

1 **H. B. 4631**

2
3 (By Delegate Manypenny)

4 [Introduced February 20, 2012; referred to the
5 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §22-3-9 and §22-3-13 of the Code of
11 West Virginia, 1931, as amended, all relating to dual liner
12 requirements in new coal-waste impoundments, new coal-waste
13 impoundments at existing facilities, replacement coal-waste
14 impoundments at existing facilities and lateral coal-waste
15 expansions of existing impoundments; requiring the Director of
16 the West Virginia Department of Environmental Protection to
17 promulgate rules for liners in these surface, coal-waste
18 impoundments including that no impoundment may be situated
19 closer than three miles up stream from any incorporated town
20 of fifteen hundred population or more; and providing abatement
21 procedures.

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

23 That §22-3-9 and §22-3-13 of the Code of West Virginia, 1931,
24 as amended, be amended and reenacted, all to read as follows:

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

2 **§22-3-9. Permit application requirements and contents.**

3 (a) The surface-mining permit application shall contain:

4 (1) The names and addresses of:

5 (A) The permit applicant;

6 (B) The owner of record of the property, surface and mineral,
7 to be mined;

8 (C) The holders of record of any leasehold interest in the
9 property;

10 (D) Any purchaser of record of the property under a real
11 estate contract;

12 (E) The operator, if different from the applicant; and

13 (F) If any of these are business entities other than a single
14 proprietor, the names and addresses of the principals, officers and
15 resident agent;

16 (2) The names and addresses of the owners of record of all
17 surface and subsurface areas contiguous to any part of the proposed
18 permit area. ~~—Provided, That~~ All residents living on property
19 contiguous to the proposed permit area shall be notified by the
20 applicant, by registered or certified mail, of such application on
21 or before the first day of publication of the notice provided ~~for~~
22 in subdivision (6) of this subsection;

23 (3) A statement of any current surface-mining permits held by
24 the applicant in the state, ~~and~~ the permit number and each pending

1 application;

2 (4) If the applicant is a partnership, corporation,
3 association or other business entity, the following, where
4 applicable:

5 (A) The names and addresses of every officer, partner,
6 resident agent, director or person performing a function similar to
7 a director together with the names and addresses of any person
8 owning of record ten percent or more of any class of voting stock
9 of the applicant; and

10 (B) A list of all names under which the applicant, officer,
11 director, partner or principal shareholder previously operated a
12 surface-mining operation in the United States within the five-year
13 period preceding the date of submission of the application;

14 (5) A statement of whether the applicant, or any officer,
15 partner, director, principal shareholder of the applicant, any
16 subsidiary, affiliate or persons controlled by or under common
17 control with the applicant, has ever been an officer, partner,
18 director or principal shareholder in a company which has ~~ever~~ held
19 a federal or state mining permit which, in the five-year period
20 prior to the date of submission of the application, has been
21 permanently suspended or revoked or has had a mining bond or
22 similar security deposited in lieu of bond forfeited and, if so, a
23 brief explanation of the facts involved;

24 (6) A copy of the applicant's advertisement to be published in

1 a newspaper of general circulation in the locality of the proposed
2 permit area at least once a week for four successive weeks. The
3 advertisement shall contain, in abbreviated form:

4 (A) The information required by this section including the
5 ownership and map of the tract location and boundaries of the
6 proposed site so that the proposed operation is readily locatable
7 by local residents;

8 (B) The location of the office of the division where the
9 application is available for public inspection; and

10 (C) ~~stating~~ A statement that written protests will be accepted
11 by the director until a certain date which is at least thirty days
12 after the last publication of the applicant's advertisement;

13 (7) A description of the type and method of surface-mining
14 operation that exists or is proposed, the engineering techniques
15 used or proposed, and the equipment used or proposed; ~~to be used;~~

16 (8) The anticipated starting and termination dates of each
17 phase of the surface-mining operation and the number of acres of
18 land to be affected;

19 (9) A description of the legal documents upon which the
20 applicant's legal right to enter and conduct surface-mining
21 operations on the proposed permit area is based and whether that
22 right is the subject of pending court litigation. ~~Provided, That~~

23 ~~Nothing in this article may be construed as vesting in the director~~
24 Nothing in this article vests the director with the jurisdiction to

1 adjudicate property-rights disputes;

2 (10) The name of the watershed and location of the surface
3 stream or tributary into which surface and pit drainage will be
4 discharged;

5 (11) A determination of the probable hydrologic consequences
6 of the mining and reclamation operations, both on and off the mine
7 site, with respect to the hydrologic regime, quantity and quality
8 of water in surface and groundwater systems, including:

9 (A) The dissolved and suspended solids under seasonal flow
10 conditions; and

11 (B) The collection of sufficient data for the mine site and
12 surrounding areas so that an assessment can be made by the director
13 of the probable cumulative impacts of all anticipated mining in the
14 area upon the hydrology of the area and particularly upon water
15 availability. ~~Provided, That this determination~~ A determination of
16 the probable hydrologic consequences is not required until ~~such~~
17 ~~time as~~ the hydrologic information on the general area prior to
18 mining is made available from an appropriate federal or state
19 agency or, if existing and in the possession of the applicant, from
20 the applicant: ~~Provided, That the permit application shall not be~~
21 approved until the information is available and is incorporated
22 into the application;

23 (12) Accurate maps to an appropriate scale clearly showing:

24 (A) The land to be affected as of the date of application;

1 (B) The area of land within the permit area upon which the
2 applicant has the legal right to enter and conduct surface-mining
3 operations; ~~and~~

4 (C) All types of information set forth on enlarged
5 topographical maps of the United States geological survey of a
6 scale of 1:24,000 or larger including all man-made features and
7 significant known archaeological sites existing on the date of
8 application;

9 ~~(D) In addition to other things specified by the director, the~~
10 ~~map shall show~~ The boundary lines and names of present owners of
11 record of all surface areas abutting the proposed permit area and
12 the location of all structures within one thousand feet of the
13 proposed permit area; and

14 (E) Other things specified by the director.

15 (13) Cross-section maps or plans of the proposed affected
16 area, including the actual area to be mined, prepared by or under
17 the direction of and certified by a person approved by the
18 director, showing pertinent elevation and location of test borings
19 or core samplings, where required by the director, and depicting
20 the following information:

21 (A) The nature and depth of the various strata or overburden;

22 (B) The location of subsurface water, if encountered, and its
23 quality;

24 (C) The nature and thickness of any coal or rider seams above

1 the seam to be mined;

2 (D) The nature of the stratum immediately beneath the coal
3 seam to be mined;

4 (E) All mineral crop lines and the strike and dip of the coal
5 to be mined within the area of land to be affected;

6 (F) Existing or previous surface-mining limits;

7 (G) The location and extent of known workings of any
8 underground mines including mine openings to the surface;

9 (H) The location of any significant aquifers;

10 (I) The estimated elevation of the water table;

11 (J) The location of spoil, waste or refuse areas and topsoil
12 preservation areas;

13 (K) The location of all impoundments for waste or erosion
14 control;

15 (L) Any settling or water treatment facility or drainage
16 system;

17 (M) Constructed or natural drainways and the location of ~~any~~
18 discharges to any surface body of water on the area of land to be
19 affected or adjacent thereto; and

20 (N) Adequate profiles at appropriate cross sections of the
21 anticipated final surface configuration that will be achieved
22 pursuant to the operator's proposed reclamation plan;

23 (14) A statement of the result of test borings or core samples
24 from the permit area, including:

1 (A) Logs of the drill holes;

2 (B) The thickness of the coal seam to be mined and analysis of
3 the chemical and physical properties of the coal;

4 (C) The sulfur content of any coal seam;

5 (D) A chemical analysis of potentially acid or toxic forming
6 sections of the overburden; and

7 (E) A chemical analysis of the stratum lying immediately
8 underneath the coal to be mined. ~~Provided, That~~

9 The provisions of this subdivision may be waived by the
10 director with respect to the specific application by a written
11 determination that such requirements are unnecessary;

12 (15) For those lands in the permit application which a
13 reconnaissance inspection suggests may be prime farmlands, a soil
14 survey shall be made or obtained according to standards established
15 by the secretary of agriculture in order to confirm the exact
16 location of such prime farmlands;

17 (16) A reclamation plan as presented in section ten of this
18 article;

19 (17) Information pertaining to coal seams, test borings, core
20 samplings or soil samples as required by this section shall be made
21 available to any person with an interest which is or may be
22 adversely affected ~~Provided, That~~ except that information which
23 pertains only to the analysis of the chemical and physical
24 properties of the coal, except information regarding mineral or

1 elemental content which is potentially toxic to the environment,
2 ~~shall be kept~~ is confidential and not made a matter of public
3 record;

4 (18) When requested by the director, the climatological
5 factors that are peculiar to the locality of the land to be
6 affected including the average seasonal precipitation, the average
7 direction and velocity of prevailing winds, and the seasonal
8 temperature ranges; and

9 (19) For each new surface impoundment, each new surface
10 impoundment at an existing facility, each replacement of an
11 existing surface impoundment and each lateral expansion of an
12 existing surface impoundment, an engineering plan for the design,
13 construction and installation of a dual liner to prevent any
14 migration of waste out of the impoundment to the adjacent
15 subsurface soil, groundwater or surface water at any time during
16 the life, including the closure period, of the impoundment; and

17 ~~(19)~~ (20) Other information that may be required by rules
18 reasonably necessary to effectuate the purposes of this article.

19 (b) If the director finds that the probable total annual
20 production at all locations of any coal surface-mining operator
21 will not exceed three hundred thousand tons, the determination of
22 probable hydrologic consequences including the engineering analyses
23 and designs necessary as required by this article or rules
24 promulgated thereunder; the development of cross-section maps and

1 plans as required by this article or rules promulgated thereunder;
2 the geologic drilling and statement of results of test borings and
3 core samplings as required by this article or rules promulgated
4 thereunder; ~~preblast~~ preblast surveys required by this article or
5 rules promulgated thereunder; the collection of site-specific
6 resource information and production of protection and enhancement
7 plans for fish and wildlife habitats and other environmental values
8 required by this article or rules promulgated thereunder; and the
9 collection of archaeological and historical information required by
10 this article and rules promulgated thereunder and any other
11 archaeological and historical information required by the federal
12 department of the interior and the preparation of plans that may be
13 necessitated thereby shall, upon the written request of the
14 operator, be performed by a qualified public or private laboratory
15 designated by the director and a reasonable cost of the preparation
16 of such determination and statement shall be assumed by the
17 division from funds provided by the United States Department of the
18 Interior pursuant to the Federal Surface Mining Control and
19 Reclamation Act of 1977, as amended.

20 (c) Before the first publication of the applicant's
21 advertisement, each applicant for a surface-mining permit shall
22 file, except for that information pertaining to the coal seam
23 itself, a copy of the application for public inspection in the
24 nearest office of the division as specified in the applicant's

1 advertisement.

2 (d) Each applicant for a permit shall be required to submit to
3 the director as a part of the permit application a certificate
4 issued by an insurance company authorized to do business in this
5 state covering the surface-mining operation for which the permit is
6 sought or evidence that the applicant has satisfied state self-
7 insurance requirements. The policy shall provide for personal
8 injury and property damage protection in an amount adequate to
9 compensate any persons damaged as a result of surface coal mining
10 and reclamation operations, including use of explosives, and
11 entitled to compensation under the applicable provisions of state
12 law. The policy shall be maintained in full force and effect
13 during the terms of the permit or any renewal including the length
14 of all reclamation operations.

15 (e) Each applicant for a surface-mining permit shall submit to
16 the director as part of the permit application a blasting plan
17 where explosives are to be used which shall outline the procedures
18 and standards by which the operator will meet the provisions of the
19 blasting performance standards.

20 (f) The applicant shall file as part of the permit application
21 a schedule listing all notices of violation, bond forfeitures,
22 permit revocations, cessation orders or permanent suspension orders
23 resulting from a violation of the Federal Surface Mining Control
24 and Reclamation Act of 1977, as amended, this article or any law or

1 regulation of the United States or any department or agency of any
2 state pertaining to air or environmental protection received by the
3 applicant in connection with any surface-mining operation during
4 the three-year period prior to the date of application, and
5 indicating the final resolution of any notice of violation,
6 forfeiture, revocation, cessation or permanent suspension.

7 (g) Within five working days of receipt of an application for
8 a permit, the director shall notify the operator in writing,
9 stating whether the application is administratively complete and
10 whether the operator's advertisement may be published. If the
11 application is not administratively complete, the director shall
12 state in writing why the application is not administratively
13 complete.

14 **§22-3-13. General environmental protection performance standards**
15 **for surface mining; variances.**

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

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

23 (1) Maximize the utilization and conservation of the solid
24 fuel resource being recovered to minimize re-affecting the land in

1 the future through surface mining;

2 (2) Restore the land affected to a condition capable of
3 supporting the uses which it was capable of supporting prior to any
4 mining, or higher or better uses of which there is reasonable
5 likelihood, so long as the use or uses do not present any actual or
6 probable hazard to public health or safety or pose any actual or
7 probable threat of water diminution or pollution. ~~and~~ The permit
8 applicants' declared proposed land use following reclamation ~~is not~~
9 ~~considered to be impractical or unreasonable, inconsistent with~~
10 ~~applicable land use policies and plans, involves unreasonable delay~~
11 ~~in implementation or is violative of federal, state or local law~~
12 shall be considered practical, reasonable and consistent with
13 applicable land use policies and plans. The proposed land use
14 following reclamation must not involve unreasonable delay nor be
15 violative of federal, state or local law.

16 (3) Except as provided in subsection (c) of this section, with
17 respect to all surface mines, backfill, compact where advisable to
18 ensure stability or to prevent leaching of toxic materials, and
19 grade in order to restore the approximate original contour:
20 *Provided*, That in surface mining which is carried out at the same
21 location over a substantial period of time where the operation
22 transects the coal deposit, and the thickness of the coal deposits
23 relative to the volume of the overburden is large and where the
24 operator demonstrates that the overburden and other spoil and waste

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

1 *further*, That the director shall propose rules for legislative
2 approval in accordance with article three, chapter twenty-nine-a of
3 this code, governing variances to the requirements for return to
4 approximate original contour or highwall elimination and where
5 adequate material is not available from surface mining operations
6 permitted after the effective date of this article for:

7 (A) Underground mining operations existing prior to August 3,
8 1977; or

9 (B) For areas upon which surface mining prior to July 1, 1977,
10 created highwalls;

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

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

22 ~~Provided, That~~ If topsoil is of insufficient quantity or of poor
23 quality for sustaining vegetation, or if other strata can be shown
24 to be more suitable for vegetation requirements, then the operator

1 shall remove, segregate and preserve in a like manner any other
2 strata which is best able to support vegetation;

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

5 (7) Ensure that all prime farmlands are mined and reclaimed in
6 accordance with the specifications for soil removal, storage,
7 replacement and reconstruction established by the United States
8 Secretary of Agriculture and the Soil Conservation Service
9 pertaining thereto. The operator, at a minimum, shall:

10 (A) Segregate the A horizon of the natural soil, except where
11 it can be shown that other available soil materials will create a
12 final soil having a greater productive capacity, and if not
13 utilized immediately, stockpile this material separately from other
14 spoil, and provide needed protection from wind and water erosion or
15 contamination by other acid or toxic material;

16 (B) Segregate the B horizon of the natural soil, or underlying
17 C horizons or other strata, or a combination of the horizons or
18 other strata that are shown to be both texturally and chemically
19 suitable for plant growth and that can be shown to be equally or
20 more favorable for plant growth than the B horizon, in sufficient
21 quantities to create in the regraded final soil a root zone of
22 comparable depth and quality to that which existed in the natural
23 soil, and if not utilized immediately, stockpile this material
24 separately from other spoil and provide needed protection from wind

1 and water erosion or contamination by other acid or toxic material;

2 (C) Replace and regrade the root zone material described in
3 paragraph (B) of this subdivision, with proper compaction and
4 uniform depth over the regraded spoil material; and

5 (D) Redistribute and grade in a uniform manner the surface
6 soil horizon described in paragraph (A) of this subdivision;

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

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

20 (10) Minimize the disturbances to the prevailing hydrologic
21 balance at the mine site and in associated off-site areas and to
22 the quality and quantity of water in surface and groundwater
23 systems both during and after surface mining operations and during
24 reclamation by:

1 (A) Avoiding acid or other toxic mine drainage by such
2 measures as, but not limited to:

3 (i) Preventing or removing water from contact with toxic
4 producing deposits;

5 (ii) Treating drainage to reduce toxic content which adversely
6 affects downstream water upon being released to water courses;

7 (iii) Casing, sealing or otherwise managing boreholes, shafts
8 and wells and keep acid or other toxic drainage from entering
9 ground and surface waters; and

10 (iv) Installing dual liners in all new coal-waste impoundments,
11 new coal-waste impoundments at existing facilities, replacement
12 coal-waste impoundments at existing facilities and lateral coal-
13 waste expansions of existing impoundments consistent with rules
14 promulgated by the director: Provided, That a new coal-waste
15 impoundment may not be situated closer than three miles up stream
16 from any incorporated town of fifteen hundred population or more;

17 (B) Conducting surface mining operations so as to prevent to
18 the extent possible, using the best technology currently available,
19 additional contributions of suspended solids to ~~streamflow~~ stream
20 flow or runoff outside the permit area but in no event may
21 contributions be in excess of requirements set by applicable state
22 or federal law;

23 (C) Constructing an approved drainage system pursuant to
24 paragraph (B) of this subdivision, prior to commencement of surface

1 mining operations, the system to be certified by a person approved
2 by the director to be constructed as designed and as approved in
3 the reclamation plan;

4 (D) Avoiding channel deepening or enlargement in operations
5 requiring the discharge of water from mines;

6 (E) Unless otherwise authorized by the director, cleaning out
7 and removing temporary or large settling ponds or other siltation
8 structures after disturbed areas are revegetated and stabilized and
9 depositing the silt and debris at a site and in a manner approved
10 by the director;

11 (F) Restoring recharge capacity of the mined area to
12 approximate ~~premining~~ premining conditions; and

13 (G) Any other actions prescribed by the director.

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

23 (12) Design, locate, construct, operate, maintain, enlarge,
24 modify and remove or abandon, in accordance with standards and

1 criteria developed pursuant to subsection (f) of this section, all
2 existing and new coal mine waste piles consisting of mine wastes,
3 tailings, coal processing wastes or other liquid and solid wastes,
4 and used either temporarily or permanently as dams or embankments;

5 (13) Refrain from surface mining within five hundred feet of
6 any active and abandoned underground mines in order to prevent
7 breakthroughs and to protect health or safety of miners ~~Provided,~~
8 ~~That~~ except that the director shall permit an operator to mine
9 near, through or partially through an abandoned underground mine or
10 closer to an active underground mine if:

11 (A) The nature, timing and sequencing of the approximate
12 coincidence of specific surface mine activities with specific
13 underground mine activities are coordinated jointly by the
14 operators involved and approved by the director; and

15 (B) The operations will result in improved resource recovery,
16 abatement of water pollution or elimination of hazards to the
17 health and safety of the public. ~~Provided, however, That~~ Any
18 breakthrough ~~which does occur~~ that occurs shall be sealed;

19 (14) Ensure that all debris, acid-forming materials, toxic
20 materials or materials constituting a fire hazard are treated or
21 buried and compacted or otherwise disposed of in a manner designed
22 to prevent contamination of ground or surface waters and that
23 contingency plans are developed to prevent sustained combustion.
24 ~~Provided, That~~ The operator shall remove or bury all metal, lumber,

1 equipment and other debris resulting from the operation before
2 grading release;

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

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

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

13 (16) Ensure that all reclamation efforts proceed in an
14 environmentally sound manner and as contemporaneously as
15 practicable with the surface mining operations. Time limits shall
16 be established by the director requiring backfilling, grading and
17 planting to be kept current: *Provided*, That where surface mining
18 operations and underground mining operations are proposed on the
19 same area, which operations must be conducted under separate
20 permits, the director may grant a variance from the requirement
21 that reclamation efforts proceed as contemporaneously as
22 practicable to permit underground mining operations prior to
23 reclamation:

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

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

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

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

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

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

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

20 (B) If the director has promulgated specific rules to govern
21 the granting of the variances in accordance with the provisions of
22 this subparagraph and has imposed any additional requirements as
23 the director considers necessary;

24 (C) If variances granted under the provisions of this

1 paragraph are reviewed by the director not more than three years
2 from the date of issuance of the permit. ~~Provided, That~~ The
3 underground mining permit shall terminate if the underground
4 operations have not commenced within three years of the date the
5 permit was issued unless extended as set forth in subdivision (3),
6 section eight of this article; and

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

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

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

24 (19) Establish on the ~~regraded~~ regraded areas, and all other

1 lands affected, a diverse, effective and permanent vegetative cover
2 of the same seasonal variety native to the area of land to be
3 affected or of a fruit, grape or berry producing variety suitable
4 for human consumption and capable of self-regeneration and plant
5 succession at least equal in extent of cover to the natural
6 vegetation of the area, except that introduced species may be used
7 in the revegetation process where desirable or when necessary to
8 achieve the approved post-mining land use plan;

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

22 On lands eligible for remining, assume the responsibility for
23 successful revegetation, as required by subdivision (19) of this
24 subsection, for a period of not less than two growing seasons, as

1 defined by the director, after the last year of augmented seeding,
2 fertilizing, irrigation or other work in order to assure compliance
3 with subdivision (19) of this subsection;

4 (21) Protect off-site areas from slides or damage occurring
5 during surface mining operations and not deposit spoil material or
6 locate any part of the operations or waste accumulations outside
7 the permit area. ~~Provided, That~~ Spoil material may be placed
8 outside the permit area, if approved by the director, after a
9 finding that environmental benefits will result from the placing of
10 spoil material outside the permit area;

11 (22) Place all excess spoil material resulting from surface-
12 mining activities in a manner that:

13 (A) Spoil is transported and placed in a controlled manner in
14 position for concurrent compaction and in a way as to assure mass
15 stability and to prevent mass movement;

16 (B) The areas of disposal are within the bonded permit areas
17 and all organic matter is removed immediately prior to spoil
18 placements;

19 (C) Appropriate surface and internal drainage system or
20 diversion ditches are used to prevent spoil erosion and movement;

21 (D) The disposal area does not contain springs, natural water
22 courses or wet weather seeps, unless lateral drains are constructed
23 from the wet areas to the main under drains in a manner that
24 filtration of the water into the spoil pile will be prevented;

1 (E) If placed on a slope, the spoil is placed upon the most
2 moderate slope among those upon which, in the judgment of the
3 director, the spoil could be placed in compliance with all the
4 requirements of this article, and is placed, where possible, upon
5 or above, a natural terrace, bench or berm, if placement provides
6 additional stability and prevents mass movement;

7 (F) Where the toe of the spoil rests on a downslope, a rock
8 toe buttress of sufficient size to prevent mass movement is
9 constructed;

10 (G) The final configuration is compatible with the natural
11 drainage pattern and surroundings and suitable for intended uses;

12 (H) The design of the spoil disposal area is certified by a
13 qualified registered professional engineer in conformance with
14 professional standards; and

15 (I) All other provisions of this article are met: *Provided,*
16 That where the excess spoil material consists of at least eighty
17 percent, by volume, sandstone, limestone or other rocks that do not
18 slake in water and will not degrade to soil material, the director
19 may approve alternate methods for disposal of excess spoil
20 material, including fill placement by dumping in a single lift, on
21 a site specific basis ~~Provided, however, That~~ so long as the
22 services of a qualified registered professional engineer
23 experienced in the design and construction of earth and rockfill
24 embankment are utilized. ~~Provided further, That the~~ This approval

1 may not be unreasonably withheld if the site is suitable;

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

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

10 (25) Retain a natural barrier to inhibit slides and erosion on
11 permit areas where outcrop barriers are required. ~~Provided, That~~
12 Constructed barriers may be allowed where:

13 (A) Natural barriers do not provide adequate stability;

14 (B) Natural barriers would result in potential future water
15 quality deterioration; ~~and~~

16 (C) Natural barriers would conflict with the goal of maximum
17 utilization of the mineral resource; ~~Provided, however,~~

18 (D) That at a minimum, the constructed barrier ~~shall be~~ is of
19 sufficient width and height to provide adequate stability and the
20 stability factor shall equal or exceed that of the natural outcrop
21 barrier; ~~and~~ Provided further,

22 (E) ~~That where~~ The water quality is paramount and the
23 constructed barrier ~~shall be~~ is composed of impervious material
24 with controlled discharge points.

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

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

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

21 (A) The proposed post-mining land use is determined to
22 constitute an equal or better use of the affected land, as compared
23 with premining use;

24 (B) The applicant presents specific plans for the proposed

1 post-mining land use and appropriate assurances that the use will
2 be:

3 (i) Compatible with adjacent land uses;

4 (ii) Practicable with respect to achieving the proposed use;

5 (iii) Obtainable according to data regarding expected need and
6 market;

7 (iv) Supported by commitments from public agencies where
8 appropriate;

9 (v) Practicable with respect to private financial capability
10 for completion of the proposed use;

11 (vi) Planned pursuant to a schedule attached to the
12 reclamation plan so as to integrate the mining operation and
13 reclamation with the post-mining land use; and

14 (vii) Designed by a person approved by the director in
15 conformance with standards established to assure the stability,
16 drainage and configuration necessary for the intended use of the
17 site;

18 (C) The proposed use would be compatible with adjacent land
19 uses, and existing state and local land use plans and programs;

20 (D) The director provides the county commission of the county
21 in which the land is located and any state or federal agency which
22 the director, in his or her discretion, determines to have an
23 interest in the proposed use, an opportunity of not more than sixty
24 days to review and comment on the proposed use; and

1 (E) All other requirements of this article will be met.

2 (4) In granting any permit pursuant to this subsection, the
3 director shall require that:

4 (A) A natural barrier be retained to inhibit slides and
5 erosion on permit areas where outcrop barriers are required:
6 *Provided*, That constructed barriers may be allowed where:

7 (i) Natural barriers do not provide adequate stability;

8 (ii) Natural barriers would result in potential future water
9 quality deterioration; and

10 (iii) Natural barriers would conflict with the goal of maximum
11 utilization of the mineral resource. ~~*Provided, however, That,*~~

12 (iv) At a minimum, the constructed barrier ~~shall be~~ is
13 sufficient in width and height to provide adequate stability and
14 the stability factor ~~shall equal or exceed~~ equals or exceeds that
15 of the natural outcrop barrier; and

16 (v) ~~*Provided further, That where*~~ The water quality is
17 paramount and the constructed barrier ~~shall be~~ is composed of
18 impervious material with controlled discharge points;

19 (B) The reclaimed area is stable;

20 (C) The resulting plateau or rolling contour drains inward
21 from the out slopes except at specific points;

22 (D) No damage will be done to natural watercourses;

23 (E) Spoil will be placed on the mountaintop bench as is
24 necessary to achieve the planned post-mining land use ~~*And provided*~~

1 ~~further, That~~ and all excess spoil material not retained on the
2 mountaintop ~~shall be~~ is placed in accordance with the provisions of
3 subdivision (22), subsection (b) of this section; and

4 (F) Ensure stability of the spoil retained on the mountaintop
5 and meet the other requirements of this article.

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

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

24 (e) The director may propose rules for legislative approval in

1 accordance with article three, chapter twenty-nine-a of this code,
2 that permit variances from the approximate original contour
3 requirements of this section: *Provided*, That the watershed control
4 of the area is improved ~~*Provided, however, That*~~ and that complete
5 backfilling with spoil material is ~~required~~ performed to completely
6 cover the highwall, which material will maintain stability
7 following mining and reclamation.

8 (f) The director shall propose rules for legislative approval
9 in accordance with article three, chapter twenty-nine-a of this
10 code, for the design, location, construction, maintenance,
11 operation, enlargement, modification, removal and abandonment of
12 new and existing coal mine waste piles. In addition to engineering
13 and other technical specifications, the standards and criteria
14 developed pursuant to this subsection shall include provisions for
15 review and approval of plans and specifications prior to
16 construction, enlargement, modification, removal or abandonment;
17 performance of periodic inspections during construction; issuance
18 of certificates of approval upon completion of construction;
19 performance of periodic safety inspections; and issuance of notices
20 and orders for required remedial or maintenance work or affirmative
21 action: *Provided*, That whenever the director finds that any coal
22 processing waste pile constitutes an imminent danger to human life,
23 he or she may, in addition to all other remedies and without the
24 necessity of obtaining the permission of any person prior or

1 present who operated or operates a pile or the landowners involved,
2 enter upon the premises where any coal processing waste pile exists
3 and may take or order to be taken any remedial action that may be
4 necessary or expedient to secure the coal processing waste pile and
5 to abate the conditions which cause the danger to human life.
6 ~~Provided, however, That~~ The cost reasonably incurred in any
7 remedial action taken by the director under this subsection may be
8 paid for initially by funds appropriated to the division for these
9 purposes and the sums expended shall be recovered from any
10 responsible operator or landowner, individually or jointly, by suit
11 initiated by the Attorney General at the request of the director.
12 For purposes of this subsection "operates" or "operated" means to
13 enter upon a coal processing waste pile, or part of a coal
14 processing waste pile, for the purpose of disposing, depositing,
15 dumping coal processing wastes on the pile or removing coal
16 processing waste from the pile or to employ a coal processing waste
17 pile for retarding the flow of or for the impoundment of water.

18 (g) The director shall propose rules for legislative approval
19 in accordance with article three, chapter twenty-nine-a of this
20 code, for the design, location, construction, maintenance,
21 operation, enlargement, modification, removal and abandonment of
22 new surface impoundments, new surface impoundments at existing
23 facilities, replacement impoundments at existing facilities and
24 lateral expansions of existing surface impoundments so that each of

1 the identified impoundments will have dual liners to prevent the
2 migration of contaminants into the groundwater and surface water:
3 Provided, That a new coal-waste impoundment may not be situated
4 closer than three miles up stream from any incorporated town of
5 fifteen hundred population or more. In addition to engineering and
6 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. Whenever the director finds that any impoundment
15 constitutes an imminent danger to human life, he or she may, in
16 addition to all other remedies and without the necessity of
17 obtaining the permission of any person prior or present who
18 operated or operates an impoundment or the landowners involved,
19 enter upon the premises where any impoundment exists and may take
20 or order to be taken any remedial action that may be necessary or
21 expedient to secure the surface impoundment and to abate the
22 conditions which cause the danger to human life. The cost
23 reasonably incurred in any remedial action taken by the director
24 under this subsection may be paid for initially by funds

1 appropriated to the division for these purposes. The sums expended
2 shall be recovered from any responsible operator or landowner,
3 individually or jointly, by suit initiated by the Attorney General
4 at the request of the director. For purposes of this subsection,
5 "operates" or "operated" means to access a surface impoundment for
6 the purpose of disposing, depositing or dumping coal processing
7 wastes.

NOTE: The purpose of this bill is to require dual liners in all new surface impoundments and to require regulations relating to the planning, constructing and maintenance of the liners, including that no impoundment may be situated closer than three miles up stream from any incorporated town of fifteen hundred population or more.

Strike-throughs indicate language that would be stricken from the present law and underscoring indicates new language that would be added.