

1 **H. B. 2026**

2
3 (By Delegate Manypenny)

4 [Introduced January 12, 2011; referred to the
5 Committee on Energy, Industry and Labor, Economic
6 Development and Small Business then the Judiciary.]
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10 A BILL to amend and reenact §22-3-13 of the Code of West Virginia,
11 1931, as amended, relating to prohibiting any permits
12 authorizing the construction, enlargement or modification of
13 any coal mine waste piles; prohibiting any new permits for
14 disposal of coal mine waste by injecting it into underground
15 mines; and to require a study of existing coal mine waste
16 piles.

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

18 That §22-3-13 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

20 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

21 **§22-3-13. General environmental protection performance standards**
22 **for surface mining; variances.**

23 (a) Any permit issued by the director pursuant to this article
24 to conduct surface mining operations shall require that the surface

1 mining operations meet all applicable performance standards of this
2 article and other requirements set forth in legislative rules
3 proposed by the director.

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

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

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

19 (3) Except as provided in subsection (c) of this section, with
20 respect to all surface mines, backfill, compact where advisable to
21 ensure stability or to prevent leaching of toxic materials, and
22 grade in order to restore the approximate original contour:

23 *Provided*, That in surface mining which is carried out at the same
24 location over a substantial period of time where the operation

1 transects the coal deposit, and the thickness of the coal deposits
2 relative to the volume of the overburden is large and where the
3 operator demonstrates that the overburden and other spoil and waste
4 materials at a particular point in the permit area or otherwise
5 available from the entire permit area is insufficient, giving due
6 consideration to volumetric expansion, to restore the approximate
7 original contour, the operator, at a minimum, shall backfill, grade
8 and compact, where advisable, using all available overburden and
9 other spoil and waste materials to attain the lowest practicable
10 grade, but not more than the angle of repose, to provide adequate
11 drainage and to cover all acid-forming and other toxic materials,
12 in order to achieve an ecologically sound land use compatible with
13 the surrounding region: *Provided, however,* That in surface mining
14 where the volume of overburden is large relative to the thickness
15 of the coal deposit and where the operator demonstrates that due to
16 volumetric expansion the amount of overburden and other spoil and
17 waste materials removed in the course of the mining operation is
18 more than sufficient to restore the approximate original contour,
19 the operator shall, after restoring the approximate contour,
20 backfill, grade and compact, where advisable, the excess overburden
21 and other spoil and waste materials to attain the lowest grade, but
22 not more than the angle of repose, and to cover all acid-forming
23 and other toxic materials, in order to achieve an ecologically
24 sound land use compatible with the surrounding region and, the

1 overburden or spoil shall be shaped and graded in a way as to
2 prevent slides, erosion and water pollution and revegetated in
3 accordance with the requirements of this article: *Provided*
4 *further*, That the director shall propose rules for legislative
5 approval in accordance with article three, chapter twenty-nine-a of
6 this code, governing variances to the requirements for return to
7 approximate original contour or highwall elimination and where
8 adequate material is not available from surface mining operations
9 permitted after the effective date of this article for: (A)

10 Underground mining operations existing prior to August 3, 1977; or
11 (B) for areas upon which surface mining prior to July 1, 1977,
12 created highwalls;

13 (4) Stabilize and protect all surface areas, including spoil
14 piles, affected by the surface mining operation to effectively
15 control erosion and attendant air and water pollution;

16 (5) Remove the topsoil from the land in a separate layer,
17 replace it on the backfill area, or if not utilized immediately,
18 segregate it in a separate pile from other spoil and, when the
19 topsoil is not replaced on a backfill area within a time short
20 enough to avoid deterioration of the topsoil, maintain a successful
21 vegetative cover by quick growing plants or by other similar means
22 in order to protect topsoil from wind and water erosion and keep it
23 free of any contamination by other acid or toxic material:

24 *Provided*, That if topsoil is of insufficient quantity or of poor

1 quality for sustaining vegetation, or if other strata can be shown
2 to be more suitable for vegetation requirements, then the operator
3 shall remove, segregate and preserve in a like manner any other
4 strata which is best able to support vegetation;

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

7 (7) Ensure that all prime farmlands are mined and reclaimed in
8 accordance with the specifications for soil removal, storage,
9 replacement and reconstruction established by the United States
10 Secretary of Agriculture and the Soil Conservation Service
11 pertaining thereto. The operator, at a minimum, shall: (A)
12 Segregate the A horizon of the natural soil, except where it can be
13 shown that other available soil materials will create a final soil
14 having a greater productive capacity, and if not utilized
15 immediately, stockpile this material separately from other spoil,
16 and provide needed protection from wind and water erosion or
17 contamination by other acid or toxic material; (B) segregate the B
18 horizon of the natural soil, or underlying C horizons or other
19 strata, or a combination of the horizons or other strata that are
20 shown to be both texturally and chemically suitable for plant
21 growth and that can be shown to be equally or more favorable for
22 plant growth than the B horizon, in sufficient quantities to create
23 in the regraded final soil a root zone of comparable depth and
24 quality to that which existed in the natural soil, and if not

1 utilized immediately, stockpile this material separately from other
2 spoil and provide needed protection from wind and water erosion or
3 contamination by other acid or toxic material; (C) replace and
4 regrade the root zone material described in paragraph (B) of this
5 subdivision, with proper compaction and uniform depth over the
6 regraded spoil material; and (D) redistribute and grade in a
7 uniform manner the surface soil horizon described in paragraph (A)
8 of this subdivision;

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

13 (9) Where augering is the method of recovery, seal all auger
14 holes with an impervious and noncombustible material in order to
15 prevent drainage except where the director determines that the
16 resulting impoundment of water in the auger holes may create a
17 hazard to the environment or the public welfare and safety:

18 *Provided*, That the director may prohibit augering if necessary to
19 maximize the utilization, recoverability or conservation of the
20 mineral resources or to protect against adverse water quality
21 impacts;

22 (10) Minimize the disturbances to the prevailing hydrologic
23 balance at the mine site and in associated off-site areas and to
24 the quality and quantity of water in surface and groundwater

1 systems both during and after surface mining operations and during
2 reclamation by: (A) Avoiding acid or other toxic mine drainage by
3 such measures as, but not limited to: (⌘) (i) Preventing or
4 removing water from contact with toxic producing deposits; (ii)
5 treating drainage to reduce toxic content which adversely affects
6 downstream water upon being released to water courses; and (iii)
7 casing, sealing or otherwise managing boreholes, shafts and wells
8 and keep acid or other toxic drainage from entering ground and
9 surface waters; (B) conducting surface mining operations so as to
10 prevent to the extent possible, using the best technology currently
11 available, additional contributions of suspended solids to
12 streamflow or runoff outside the permit area, but in no event may
13 contributions be in excess of requirements set by applicable state
14 or federal law; (C) constructing an approved drainage system
15 pursuant to paragraph (B) of this subdivision, prior to
16 commencement of surface mining operations, the system to be
17 certified by a person approved by the director to be constructed as
18 designed and as approved in the reclamation plan; (D) avoiding
19 channel deepening or enlargement in operations requiring the
20 discharge of water from mines; (E) unless otherwise authorized by
21 the director, cleaning out and removing temporary or large settling
22 ponds or other siltation structures after disturbed areas are
23 revegetated and stabilized, and depositing the silt and debris at
24 a site and in a manner approved by the director; (F) restoring

1 recharge capacity of the mined area to approximate premining
2 conditions; and (G) any other actions prescribed by the director;

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

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

18 (13) Refrain from surface mining within five hundred feet of
19 any active and abandoned underground mines in order to prevent
20 breakthroughs and to protect health or safety of miners: *Provided,*
21 That the director shall permit an operator to mine near, through or
22 partially through an abandoned underground mine or closer to an
23 active underground mine if: (A) The nature, timing and sequencing
24 of the approximate coincidence of specific surface mine activities

1 with specific underground mine activities are coordinated jointly
2 by the operators involved and approved by the director; and (B) the
3 operations will result in improved resource recovery, abatement of
4 water pollution or elimination of hazards to the health and safety
5 of the public: *Provided, however,* That any breakthrough which does
6 occur shall be sealed;

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

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

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

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

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

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

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

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

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

24 (iv) The areas proposed for the variance have been shown by

1 the applicant to be necessary for the implementing of the proposed
2 underground mining operations;

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

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

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

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

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

24 (17) Ensure that the construction, maintenance and post-mining

1 conditions of access and haul roads into and across the site of
2 operations will control or prevent erosion and siltation, pollution
3 of water, damage to fish or wildlife or their habitat, or public or
4 private property: *Provided*, That access roads constructed for and
5 used to provide infrequent service to surface facilities, such as
6 ventilators or monitoring devices, are exempt from specific
7 construction criteria provided adequate stabilization to control
8 erosion is achieved through alternative measures;

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

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

21 (20) Assume the responsibility for successful revegetation, as
22 required by subdivision (19) of this subsection, for a period of
23 not less than five growing seasons, as defined by the director,
24 after the last year of augmented seeding, fertilizing, irrigation

1 or other work in order to assure compliance with subdivision (19)
2 of this subsection: *Provided, That* when the director issues a
3 written finding approving a long-term agricultural post-mining land
4 use as a part of the mining and reclamation plan, the director may
5 grant exception to the provisions of subdivision (19) of this
6 subsection: *Provided, however, That* when the director approves an
7 agricultural post-mining land use, the applicable five growing
8 seasons of responsibility for revegetation begins on the date of
9 initial planting for the agricultural post-mining land use;

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

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

23 (22) Place all excess spoil material resulting from surface-
24 mining activities in a manner that: (A) Spoil is transported and

1 placed in a controlled manner in position for concurrent compaction
2 and in a way as to assure mass stability and to prevent mass
3 movement; (B) the areas of disposal are within the bonded permit
4 areas and all organic matter is removed immediately prior to spoil
5 placements; (C) appropriate surface and internal drainage system or
6 diversion ditches are used to prevent spoil erosion and movement;
7 (D) the disposal area does not contain springs, natural water
8 courses or wet weather seeps, unless lateral drains are constructed
9 from the wet areas to the main under drains in a manner that
10 filtration of the water into the spoil pile will be prevented; (E)
11 if placed on a slope, the spoil is placed upon the most moderate
12 slope among those upon which, in the judgment of the director, the
13 spoil could be placed in compliance with all the requirements of
14 this article, and is placed, where possible, upon, or above, a
15 natural terrace, bench or berm, if placement provides additional
16 stability and prevents mass movement; (F) where the toe of the
17 spoil rests on a downslope, a rock toe buttress, of sufficient size
18 to prevent mass movement, is constructed; (G) the final
19 configuration is compatible with the natural drainage pattern and
20 surroundings and suitable for intended uses; (H) the design of the
21 spoil disposal area is certified by a qualified registered
22 professional engineer in conformance with professional standards;
23 and (I) all other provisions of this article are met: *Provided,*
24 That where the excess spoil material consists of at least eighty

1 percent, by volume, sandstone, limestone or other rocks that do not
2 slake in water and will not degrade to soil material, the director
3 may approve alternate methods for disposal of excess spoil
4 material, including fill placement by dumping in a single lift, on
5 a site specific basis: *Provided, however,* That the services of a
6 qualified registered professional engineer experienced in the
7 design and construction of earth and rockfill embankment are
8 utilized: *Provided further,* That the approval may not be
9 unreasonably withheld if the site is suitable;

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

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

18 (25) Retain a natural barrier to inhibit slides and erosion on
19 permit areas where outcrop barriers are required: *Provided,* That
20 constructed barriers may be allowed where: (A) Natural barriers do
21 not provide adequate stability; (B) natural barriers would result
22 in potential future water quality deterioration; and (C) natural
23 barriers would conflict with the goal of maximum utilization of the
24 mineral resource: *Provided, however,* That at a minimum, the

1 constructed barrier shall be of sufficient width and height to
2 provide adequate stability and the stability factor shall equal or
3 exceed that of the natural outcrop barrier: *Provided further*, That
4 where water quality is paramount, the constructed barrier shall be
5 composed of impervious material with controlled discharge points.

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

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

20 (3) In cases where an industrial, commercial, agricultural,
21 commercial forestry, residential, or public facility including
22 recreational uses is proposed for the post-mining use of the
23 affected land, the director may grant a permit for a surface mining
24 operation of the nature described in subdivision (2) of this

1 subsection where: (A) The proposed post-mining land use is
2 determined to constitute an equal or better use of the affected
3 land, as compared with premining use; (B) the applicant presents
4 specific plans for the proposed post-mining land use and
5 appropriate assurances that the use will be: (F) (i) Compatible
6 with adjacent land uses; (ii) practicable with respect to achieving
7 the proposed use; (iii) obtainable according to data regarding
8 expected need and market; (iv) supported by commitments from public
9 agencies where appropriate; (v) practicable with respect to private
10 financial capability for completion of the proposed use; (vi)
11 planned pursuant to a schedule attached to the reclamation plan so
12 as to integrate the mining operation and reclamation with the post-
13 mining land use; and (vii) designed by a person approved by the
14 director in conformance with standards established to assure the
15 stability, drainage and configuration necessary for the intended
16 use of the site; (C) the proposed use would be compatible with
17 adjacent land uses, and existing state and local land use plans and
18 programs; (D) the director provides the county commission of the
19 county in which the land is located and any state or federal agency
20 which the director, in his or her discretion, determines to have an
21 interest in the proposed use, an opportunity of not more than sixty
22 days to review and comment on the proposed use; and (E) all other
23 requirements of this article will be met.

24 (4) In granting any permit pursuant to this subsection, the

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

23 (5) All permits granted under the provisions of this
24 subsection shall be reviewed not more than three years from the

1 date of issuance of the permit; unless the applicant affirmatively
2 demonstrates that the proposed development is proceeding in
3 accordance with the terms of the approved schedule and reclamation
4 plan.

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

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

1 (f) The director shall propose rules for legislative approval
2 in accordance with article three, chapter twenty-nine-a of this
3 code, for the design, location, construction, maintenance,
4 operation, enlargement, modification, removal and abandonment of
5 new and existing coal mine waste piles. In addition to engineering
6 and other technical specifications, the standards and criteria
7 developed pursuant to this subsection shall include provisions for
8 review and approval of plans and specifications prior to
9 construction, enlargement, modification, removal or abandonment;
10 performance of periodic inspections during construction; issuance
11 of certificates of approval upon completion of construction;
12 performance of periodic safety inspections; and issuance of notices
13 and orders for required remedial or maintenance work or affirmative
14 action: Provided, That after June 1, 2011, the director may not
15 issue any permit authorizing the construction, enlargement or
16 modification of any coal mine waste pile consisting of mine wastes,
17 tailings, coal processing wastes and solid wastes and used either
18 temporarily or permanently as dams or embankments; authorization of
19 modification of any coal mine waste pile which existed on January
20 1, 2009, is not prohibited by this section if the modification is
21 undertaken for the sole purpose of increasing the safety or
22 stability of the coal mine waste pile and does not result in any
23 enlargement of the coal mine waste pile or any increase in the
24 volume of water, mine wastes, tailings, coal processing wastes or

1 solid wastes which are or may be impounded by the coal mine waste
2 pile: *Provided, however,* That whenever the director finds that any
3 coal processing waste pile constitutes an imminent danger to human
4 life or a reasonable likelihood of failure, he or she ~~may~~ shall, in
5 addition to all other remedies and without the necessity of
6 obtaining the permission of any person prior or present who
7 operated or operates a pile or the landowners involved, enter upon
8 the premises where any coal processing waste pile exists and may
9 take or order to be taken any remedial action that may be necessary
10 or expedient to secure the coal processing waste pile and to abate
11 the conditions which cause the danger to human life: *Provided*
12 ~~however~~ further, That the cost reasonably incurred in any remedial
13 action taken by the director under this subsection may be paid for
14 initially by funds appropriated to the division for these purposes,
15 and the sums expended shall be recovered from any responsible
16 operator or landowner, individually or jointly, by suit initiated
17 by the Attorney General at the request of the director. For
18 purposes of this subsection "operates" or "operated" means to enter
19 upon a coal processing waste pile, or part of a coal processing
20 waste pile, for the purpose of disposing, depositing, dumping coal
21 processing wastes on the pile or removing coal processing waste
22 from the pile, or to employ a coal processing waste pile for
23 retarding the flow of or for the impoundment of water.

24 (g) The secretary may not permit the disposal of coal mine

1 waste by injecting it into underground mines and may not issue any
2 new permit or approve modification of any existing permit which
3 contemplates such disposal.

4 (h) The Secretary of the Department of Environmental
5 Protection shall conduct a study of existing coal mine waste piles
6 consisting of mine wastes, tailings, coal processing wastes and
7 solid wastes and used either temporarily or permanently as dams or
8 embankments. Such study shall include, at a minimum, the
9 following: (1) The stability and structural integrity of each coal
10 mine waste pile; (2) the chemicals present in coal mine waste piles
11 or the resulting impoundments, whether those chemicals are present
12 as a result of additives used as part of the cleaning or disposal
13 process or are naturally occurring; (3) the accuracy and
14 completeness of maps of active and abandoned maps of mines located
15 beneath each coal mine waste pile; and (4) the existence of natural
16 fractures in the floors of existing coal sludge impoundments. The
17 secretary shall prepare a report setting forth the results of its
18 findings and provide it to the Legislature and the Governor on or
19 before January 1, 2012.

NOTE: The purpose of this bill is to prohibit any permits authorizing the construction, enlargement or modification of any coal mine waste impoundment; to prohibit any new permits for disposal of coal mine waste by injecting it into underground mines; and to require a study of existing coal mine waste piles.

Strike-throughs indicate language that would be stricken from

the present law, and underscoring indicates new language that would be added.