, review and approval, those
21 land and water resources, contiguous to or near a permit
22 area, upon which surface mining and reclamation opera-
23 tions conducted within a permit area during the life of the
24 operations may have an impact. "Adjacent areas" means,
25 for the purpose of conducting surface mining and reclama-
26 tion operations, those land and water resources contiguous
27 to or near the affected area upon which surface mining
28 and reclamation operations conducted within a permit
29 area during the life of the operations may have an impact.

30 (d) "Applicant" means any person who has or should
31 have applied for any permit pursuant to this article.

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

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

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

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

62 (i) "Director" means the director of the division of
63 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.

96 (p) "Permit" means a permit to conduct surface mining
97 operations pursuant to this article.

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

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

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

109 (t) "Prime farmland" has the same meaning as that
110 prescribed by the United States secretary of agriculture on
111 the basis of such factors as moisture availability, tempera-
112 ture regime, chemical balance, permeability, surface layer
113 composition, susceptibility to flooding and erosion charac-
114 teristics and which historically have been used for inten-
115 sive agricultural purposes and as published in the federal
116 register.

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

119 (1) Activities conducted on the surface of lands for the
120 removal of coal, or, subject to the requirements of section
121 fourteen of this article, surface operations and surface
122 impacts incident to an underground coal mine, including
123 the drainage and discharge from the mine. The activities
124 include: Excavation for the purpose of obtaining coal,
125 including, but not limited to, common methods as contour,
126 strip, auger, mountaintop removal, box cut, open pit and
127 area mining; the uses of explosives and blasting; reclama-
128 tion; in situ distillation or retorting, leaching or other

129 chemical or physical processing; the cleaning, concentrat-
130 ing or other processing or preparation and loading of coal
131 for commercial purposes at or near the mine site; and

132 (2) The areas upon which the above activities occur or
133 where the activities disturb the natural land surface. The
134 areas also include any adjacent land, the use of which is
135 incidental to the activities; all lands affected by the
136 construction of new roads or the improvement or use of
137 existing roads to gain access to the site of the activities
138 and for haulage; and excavations, workings, impound-
139 ments, dams, ventilation shafts, entryways, refuse banks,
140 dumps, stockpiles, overburden piles, spoil banks, culm
141 banks, tailings, holes or depressions, repair areas, storage
142 areas, processing areas, shipping areas and other areas
143 upon which are sited structures, facilities, or other prop-
144 erty or materials on the surface, resulting from or incident
145 to the activities: *Provided*, That the activities do not
146 include the extraction of coal incidental to the extraction
147 of other minerals where coal does not exceed sixteen and
148 two-thirds percent of the tonnage of minerals removed for
149 purposes of commercial use or sale, or coal prospecting
150 subject to section seven of this article. Surface mining
151 does not include any of the following:

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

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

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

159 (v) "Underground mine" means the surface effects
160 associated with the shaft, slopes, drifts or inclines con-
161 nected with excavations penetrating coal seams or strata
162 and the equipment connected therewith which contribute

163 directly or indirectly to the mining, preparation or han-
164 dling of coal.

165 (w) “Significant, imminent environmental harm to land,
166 air or water resources” means the existence of any condi-
167 tion or practice, or any violation of a permit or other
168 requirement of this article, which condition, practice or
169 violation could reasonably be expected to cause significant
170 and imminent environmental harm to land, air or water
171 resources. The term “environmental harm” means any
172 adverse impact on land, air or water resources, including,
173 but not limited to, plant, wildlife and fish, and the envi-
174 ronmental harm is imminent if a condition or practice
175 exists which is causing the harm or may reasonably be
176 expected to cause the harm at any time before the end of
177 the abatement time set by the director. An environmental
178 harm is significant if that harm is appreciable and not
179 immediately repairable.

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

184 (y) “Lands eligible for remining” means those lands that
185 would be eligible for expenditures under section four,
186 article two of this chapter. Surface mining operations on
187 lands eligible for remining do not affect the eligibility of
188 the lands for reclamation and restoration under article two
189 of this chapter. In event the bond or deposit for lands
190 eligible for remining is forfeited, funds available under
191 article two of this chapter may be used to provide for
192 adequate reclamation or abatement. However, if condi-
193 tions constitute an emergency as provided in section 410 of
194 the federal Surface Mining Control and Reclamation Act
195 of 1977, as amended, then those federal provisions apply.

196 (z) "Replacement of water supply" means, with respect
197 to water supplies, contaminated, diminished or interrupted
198 provision of water supply on both a temporary and
199 permanent basis of equivalent quality and quantity.
200 Replacement includes provision of an equivalent water
201 delivery system and payment of operation and mainte-
202 nance cost in excess of customary and reasonable delivery
203 cost for the replaced water supplies.

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

**§22-3-13. General environmental protection performance stan-
dards for surface mining; variances.**

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

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

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

13 (2) Restore the land affected to a condition capable of
14 supporting the uses which it was capable of supporting
15 prior to any mining, or higher or better uses of which there
16 is reasonable likelihood so long as the use or uses do not
17 present any actual or probable hazard to public health or
18 safety or pose any actual or probable threat of water

19 diminution or pollution and the permit applicants' de-
20 clared proposed land use following reclamation is not
21 considered to be impractical or unreasonable, inconsistent
22 with applicable land use policies and plans, involves
23 unreasonable delay in implementation or is violative of
24 federal, state or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact where
27 advisable to ensure stability or to prevent leaching of toxic
28 materials, and grade in order to restore the approximate
29 original contour: *Provided*, That in surface mining which
30 is carried out at the same location over a substantial
31 period of time where the operation transects the coal
32 deposit, and the thickness of the coal deposits relative to
33 the volume of the overburden is large and where the
34 operator demonstrates that the overburden and other spoil
35 and waste materials at a particular point in the permit
36 area or otherwise available from the entire permit area is
37 insufficient, giving due consideration to volumetric
38 expansion, to restore the approximate original contour, the
39 operator, at a minimum, shall backfill, grade and compact,
40 where advisable, using all available overburden and other
41 spoil and waste materials to attain the lowest practicable
42 grade, but not more than the angle of repose, to provide
43 adequate drainage and to cover all acid-forming and other
44 toxic materials, in order to achieve an ecologically sound
45 land use compatible with the surrounding region: *Pro-*
46 *vided, however*, That in surface mining where the volume
47 of overburden is large relative to the thickness of the coal
48 deposit and where the operator demonstrates that due to
49 volumetric expansion the amount of overburden and other
50 spoil and waste materials removed in the course of the
51 mining operation is more than sufficient to restore the
52 approximate original contour, the operator shall, after
53 restoring the approximate contour, backfill, grade and

54 compact, where advisable, the excess overburden and
55 other spoil and waste materials to attain the lowest grade,
56 but not more than the angle of repose, and to cover all
57 acid-forming and other toxic materials, in order to achieve
58 an ecologically sound land use compatible with the
59 surrounding region and, the overburden or spoil shall be
60 shaped and graded in 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

89 for sustaining vegetation, or if other strata can be shown
90 to be more suitable for vegetation requirements, then the
91 operator shall remove, segregate and preserve in a like
92 manner any other strata which is best able to support
93 vegetation;

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

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

123 manner the surface soil horizon described in paragraph (A)
124 of this subdivision;

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

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

140 (10) Minimize the disturbances to the prevailing
141 hydrologic balance at the mine site and in associated off-
142 site areas and to the quality and quantity of water in
143 surface and groundwater systems both during and after
144 surface mining operations and during reclamation by: (A)
145 Avoiding acid or other toxic mine drainage by such
146 measures as, but not limited to: (i) Preventing or removing
147 water from contact with toxic producing deposits; (ii)
148 treating drainage to reduce toxic content which adversely
149 affects downstream water upon being released to water
150 courses; and (iii) casing, sealing or otherwise managing
151 boreholes, shafts and wells and keep acid or other toxic
152 drainage from entering ground and surface waters; (B)
153 conducting surface mining operations so as to prevent to
154 the extent possible, using the best technology currently
155 available, additional contributions of suspended solids to
156 streamflow or runoff outside the permit area, but in no
157 event may contributions be in excess of requirements set

158 by applicable state or federal law; (C) constructing an
159 approved drainage system pursuant to paragraph (B) of
160 this subdivision, prior to commencement of surface mining
161 operations, the system to be certified by a person approved
162 by the director to be constructed as designed and as
163 approved in the reclamation plan; (D) avoiding channel
164 deepening or enlargement in operations requiring the
165 discharge of water from mines; (E) unless otherwise
166 authorized by the director, cleaning out and removing
167 temporary or large settling ponds or other siltation
168 structures after disturbed areas are revegetated and
169 stabilized, and depositing the silt and debris at a site and
170 in a manner approved by the director; (F) restoring
171 recharge capacity of the mined area to approximate
172 premining conditions; and (G) any other actions prescribed
173 by the director;

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

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

190 (13) Refrain from surface mining within five hundred
191 feet of any active and abandoned underground mines in
192 order to prevent breakthroughs and to protect health or

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

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

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

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

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

225 (16) Ensure that all reclamation efforts proceed in an
226 environmentally sound manner and as contemporaneously

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

323 (21) Protect off-site areas from slides or damage occur-
324 ring during surface mining operations and not deposit
325 spoil material or locate any part of the operations or waste

326 accumulations outside the permit area: *Provided*, That
327 spoil material may be placed outside the permit area, if
328 approved by the director after a finding that environmen-
329 tal benefits will result from the placing of spoil material
330 outside the permit area;

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

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

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

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

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

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

397 (2) Where an applicant meets the requirements of
398 subdivisions (3) and (4) of this subsection, a permit with-
399 out regard to the requirement to restore to approximate
400 original contour set forth in subsection (b) or (d) of this
401 section may be granted for the surface mining of coal
402 where the mining operation will remove an entire coal
403 seam or seams running through the upper fraction of a
404 mountain, ridge or hill, except as provided in subpara-
405 graph (A), subdivision (4) of this subsection, by removing
406 all of the overburden and creating a level plateau or a
407 gently rolling contour with no highwalls remaining, and
408 capable of supporting post-mining uses in accordance with
409 the requirements of this subsection.

410 (3) In cases where an industrial, commercial, agricul-
411 tural, commercial forestry, residential, or public facility
412 including recreational uses is proposed for the post-mining
413 use of the affected land, the director may grant a permit
414 for a surface mining operation of the nature described in
415 subdivision (2) of this subsection where: (A) The proposed
416 post-mining land use is determined to constitute an equal
417 or better use of the affected land, as compared with
418 premining use; (B) the applicant presents specific plans for
419 the proposed post-mining land use and appropriate
420 assurances that the use will be: (i) Compatible with
421 adjacent land uses; (ii) practicable with respect to achiev-
422 ing the proposed use; (iii) obtainable according to data
423 regarding expected need and market; (iv) supported by
424 commitments from public agencies where appropriate; (v)
425 practicable with respect to private financial capability for
426 completion of the proposed use; (vi) planned pursuant to
427 a schedule attached to the reclamation plan so as to
428 integrate the mining operation and reclamation with the

429 post-mining land use; and (vii) designed by a person
430 approved by the director in conformance with standards
431 established to assure the stability, drainage and configura-
432 tion necessary for the intended use of the site; (C) the
433 proposed use would be compatible with adjacent land
434 uses, and existing state and local land use plans and
435 programs; (D) the director provides the county commission
436 of the county in which the land is located and any state or
437 federal agency which the director, in his or her discretion,
438 determines to have an interest in the proposed use, an
439 opportunity of not more than sixty days to review and
440 comment on the proposed use; and (E) all other require-
441 ments of this article will be met.

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

465 in accordance with the provisions of subdivision (22),
466 subsection (b) of this section; and (F) ensure stability of the
467 spoil retained on the mountaintop and meet the other
468 requirements of this article.

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

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

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

497 (f) The director shall propose rules for legislative ap-
498 proval in accordance with article three, chapter twenty-

499 nine-a of this code, for the design, location, construction,
500 maintenance, operation, enlargement, modification,
501 removal and abandonment of new and existing coal mine
502 waste piles. In addition to engineering and other technical
503 specifications, the standards and criteria developed
504 pursuant to this subsection shall include provisions for
505 review and approval of plans and specifications prior to
506 construction, enlargement, modification, removal or
507 abandonment; performance of periodic inspections during
508 construction; issuance of certificates of approval upon
509 completion of construction; performance of periodic safety
510 inspections; and issuance of notices and orders for re-
511 quired remedial or maintenance work or affirmative
512 action: *Provided*, That whenever the director finds that
513 any coal processing waste pile constitutes an imminent
514 danger to human life, he or she may, in addition to all
515 other remedies and without the necessity of obtaining the
516 permission of any person prior or present who operated or
517 operates a pile or the landowners involved, enter upon the
518 premises where any coal processing waste pile exists and
519 may take or order to be taken any remedial action that
520 may be necessary or expedient to secure the coal process-
521 ing waste pile and to abate the conditions which cause the
522 danger to human life: *Provided, however*, That the cost
523 reasonably incurred in any remedial action taken by the
524 director under this subsection may be paid for initially by
525 funds appropriated to the division for these purposes, and
526 the sums expended shall be recovered from any responsible
527 operator or landowner, individually or jointly, by suit
528 initiated by the attorney general at the request of the
529 director. For purposes of this subsection "operates" or
530 "operated" means to enter upon a coal processing waste
531 pile, or part of a coal processing waste pile, for the purpose
532 of disposing, depositing, dumping coal processing wastes
533 on the pile or removing coal processing waste from the
534 pile, or to employ a coal processing waste pile for retard-
535 ing 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.

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

23 (b) Upon receipt of the application for bond release, the
24 director, within thirty days, taking into consideration
25 existing weather conditions, shall conduct an inspection
26 and evaluation of the reclamation work involved. The
27 evaluation shall consider, among other things, the degree
28 of difficulty to complete any remaining reclamation,
29 whether pollution of surface and subsurface water is
30 occurring, the probability of continuance or future occur-
31 rence of the pollution and the estimated cost of abating the
32 pollution. The director shall notify the permittee in

33 writing of his or her decision to release or not to release all
34 or part of the bond or deposit within sixty days from the
35 date of the initial publication of the advertisement if no
36 public hearing is requested. If a public hearing is held, the
37 director's decision shall be issued within thirty days
38 thereafter.

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

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

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

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

60 (C) When the operator has completed successfully all
61 surface mining and reclamation activities, the release of
62 the remaining portion of the bond, but not before the
63 expiration of the period specified in subdivision (20),
64 subsection (b), section thirteen of this article: *Provided*,
65 That the revegetation has been established on the regraded
66 mined lands in accordance with the approved reclamation

67 plan: *Provided, however,* That the release may be made
68 where the quality of the untreated post-mining water
69 discharged is better than or equal to the premining water
70 quality discharged from the mining site.

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

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

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

87 (C) When the operator has completed successfully all
88 surface mining and reclamation activities, the release of
89 the remaining portion of the bond, but not before the
90 expiration of the period specified in subdivision (20),
91 subsection (b), section thirteen of this article: *Provided,*
92 That the revegetation has been established on the regraded
93 mined lands in accordance with the approved reclamation
94 plan and if applicable the necessary post-mining infra-
95 structure is established and any necessary financing is
96 completed: *Provided, however,* That the release may be
97 made where the quality of the untreated post-mining
98 water discharged is better than or equal to the premining
99 water quality discharged from the mining site.

100 No part of the bond or deposit may be released under
101 this subsection so long as the lands to which the release
102 would be applicable are contributing additional suspended
103 solids to streamflow or runoff outside the permit area in
104 excess of the requirements set by section thirteen of this
105 article, or until soil productivity for prime farmlands has
106 returned to equivalent levels of yield as nonmined land of
107 the same soil type in the surrounding area under equiva-
108 lent management practices as determined from the soil
109 survey performed pursuant to section nine of this article.
110 Where a sediment dam is to be retained as a permanent
111 impoundment pursuant to section thirteen of this article,
112 or where a road or minor deviation is to be retained for
113 sound future maintenance of the operation, the portion of
114 the bond may be released under this subsection so long as
115 provisions for sound future maintenance by the operator
116 or the landowner have been made with the director.

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

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

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

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

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

169 (h) For the purpose of the hearing, the director has the
170 authority and is hereby empowered to administer oaths,
171 subpoena witnesses and written or printed materials,
172 compel the attendance of witnesses, or production of
173 materials, and take evidence, including, but not limited to,
174 inspections of the land affected and other surface-mining
175 operations carried on by the applicant in the general
176 vicinity. A verbatim record of each public hearing re-
177 quired by this section shall be made and a transcript made
178 available on the motion of any party or by order of the
179 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.

[Handwritten Signature]
.....

Chairman Senate Committee

[Handwritten Signature]
.....

Chairman House Committee

Originating in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
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Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *approved* this the *24th*
March
Day of, 2000

[Handwritten Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/8/02

Time 12:30 pm