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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

SENATE BILL NO. 520

(By Senators LOVE, KIMBLE & BAILEY)



PASSED APRIL 12, 1997

In Effect NINETY Days From Passage

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(BY SENATORS LOVE, KIMBLE AND BAILEY)

[Passed April 12, 1997; in effect ninety days from passage.]

AN ACT to amend and reenact sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface coal mining reclamation; adding definitions; allowing for a compliance conference; establishing procedures for reinstatement of revoked permits; allowing coal removal of existing abandoned coal process waste piles under reclamation contract; creating provisions for no cost reclamation contracts, coal extraction under a government financed reclamation contract and coal extraction incidental to land development; and modifying certain bonding requirement.

Be it enacted by the Legislature of West Virginia:

That sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, 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 such 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"
14 means, when used in the context of underground mining
15 activities, all surface land and water resources affected
16 during the term of the permit: (1) By surface operations or
17 facilities incident to underground mining activities; or (2)
18 by 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
24 such operations may have an impact. "Adjacent areas"
25 means, for the purpose of conducting surface-mining and
26 reclamation operations, those land and water resources
27 contiguous to or near the affected area upon which
28 surface-mining and reclamation operations conducted
29 within a permit area during the life of such operations
30 may have an impact.

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

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

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

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

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

63 (i) "Director" means the director of the division of
64 environmental protection or such other person to whom
65 the director has delegated authority or duties pursuant to
66 sections six or eight, article one of this chapter.

67 (j) "Disturbed area" means an area where vegetation,
68 topsoil or overburden has been removed or placed by
69 surface-mining operations, and reclamation is incomplete.

70 (k) "Division" means the division of environmental

71 protection.

72 (l) "Imminent danger to the health or safety of the
73 public" means the existence of such condition or practice,
74 or any violation of a permit or other requirement of this
75 article, which condition, practice or violation could
76 reasonably be expected to cause substantial physical harm
77 or death to any person outside the permit area before such
78 condition, practice or violation can be abated. A reason-
79 able expectation of death or serious injury before abate-
80 ment exists if a rational person, subjected to the same
81 conditions or practices giving rise to the peril, would not
82 expose the person to the danger during the time necessary
83 for the abatement.

84 (m) "Minerals" means clay, coal, flagstone, gravel,
85 limestone, manganese, sand, sandstone, shale, iron ore and
86 any other metal or metallurgical ore.

87 (n) "Operation" means those activities conducted by an
88 operator who is subject to the jurisdiction of this article.

89 (o) "Operator" means any person who is granted or who
90 should obtain a permit to engage in any activity covered
91 by this article and any rule promulgated hereunder and
92 includes any person who engages in surface-mining or
93 surface-mining and reclamation operations, or both. The
94 term shall also be construed in a manner consistent with
95 the federal program pursuant to the federal Surface-
96 Mining Control and Reclamation Act of 1977, as amended.

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

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

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

106 (s) "Person" means any individual, partnership, firm,
107 society, association, trust, corporation, other business

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108 entity or any agency, unit or instrumentality of federal,
109 state or local government.

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

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

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

134 (2) The areas upon which the above activities occur or
135 where such activities disturb the natural land surface.
136 Such areas shall also include any adjacent land, the use of
137 which is incidental to any such activities; all lands af-
138 fected by the construction of new roads or the improve-
139 ment or use of existing roads to gain access to the site of
140 such activities and for haulage; and excavations, work-
141 ings, impoundments, dams, ventilation shafts, entryways,
142 refuse banks, dumps, stockpiles, overburden piles, spoil
143 banks, culm banks, tailings, holes or depressions, repair
144 areas, storage areas, processing areas, shipping areas and
145 other areas upon which are sited structures, facilities, or
146 other property or materials on the surface, resulting from

147 or incident to such activities: *Provided*, That such activi-
148 ties do not include the extraction of coal incidental to the
149 extraction of other minerals where coal does not exceed
150 sixteen and two-thirds percent of the tonnage of minerals
151 removed for purposes of commercial use or sale, or coal
152 prospecting subject to section seven of this article.
153 Surface-mining may not include any of the following:

154 (1) Coal extraction authorized pursuant to a
155 government-financed reclamation contract;

156 (2) Coal extraction authorized as an incidental part of
157 development of land for commercial, residential, indus-
158 trial, or civic use; or

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

161 (v) "Underground mine" means the surface effects
162 associated with the shaft; slopes, drifts or inclines con-
163 nected with excavations penetrating coal seams or strata
164 and the equipment connected therewith which contribute
165 directly or indirectly to the mining, preparation or han-
166 dling of coal.

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

182 (x) "Unanticipated event or condition" as used in section
183 eighteen of this article means an event or condition in a
184 remaining operation that was not contemplated by the

185 applicable surface coal mining and reclamation permit.

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

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

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

**§22-3-13. General environmental protection performance
standards 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 will meet all applica-
4 ble performance standards of this article and other
5 requirements as the director promulgates.

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

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

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

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

49 amount of overburden and other spoil and waste materials
50 removed in the course of the mining operation is more
51 than sufficient to restore the approximate original con-
52 tour, the operator shall, after restoring the approximate
53 contour, backfill, grade and compact, where advisable, the
54 excess overburden and other spoil and waste materials to
55 attain the lowest grade, but not more than the angle of
56 repose, and to cover all acid-forming and other toxic
57 materials, in order to achieve an ecologically sound land
58 use compatible with the surrounding region and, the
59 overburden or spoil shall be shaped and graded in such a
60 way as to prevent slides, erosion and water pollution and
61 is revegetated in accordance with the requirements of this
62 article: *Provided further*, That the director shall promul-
63 gate rules governing variances to the requirements for
64 return to approximate original contour or highwall
65 elimination and where adequate material is not available
66 from surface-mining operations permitted after the
67 effective date of this article for: (A) Underground mining
68 operations existing prior to the third day of August, one
69 thousand nine hundred seventy-seven; or (B) for areas
70 upon which surface-mining prior to the first day of July,
71 one thousand nine hundred seventy-seven, created
72 highwalls;

73 (4) Stabilize and protect all surface areas, including
74 spoil piles, affected by the surface-mining operation to
75 effectively control erosion and attendant air and water
76 pollution;

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

89 operator shall remove, segregate and preserve in a like
90 manner such other strata which is best able to support
91 vegetation;

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

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

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

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

138 (10) Minimize the disturbances to the prevailing
139 hydrologic balance at the mine site and in associated off-
140 site areas and to the quality and quantity of water in
141 surface and groundwater systems both during and after
142 surface-mining operations and during reclamation by: (A)
143 Avoiding acid or other toxic mine drainage by such
144 measures as, but not limited to: (i) Preventing or removing
145 water from contact with toxic producing deposits; (ii)
146 treating drainage to reduce toxic content which adversely
147 affects downstream water upon being released to water
148 courses; and (iii) casing, sealing or otherwise managing
149 boreholes, shafts and wells and keep acid or other toxic
150 drainage from entering ground and surface waters; (B)
151 conducting surface-mining operations so as to prevent to
152 the extent possible, using the best technology currently
153 available, additional contributions of suspended solids to
154 streamflow or runoff outside the permit area, but in no
155 event shall contributions be in excess of requirements set
156 by applicable state or federal law; (C) constructing an
157 approved drainage system pursuant to subparagraph (B)
158 of this subdivision prior to commencement of surface-
159 mining operations, such system to be certified by a person
160 approved by the director to be constructed as designed
161 and as approved in the reclamation plan; (D) avoiding
162 channel deepening or enlargement in operations requiring
163 the discharge of water from mines; (E) unless otherwise
164 authorized by the director, cleaning out and removing
165 temporary or large settling ponds or other siltation
166 structures after disturbed areas are revegetated and
167 stabilized, and depositing the silt and debris at a site and
168 in a manner approved by the director; (F) restoring

169 recharge capacity of the mined area to approximate
170 premining conditions; and (G) such other actions as the
171 director may prescribe;

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

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

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

203 (14) Ensure that all debris, acid-forming materials, toxic
204 materials or materials constituting a fire hazard are
205 treated or buried and compacted, or otherwise disposed of
206 in a manner designed to prevent contamination of ground
207 or surface waters, and that contingency plans are devel-

oped to prevent sustained combustion: *Provided*, That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to: (A) Provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by publication of the planned blasting schedule in a newspaper of general circulation in the locality and by mailing a copy of the proposed blasting schedule to every resident living within one-half mile of the proposed blasting site: *Provided*, That this notice shall suffice as daily notice to residents or occupants of the areas; (B) maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; (C) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent: (i) Injury to persons; (ii) damage to public and private property outside the permit area; (iii) adverse impacts on any underground mine; and (iv) change in the course, channel or availability of ground or surface water outside the permit area; (D) require that all blasting operations be conducted by persons certified by the director; and (E) provide that upon written request of a resident or owner of a man-made dwelling or structure within one-half mile of any portion of the permit area, the applicant or permittee shall conduct a preblasting survey or other appropriate investigation of the structures and submit the results to the director and a copy to the resident or owner making the request. The area of the survey shall be determined by the director in accordance with rules promulgated by him or her;

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

248 as practicable with the surface-mining operations. Time
249 limits shall be established by the director requiring
250 backfilling, grading and planting to be kept current:
251 *Provided*, That where surface-mining operations and
252 underground mining operations are proposed on the same
253 area, which operations must be conducted under separate
254 permits, the director may grant a variance from the
255 requirement that reclamation efforts proceed as contem-
256 poraneously as practicable to permit underground mining
257 operations prior to reclamation:

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

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

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

266 (iii) The applicant has satisfactorily demonstrated that
267 the plan for the underground mining operations conforms
268 to requirements for underground mining in the jurisdic-
269 tion and that permits necessary for the underground
270 mining operations have been issued by the appropriate
271 authority;

272 (iv) The areas proposed for the variance have been
273 shown by the applicant to be necessary for the implement-
274 ing of the proposed underground mining operations;

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

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

281 (B) If the director has promulgated specific rules to
282 govern the granting of such variances in accordance with
283 the provisions of this subparagraph and has imposed such
284 additional requirements as the director deems necessary;

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

293 (D) If liability under the bond filed by the applicant
294 with the director pursuant to subsection (b), section eleven
295 of this article is for the duration of the underground
296 mining operations and until the requirements of subsec-
297 tion (g), section eleven and section twenty-three of this
298 article have been fully complied with.

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

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

313 (19) Establish on the regraded areas, and all other lands
314 affected, a diverse, effective and permanent vegetative
315 cover of the same seasonal variety native to the area of
316 land to be affected or of a fruit, grape or berry producing
317 variety suitable for human consumption and capable of
318 self-regeneration and plant succession at least equal in
319 extent of cover to the natural vegetation of the area,
320 except that introduced species may be used in the
321 revegetation process where desirable or when necessary to
322 achieve the approved postmining land use plan;

323 (20) Assume the responsibility for successful

324 revegetation, as required by subdivision (19) of this
325 subsection, for a period of not less than five growing
326 seasons, as defined by the director, after the last year of
327 augmented seeding, fertilizing, irrigation or other work in
328 order to assure compliance with subdivision (19) of this
329 subsection: *Provided*, That when the director issues a
330 written finding approving a long-term agricultural
331 postmining land use as a part of the mining and reclama-
332 tion plan, the director may grant exception to the provi-
333 sions of subdivision (19) of this subsection: *Provided*,
334 *however*, That when the director approves an agricultural
335 postmining land use, the applicable five growing seasons
336 of responsibility for revegetation begins on the date of
337 initial planting for such agricultural postmining land use;

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

345 (21) Protect off-site areas from slides or damage occur-
346 ring during surface-mining operations and not deposit
347 spoil material or locate any part of the operations or waste
348 accumulations outside the permit area: *Provided*, That
349 spoil material may be placed outside the permit area, if
350 approved by the director after a finding that environmen-
351 tal benefits will result from such;

352 (22) Place all excess spoil material resulting from
353 surface-mining activities in such a manner that: (A) Spoil
354 is transported and placed in a controlled manner in
355 position for concurrent compaction and in a way as to
356 assure mass stability and to prevent mass movement; (B)
357 the areas of disposal are within the bonded permit areas
358 and all organic matter is removed immediately prior to
359 spoil placements; (C) appropriate surface and internal
360 drainage system or diversion ditches are used to prevent
361 spoil erosion and movement; (D) the disposal area does not
362 contain springs, natural water courses or wet weather
363 seeps, unless lateral drains are constructed from the wet

364 areas to the main underdrains in a manner that filtration
365 of the water into the spoil pile will be prevented; (E) if
366 placed on a slope, the spoil is placed upon the most
367 moderate slope among those upon which, in the judgment
368 of the director, the spoil could be placed in compliance
369 with all the requirements of this article, and is placed,
370 where possible, upon, or above, a natural terrace, bench or
371 berm, if placement provides additional stability and
372 prevents mass movement; (F) where the toe of the spoil
373 rests on a downslope, a rock toe buttress, of sufficient size
374 to prevent mass movement, is constructed; (G) the final
375 configuration is compatible with the natural drainage
376 pattern and surroundings and suitable for intended uses;
377 (H) design of the spoil disposal area is certified by a
378 qualified registered professional engineer in conformance
379 with professional standards; and (I) all other provisions of
380 this article are met: *Provided*, That where the excess spoil
381 material consists of at least eighty percent, by volume,
382 sandstone, limestone or other rocks that do not slake in
383 water and will not degrade to soil material, the director
384 may approve alternate methods for disposal of excess spoil
385 material, including fill placement by dumping in a single
386 lift, on a site specific basis: *Provided, however*, That the
387 services of a qualified registered professional engineer
388 experienced in the design and construction of earth and
389 rockfill embankment are utilized: *Provided further*, That
390 such approval may not be unreasonably withheld if the
391 site is suitable;

392 (23) Meet such other criteria as are necessary to achieve
393 reclamation in accordance with the purposes of this
394 article, taking into consideration the physical, climatolog-
395 ical and other characteristics of the site;

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

401 (25) Retain a natural barrier to inhibit slides and erosion
402 on permit areas where outcrop barriers are required:
403 *Provided*, That constructed barriers may be allowed

404 where: (A) Natural barriers do not provide adequate
405 stability; (B) natural barriers would result in potential
406 future water quality deterioration; and (C) natural barriers
407 would conflict with the goal of maximum utilization of
408 the mineral resource: *Provided, however,* That at a
409 minimum, the constructed barrier must be of sufficient
410 width and height to provide adequate stability and the
411 stability factor must equal or exceed that of the natural
412 outcrop barrier: *Provided further,* That where water
413 quality is paramount, the constructed barrier must be
414 composed of impervious material with controlled discharge
415 points.

416 (c) (1) The director may prescribe procedures pursuant
417 to which he or she may permit surface-mining operations
418 for the purposes set forth in subdivision (3) of this subsection.
419

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

433 (3) In cases where an industrial, commercial, woodland,
434 agricultural, residential, public or fish and wildlife
435 habitat and recreation lands use is proposed for the
436 postmining use of the affected land, the director may
437 grant a permit for a surface-mining operation of the
438 nature described in subdivision (2) of this subsection
439 where: (A) The proposed postmining land use is deemed
440 to constitute an equal or better use of the affected land, as
441 compared with premining use; (B) the applicant presents
442 specific plans for the proposed postmining land use and
443 appropriate assurances that the use will be: (i) Compati-

444 ble with adjacent land uses; (ii) practicable with respect to
445 achieving the proposed use; (iii) supported by commit-
446 ments from public agencies where appropriate; (iv)
447 practicable with respect to private financial capability for
448 completion of the proposed use; (v) planned pursuant to a
449 schedule attached to the reclamation plan so as to inte-
450 grate the mining operation and reclamation with the
451 postmining land use; and (vi) designed by a person ap-
452 proved by the director in conformance with standards
453 established to assure the stability, drainage and configu-
454 ration necessary for the intended use of the site; (C) the
455 proposed use would be compatible with adjacent land
456 uses, and existing state and local land use plans and
457 programs; (D) the director provides the county commission
458 of the county in which the land is located and any state or
459 federal agency which the director, in his or her discretion,
460 determines to have an interest in the proposed use, an
461 opportunity of not more than sixty days to review and
462 comment on the proposed use; and (E) all other require-
463 ments of this article will be met.

464 (4) In granting any permit pursuant to this subsection,
465 the director shall require that: (A) A natural barrier be
466 retained to inhibit slides and erosion on permit areas
467 where outcrop barriers are required: *Provided*, That
468 constructed barriers may be allowed where: (i) Natural
469 barriers do not provide adequate stability; (ii) natural
470 barriers would result in potential future water quality
471 deterioration; and (iii) natural barriers would conflict
472 with the goal of maximum utilization of the mineral
473 resource: *Provided, however*, That, at a minimum, the
474 constructed barrier must be sufficient width and height to
475 provide adequate stability and the stability factor must
476 equal or exceed that of the natural outcrop barrier:
477 *Provided further*, That where water quality is paramount,
478 the constructed barrier must be composed of impervious
479 material with controlled discharge points; (B) the re-
480 claimed area is stable; (C) the resulting plateau or rolling
481 contour drains inward from the out slopes except at
482 specific points; (D) no damage will be done to natural
483 watercourses; (E) spoil will be placed on the mountaintop
484 bench as is necessary to achieve the planned postmining

485 land use: *And provided further*, That all excess spoil
486 material not retained on the mountaintop shall be placed
487 in accordance with the provisions of subdivision (22),
488 subsection (b) of this section; and (F) ensure stability of
489 the spoil retained on the mountaintop and meet the other
490 requirements of this article.

491 (5) All permits granted under the provisions of this
492 subsection shall be reviewed not more than three years
493 from the date of issuance of the permit; unless the appli-
494 cant affirmatively demonstrates that the proposed devel-
495 opment is proceeding in accordance with the terms of the
496 approved schedule and reclamation plan.

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

510 (e) The director may promulgate rules that permit
511 variances from the approximate original contour require-
512 ments of this section: *Provided*, That the watershed
513 control of the area is improved: *Provided, however*, That
514 complete backfilling with spoil material is required to
515 completely cover the highwall, which material will
516 maintain stability following mining and reclamation.

517 (f) The director shall promulgate rules for the design,
518 location, construction, maintenance, operation, enlarge-
519 ment, modification, removal and abandonment of new and
520 existing coal mine waste piles. In addition to engineering
521 and other technical specifications, the standards and
522 criteria developed pursuant to this subsection must
523 include provisions for review and approval of plans and

524 specifications prior to construction, enlargement, modifi-
525 cation, removal or abandonment; performance of periodic
526 inspections during construction; issuance of certificates of
527 approval upon completion of construction; performance of
528 periodic safety inspections; and issuance of notices and
529 orders for required remedial or maintenance work or
530 affirmative action: *Provided*, That whenever the director
531 finds that any coal processing waste pile constitutes an
532 imminent danger to human life, he or she may, in addition
533 to all other remedies and without the necessity of obtain-
534 ing the permission of any person prior or present who
535 operated or operates a pile or the landowners involved,
536 enter upon the premises where any such coal processing
537 waste pile exists and may take or order to be taken such
538 remedial action as may be necessary or expedient to
539 secure the coal processing waste pile and to abate the
540 conditions which cause the danger to human life: *Pro-*
541 *vided, however*, That the cost reasonably incurred in any
542 remedial action taken by the director under this subsec-
543 tion may be paid for initially by funds appropriated to the
544 division for these purposes, and the sums so expended
545 shall be recovered from any responsible operator or
546 landowner, individually or jointly, by suit initiated by the
547 attorney general at the request of the director. For
548 purposes of this subsection "operates" or "operated"
549 means to enter upon a coal processing waste pile, or part
550 thereof, for the purpose of disposing, depositing, dumping
551 coal processing wastes thereon or removing coal process-
552 ing waste therefrom, or to employ a coal processing waste
553 pile for retarding the flow of or for the impoundment of
554 water.

§22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

1 (a) The director shall cause to be made inspections of
2 surface-mining operations as are necessary to effectively
3 enforce the requirements of this article and for such
4 purposes the director or his or her authorized representa-
5 tive shall without advance notice and upon presentation
6 of appropriate credentials: (A) Have the right of entry to,
7 upon or through surface-mining operations or any pre-

8 mises in which any records required to be maintained
9 under subdivision (1), subsection (b) of this section are
10 located; and (B) at reasonable times and without delay,
11 have access to and copy any records and inspect any
12 monitoring equipment or method of operation required
13 under this article.

14 (b) For the purpose of enforcement under this article, in
15 the administration and enforcement of any permit under
16 this article, or for determining whether any person is in
17 violation of any requirement of this article:

18 (1) The director shall, at a minimum, require any
19 operator to: (A) Establish and maintain appropriate
20 records; (B) make monthly reports to the division; (C)
21 install, use and maintain any necessary monitoring
22 equipment or methods consistent with subdivision (11),
23 subsection (a), section nine of this article; (D) evaluate
24 results in accordance with such methods, at such loca-
25 tions, intervals and in such manner as the director pre-
26 scribes; and (E) provide any other information relative to
27 surface-mining operations as the director finds reasonable
28 and necessary; and

29 (2) For those surface-mining operations which remove or
30 disturb strata that serve as aquifers which significantly
31 ensure the hydrologic balance of water use either on or off
32 the mining site, the director shall require that: (A) Moni-
33 toring sites be established to record the quantity and
34 quality of surface drainage above and below the mine site
35 as well as in the potential zone of influence; (B) monitor-
36 ing sites be established to record level, amount and
37 samples of groundwater and aquifers potentially affected
38 by the surface-mining and also below the lowermost
39 mineral seam to be mined; (C) records or well logs and
40 borehole data be maintained; and (D) monitoring sites be
41 established to record precipitation. The monitoring data
42 collection and analysis required by this section shall be
43 conducted according to standards and procedures set forth
44 by the director in order to assure their reliability and
45 validity.

46 (c) All surface-mining operations shall be inspected at

47 least once every thirty days. The inspections shall be
48 made on an irregular basis without prior notice to the
49 operator or the operator's agents or employees, except for
50 necessary on-site meetings with the operator. The inspec-
51 tions shall include the filing of inspection reports ade-
52 quate to enforce the requirements, terms and purposes of
53 this article.

54 (d) Each permittee shall maintain at the entrances to the
55 surface-mining operations a clearly visible monument
56 which sets forth the name, business address and telephone
57 number of the permittee and the permit number of the
58 surface-mining operations.

59 (e) Copies of any records, reports, inspection materials
60 or information obtained under this article by the director
61 shall be made immediately available to the public at
62 central and sufficient locations in the county, multicounty
63 or state area of mining so that they are conveniently
64 available to residents in the areas of mining unless
65 specifically exempted by this article.

66 (f) Within thirty days after service of a copy of an order
67 of the director upon an operator by registered or certified
68 mail, the operator shall furnish to the director five copies
69 of a progress map prepared by or under the supervision of
70 a person approved by the director showing the disturbed
71 area to the date of such map. Such progress map shall
72 contain information identical to that required for both the
73 proposed and final maps required by this article, and shall
74 show in detail completed reclamation work as required by
75 the director. Such progress map shall include a geologic
76 survey sketch showing the location of the operation, shall
77 be properly referenced to a permanent landmark, and
78 shall be within such reasonable degree of accuracy as may
79 be prescribed by the director. If no land has been dis-
80 turbed by operations during the preceding year, the
81 operator shall notify the director of that fact.

82 (g) Whenever on the basis of available information,
83 including reliable information from any person, the
84 director has cause to believe that any person is in violation
85 of this article, any permit condition or any rule promul-

86 gated under this article, the director shall immediately
87 order state inspection of the surface-mining operation at
88 which the alleged violation is occurring unless the infor-
89 mation is available as a result of a prior state inspection.
90 The director shall notify any person who supplied such
91 reliable information when the state inspection will be
92 carried out. Such person may accompany the inspector
93 during the inspection.

94 (h) When requested by the permittee, the director may
95 provide for a compliance conference with his or her
96 authorized representative to review the compliance status
97 of any coal exploration or surface-coal mining and
98 reclamation operation. Any such conference may not
99 constitute an inspection as defined in this section.

**§22-3-17. Notice of violation; procedure and actions; enforce-
ment; permit revocation and bond forfeiture;
civil and criminal penalties; appeals to the
board; prosecution; injunctive relief.**

1 (a) If any of the requirements of this article, rules
2 promulgated pursuant thereto or permit conditions have
3 not been complied with, the director shall cause a notice
4 of violation to be served upon the operator or the opera-
5 tor's duly authorized agent. A copy of the notice shall be
6 handed to the operator or the operator's duly authorized
7 agent in person or served by certified mail addressed to
8 the operator at the permanent address shown on the
9 application for a permit. The notice shall specify in what
10 respects the operator has failed to comply with this
11 article, rules or permit conditions and shall specify a
12 reasonable time for abatement of the violation not to
13 exceed thirty days. If the operator has not abated the
14 violation within the time specified in the notice, or any
15 reasonable extension thereof, not to exceed sixty days, the
16 director shall order the cessation of the operation or the
17 portion thereof causing the violation, unless the operator
18 affirmatively demonstrates that compliance is unattain-
19 able due to conditions totally beyond the control of the
20 operator. If a violation is not abated within the time
21 specified or any extension thereof, or any cessation order
22 is issued, a mandatory civil penalty of not less than seven

23 hundred fifty dollars per day per violation shall be
24 assessed. A cessation order remains in effect until the
25 director determines that the violation has been abated or
26 until modified, vacated or terminated by the director or by
27 a court. In any cessation order issued under this subsection,
28 the director shall determine the steps necessary to
29 abate the violation in the most expeditious manner
30 possible and shall include the necessary measures in the
31 order.

32 (b) If the director determines that a pattern of violations
33 of any requirement of this article or any permit condition
34 exists or has existed, as a result of the operator's lack of
35 reasonable care and diligence, or that the violations are
36 willfully caused by the operator, the director shall immediately
37 issue an order directing the operator to show cause
38 why the permit should not be suspended or revoked and
39 giving the operator thirty days in which to request a
40 public hearing. If a hearing is requested, the director shall
41 inform all interested parties of the time and place of the
42 hearing. Any hearing under this section shall be recorded
43 and is subject to the provisions of chapter twenty-nine-a
44 of this code. Within sixty days following the public
45 hearing, the director shall issue and furnish to the
46 permittee and all other parties to the hearing a written
47 decision, and the reasons therefor, concerning suspension
48 or revocation of the permit. Upon the operator's failure to
49 show cause why the permit should not be suspended or
50 revoked, the director shall immediately suspend or revoke
51 the operator's permit. If the permit is revoked, the
52 director shall initiate procedures in accordance with rules
53 promulgated by the director to forfeit the entire amount
54 of the operator's bond, or other security posted pursuant
55 to sections eleven or twelve of this article, and give notice
56 to the attorney general, who shall collect the forfeiture
57 without delay: *Provided*, That the entire proceeds of such
58 forfeiture shall be deposited with the treasurer of the state
59 of West Virginia to the credit of the special reclamation
60 fund. All forfeitures collected shall be deposited in the
61 special reclamation fund and shall be expended back upon
62 the areas for which the bond was posted: *Provided*,
63 *however*, That any excess therefrom shall remain in the

64 special reclamation fund.

65 Within one year following the notice of permit revoca-
66 tion, subject to the discretion of the director and based
67 upon a petition for reinstatement, the revoked permit may
68 be reinstated. The reinstated permit may be assigned to
69 any person who meets the permit eligibility requirements
70 of this article.

71 (c) Any person engaged in surface-mining operations
72 who violates any permit condition or who violates any
73 other provision of this article or rules promulgated
74 pursuant thereto may also be assessed a civil penalty. The
75 penalty may not exceed five thousand dollars. Each day
76 of continuing violation may be deemed a separate viola-
77 tion for purposes of penalty assessments. In determining
78 the amount of the penalty, consideration shall be given to
79 the operator's history of previous violations at the particu-
80 lar surface-mining operation, the seriousness of the
81 violation, including any irreparable harm to the environ-
82 ment and any hazard to the health or safety of the public,
83 whether the operator was negligent, and the demonstrated
84 good faith of the operator charged in attempting to
85 achieve rapid compliance after notification of the viola-
86 tion.

87 (d) (1) Upon the issuance of a notice or order pursuant to
88 this section, the assessment officer shall, within thirty
89 days, set a proposed penalty assessment and notify the
90 operator in writing of such proposed penalty assessment.
91 The proposed penalty assessment must be paid in full
92 within thirty days of receipt or, if the operator wishes to
93 contest either the amount of the penalty or the fact of
94 violation, an informal conference with the assessment
95 officer may be requested within fifteen days or a formal
96 hearing before the surface mine board may be requested
97 within thirty days. The notice of proposed penalty
98 assessment shall advise the operator of the right to an
99 informal conference and a formal hearing pursuant to this
100 section. When an informal conference is requested, the
101 operator has fifteen days from receipt of the assessment
102 officer's decision to request a formal hearing before the
103 board.

104 (A) When an informal conference is held, the assessment
105 officer has authority to affirm, modify or vacate the
106 notice, order or proposed penalty assessment.

107 (B) When a formal hearing is requested, the amount of
108 the proposed penalty assessment shall be forwarded to the
109 director for placement in an escrow account. Formal
110 hearings shall be of record and subject to the provisions of
111 article five, chapter twenty-nine-a of this code. Following
112 the hearing the board shall affirm, modify or vacate the
113 notice, order or proposed penalty assessment and, when
114 appropriate, incorporate an assessment order requiring
115 that the assessment be paid.

116 (2) Civil penalties owed under this section may be
117 recovered by the director in the circuit court of Kanawha
118 County. Civil penalties collected under this article shall
119 be deposited with the treasurer of the state of West
120 Virginia to the credit of the special reclamation fund
121 established in section eleven of this article. If, through the
122 administrative or judicial review of the proposed penalty
123 it is determined that no violation occurred or that the
124 amount of the penalty should be reduced, the director
125 shall within thirty days remit the appropriate amount to
126 the person, with interest at the rate of six percent or at the
127 prevailing United States department of the treasury rate,
128 whichever is greater. Failure to forward the money to the
129 director within thirty days is a waiver of all legal rights to
130 contest the violation or the amount of the penalty.

131 (e) Any person having an interest which is or may be
132 adversely affected by any order of the director or the
133 surface mine board may file an appeal only in accordance
134 with the provisions of article one, chapter twenty-two-b
135 of this code, within thirty days after receipt of the order.

136 (f) The filing of an appeal or a request for an informal
137 conference or formal hearing provided for in this section
138 does not stay execution of the order appealed from.
139 Pending completion of the investigation and conference or
140 hearing required by this section, the applicant may file
141 with the director a written request that the director grant
142 temporary relief from any notice or order issued under

143 section sixteen or seventeen of this article, together with
144 a detailed statement giving reasons for granting such
145 relief. The director shall issue an order or decision
146 granting or denying such relief expeditiously: *Provided,*
147 That where the applicant requests relief from an order for
148 cessation of surface-mining and reclamation operations,
149 the decision on the request shall be issued within five days
150 of its receipt. The director may grant such relief, under
151 such conditions as he or she may prescribe if:

152 (1) All parties to the proceedings have been notified and
153 given an opportunity to be heard on a request for tempo-
154 rary relief;

155 (2) The person requesting the relief shows that there is
156 a substantial likelihood that they will prevail on the
157 merits in the final determination of the proceedings;

158 (3) The relief will not adversely affect the public health
159 or safety or cause significant imminent environmental
160 harm to land, air or water resources; and

161 (4) The relief sought is not the issuance of a permit
162 where a permit has been denied, in whole or in part, by the
163 director.

164 (g) Any person who willfully and knowingly violates a
165 condition of a permit issued pursuant to this article or
166 rules promulgated pursuant thereto, or fails or refuses to
167 comply with any order issued under said article and rules
168 or any order incorporated in a final decision issued by the
169 director, is guilty of a misdemeanor and, upon conviction
170 thereof, shall be fined not less than one hundred dollars
171 nor more than ten thousand dollars, or imprisoned in the
172 county jail not more than one year, or both fined and
173 imprisoned.

174 (h) Whenever a corporate operator violates a condition
175 of a permit issued pursuant to this article, rules promul-
176 gated pursuant thereto, or any order incorporated in a
177 final decision issued by the director, any director, officer
178 or agent of the corporation who willfully and knowingly
179 authorized, ordered or carried out the failure or refusal, is
180 subject to the same civil penalties, fines and imprisonment

181 that may be imposed upon a person under subsections (c)
182 and (g) of this section.

183 (i) Any person who knowingly makes any false state-
184 ment, representation or certification, or knowingly fails to
185 make any statement, representation or certification in any
186 application, petition, record, report, plan or other docu-
187 ment filed or required to be maintained pursuant to this
188 article or rules promulgated pursuant thereto, is guilty of
189 a misdemeanor and, upon conviction thereof, shall be
190 fined not less than one hundred dollars nor more than ten
191 thousand dollars, or imprisoned in the county jail not
192 more than one year, or both fined and imprisoned.

193 (j) Whenever any person: (A) Violates or fails or refuses
194 to comply with any order or decision issued by the direc-
195 tor under this article; or (B) interferes with, hinders or
196 delays the director in carrying out the provisions of this
197 article; or (C) refuses to admit the director to the mine; or
198 (D) refuses to permit inspection of the mine by the direc-
199 tor; or (E) refuses to furnish any reasonable information or
200 report requested by the director in furtherance of the
201 provisions of this article; or (F) refuses to permit access to,
202 and copying of, such records as the director determines
203 necessary in carrying out the provisions of this article; or
204 (G) violates any other provisions of this article, the rules
205 promulgated pursuant thereto, or the terms and conditions
206 of any permit, the director, the attorney general or the
207 prosecuting attorney of the county in which the major
208 portion of the permit area is located may institute a civil
209 action for relief, including a permanent or temporary
210 injunction, restraining order or any other appropriate
211 order, in the circuit court of Kanawha County or any court
212 of competent jurisdiction to compel compliance with and
213 enjoin such violations, failures or refusals. The court or
214 the judge thereof may issue a preliminary injunction in
215 any case pending a decision on the merits of any applica-
216 tion filed without requiring the filing of a bond or other
217 equivalent security.

218 (k) Any person who shall, except as permitted by law,
219 willfully resists, prevents, impedes or interferes with the
220 director or any of his or her agents in the performance of

221 duties pursuant to this article is guilty of a misdemeanor
222 and, upon conviction thereof, shall be punished by a fine
223 of not more than five thousand dollars or by imprisonment
224 for not more than one year, or both.

§22-3-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a complete surface-mining
2 application or significant revision or renewal thereof,
3 including public notification and an opportunity for a
4 public hearing, the director shall grant, require revision
5 of, or deny the application for a permit within sixty days
6 and notify the applicant in writing of the decision. The
7 applicant for a permit, or revision of a permit, has the
8 burden of establishing that the application is in compli-
9 ance with all the requirements of this article and the rules
10 promulgated hereunder.

11 (b) No permit or significant revision of a permit may be
12 approved unless the applicant affirmatively demonstrates
13 and the director finds in writing on the basis of the
14 information set forth in the application or from informa-
15 tion otherwise available which shall be documented in the
16 approval and made available to the applicant that:

17 (1) The permit application is accurate and complete and
18 that all the requirements of this article and rules thereun-
19 der have been complied with;

20 (2) The applicant has demonstrated that reclamation as
21 required by this article can be accomplished under the
22 reclamation plan contained in the permit application;

23 (3) The assessment of the probable cumulative impact of
24 all anticipated mining in the area on the hydrologic
25 balance, as specified in section nine of this article, has
26 been made by the director and the proposed operation has
27 been designed to prevent material damage to the
28 hydrologic balance outside the permit area;

29 (4) The area proposed to be mined is not included within
30 an area designated unsuitable for surface-mining pursu-
31 ant to section twenty-two of this article or is not within an
32 area under administrative study by the director for such
33 designation; and

34 (5) In cases where the private mineral estate has been
35 severed from the private surface estate, the applicant has
36 submitted: (A) The written consent of the surface owner
37 to the extraction of coal by surface-mining; or (B) a
38 conveyance that expressly grants or reserves the right to
39 extract the coal by surface-mining; or (C) if the convey-
40 ance does not expressly grant the right to extract coal by
41 surface-mining, the surface subsurface legal relationship
42 shall be determined in accordance with applicable law:
43 *Provided*, That nothing in this article shall be construed to
44 authorize the director to adjudicate property rights
45 disputes.

46 (c) Where information available to the division indicates
47 that any surface-mining operation owned or controlled by
48 the applicant is currently in violation of this article or
49 other environmental laws or rules, the permit may not be
50 issued until the applicant submits proof that such viola-
51 tion has been corrected or is in the process of being
52 corrected to the satisfaction of the director or the depart-
53 ment or agency which has jurisdiction over the violation,
54 and no permit may be issued to any applicant after a
55 finding by the director, after an opportunity for hearing,
56 that the applicant or the operator specified in the applica-
57 tion controls or has controlled mining operations with a
58 demonstrated pattern of willful violations of this article or
59 of other state or federal programs implementing the
60 federal Surface-Mining Control and Reclamation Act of
61 1977, as amended, of such nature and duration with such
62 irreparable damage to the environment as to indicate an
63 intent not to comply with the provisions of this article or
64 the federal Surface-Mining Control and Reclamation Act
65 of 1977, as amended: *Provided*, That if the director finds
66 that the applicant is or has been affiliated with, or man-
67 aged or controlled by, or is or has been under the common
68 control of, other than as an employee, a person who has
69 had a surface-mining permit revoked or bond or other
70 security forfeited for failure to reclaim lands as required
71 by the laws of this state, he or she may not issue a permit
72 to the applicant: *Provided, however*, That subject to the
73 discretion of the director and based upon a petition for
74 reinstatement, permits may be issued to any applicant if:

75 (1) After the revocation or forfeiture, the operator whose
76 permit has been revoked or bond forfeited has paid into
77 the special reclamation fund any additional sum of money
78 determined by the director to be adequate to reclaim the
79 disturbed area; (2) the violations which resulted in the
80 revocation or forfeiture have not caused irreparable
81 damage to the environment; and (3) the director is satis-
82 fied that the petitioner will comply with this article.

83 (d) (1) In addition to finding the application in compli-
84 ance with subsection (b) of this section, if the area pro-
85 posed to be mined contains prime farmland, the director
86 may, pursuant to rules promulgated hereunder, grant a
87 permit to mine on prime farmland if the operator affirma-
88 tively demonstrates that the operator has the technologi-
89 cal capability to restore such mined area, within a reason-
90 able time, to equivalent or higher levels of yield as
91 nonmined prime farmland in the surrounding area under
92 equivalent levels of management, and can meet the soil
93 reconstruction standards in subdivision (7), subsection (b),
94 section thirteen of this article. Except for compliance
95 with subsection (b) of this section, the requirements of
96 subdivision (1) of this subsection apply to all permits
97 issued after the third day of August, one thousand nine
98 hundred seventy-seven.

99 (2) Nothing in this subsection applies to any permit
100 issued prior to the third day of August, one thousand nine
101 hundred seventy-seven, or to any revisions or renewals
102 thereof, or to any existing surface-mining operations for
103 which a permit was issued prior to said date.

104 (e) If the director finds that the overburden on any part
105 of the area of land described in the application for a
106 permit is such that experience in the state with a similar
107 type of operation upon land with similar overburden
108 shows that one or more of the following conditions cannot
109 feasibly be prevented: (1) Substantial deposition of
110 sediment in stream beds; (2) landslides; or (3) acid-water
111 pollution, the director may delete such part of the land
112 described in the application upon which such overburden
113 exists.

114 (f) The prohibition of subsection (c) of this section may
115 not apply to a permit application due to any violation
116 resulting from an unanticipated event or condition at a
117 surface coal mine eligible for remaining under a permit
118 held by the applicant.

**§22-3-28. Special permits authorization for reclamation of
existing abandoned coal processing waste piles;
coal extraction pursuant to a government-fi-
nanced reclamation contract; coal extraction as
an incidental part of development of land for
commercial, residential, industrial or civic use;
no cost reclamation contract.**

1 (a) Except where exempted by section twenty-six of this
2 article, it is unlawful for any person to engage in surface-
3 mining as defined in this article as an incident to the
4 development of land for commercial, residential, indus-
5 trial or civic use without having first obtained from the
6 director a permit therefor as provided in section eight of
7 this article, unless a special authorization therefor has
8 been first obtained from the director as provided in this
9 section.

10 Application for a special authorization to engage in
11 surface-mining as an incident to the development of land
12 for commercial, residential, industrial or civic use shall be
13 made in writing on forms prescribed by the director and
14 shall be signed and verified by the applicant. The applica-
15 tion shall be accompanied by:

16 (1) A site preparation plan, prepared and certified by or
17 under the supervision of a person approved by the direc-
18 tor, showing the tract of land which the applicant pro-
19 poses to develop for commercial, residential, industrial or
20 civic use; the probable boundaries and areas of the coal
21 deposit to be mined and removed from said tract of land
22 incident to the proposed commercial, residential, indus-
23 trial or civic use thereof; and such other information as
24 prescribed by the director;

25 (2) A development plan for the proposed commercial,
26 residential, industrial or civic use of said land;

27 (3) The name of owner of the surface of the land to be
28 developed;

29 (4) The name of owner of the coal to be mined incident
30 to the development of the land;

31 (5) A reasonable estimate of the number of acres of coal
32 that would be mined as a result of the proposed develop-
33 ment of said land: *Provided*, That in no event may such
34 number of acres to be mined, excluding roadways, exceed
35 five acres; and

36 (6) Such other information as the director may require
37 to satisfy and assure the director that the surface-mining
38 under special authorization is incidental or secondary to
39 the proposed commercial, residential, industrial or civic
40 use of said land.

41 (b) There shall be attached to the application for the
42 special authorization a certificate of insurance certifying
43 that the applicant has in force a public liability insurance
44 policy issued by an insurance company authorized to do
45 business in this state affording personal injury protection
46 in accordance with subsection (d), section nine of this
47 article.

48 The application for the special authorization shall also
49 be accompanied by a bond, or cash or collateral securities
50 or certificates of the same type, in the form as prescribed
51 by the director and in the minimum amount of two
52 thousand dollars per acre, for a maximum disturbance of
53 five acres.

54 The bond shall be payable to the state of West Virginia
55 and conditioned that the applicant complete the site
56 preparation for the proposed commercial, residential,
57 industrial or civic use of said land. At the conclusion of
58 the site preparation, in accordance with the site prepara-
59 tion plan submitted with the application, the bond
60 conditions are satisfied and the bond and any cash,
61 securities or certificates furnished with said bond may be
62 released and returned to the applicant. The filing fee for
63 the special authorization is five hundred dollars. The
64 special authorization is valid for two-years.

65 (c) The purpose of this section is to vest jurisdiction in
66 the director, where the surface-mining is incidental or
67 secondary to the preparation of land for commercial,
68 residential, industrial or civic use and where, as an
69 incident to such preparation of land, minerals must be
70 removed, including, but not limited to, the building and
71 construction of railroads, shopping malls, factory and
72 industrial sites, residential and building sites and recre-
73 ational areas. Anyone who has been issued a special
74 authorization may not be issued an additional special
75 authorization on the same or adjacent tract of land unless
76 satisfactory evidence has been submitted to the director
77 that such authorization is necessary to subsequent devel-
78 opment or construction. As long as the operator complies
79 with the purpose and provisions of this section, the other
80 sections of this article are not applicable to the operator
81 holding a special authorization: *Provided*, That the
82 director shall promulgate rules establishing applicable
83 performance standards for operations permitted under
84 this section.

85 (d) The director may, in the exercise of his or her sound
86 discretion, when not in conflict with the purposes and
87 findings of this article and to bring about a more desirable
88 land use or to protect the public and the environment,
89 issue a reclamation contract solely for the removal of
90 existing abandoned coal processing waste piles: *Provided*,
91 That a bond and a reclamation plan is required for such
92 operations.

93 (e) No person may engage in coal extraction pursuant to
94 a government financed reclamation contract without a
95 valid surface-mining permit issued pursuant to this article
96 unless such person affirmatively demonstrates that he is
97 eligible to secure special authorization pursuant to this
98 section to engage in a government-financed reclamation
99 contract authorizing incidental and necessary coal extrac-
100 tion. The director shall determine eligibility before
101 entering into a government financed reclamation contract
102 authorizing incidental and necessary coal extraction. The
103 director may provide the special authorization as part of
104 the government financed reclamation contract: *Provided*,

105 That the contract contains and does not violate the
106 requirements of this section. The director may not be
107 required to grant a special authorization to any eligible
108 person. The director may, however, in his or her discre-
109 tion, grant a special authorization allowing incidental and
110 necessary coal extraction pursuant to a government
111 financed reclamation contract in accordance with this
112 section.

113 Only eligible persons may secure special authorization
114 to engage in incidental and necessary coal extraction
115 pursuant to a government financed reclamation contract.
116 Any eligible person who proposes to engage in coal
117 extraction pursuant to a government-financed reclama-
118 tion contract may request and secure special authorization
119 from the director to conduct such activities under this
120 section. A special authorization can only be obtained if a
121 clause is inserted in a government financed reclamation
122 contract authorizing such extraction and the person
123 requesting such authorization has affirmatively demon-
124 strated to the director's satisfaction that he or she has
125 satisfied the provisions of this section. A special authori-
126 zation shall only be granted by the director prior to the
127 commencement of coal extraction on a project area. In
128 order to be considered for a special authorization by the
129 director, an eligible person must meet the permit eligibil-
130 ity requirements of this article and demonstrate a mini-
131 mum that:

132 (1) The primary purpose of the operation to be under-
133 taken is the reclamation of abandoned or forfeited mine
134 lands;

135 (2) The extraction of coal will be incidental and neces-
136 sary to accomplish the reclamation of abandoned or
137 forfeited mine lands pursuant to a government financed
138 reclamation contract;

139 (3) Incidental and necessary coal extraction will be
140 confined to the project area being reclaimed; or

141 (4) All coal extraction and reclamation activity under-
142 taken pursuant to a government financed reclamation
143 project will be accomplished pursuant to the applicable

144 environmental protection performance standards and
145 conditions included in the government-financed reclama-
146 tion contract.

147 Prior to commencing coal extraction pursuant to a
148 government financed reclamation project, the contractor
149 shall file with the director a performance bond condi-
150 tioned upon the contractor's performance of all the
151 requirements of the government financed reclamation
152 contract pursuant to this article. For a no cost reclama-
153 tion contract, the criteria for establishing the amount of
154 the performance bond shall be the engineering estimate,
155 determined by the director: *Provided*, That the director
156 may establish a lesser bond amount for long term, no cost
157 reclamation projects in which the reclamation schedule
158 extends beyond two years. In these contracts, the director
159 may in the alternative establish a bond amount which
160 reflects the cost of the proportionate amount of reclama-
161 tion which will occur during a specified period. The
162 performance bond which is provided by the contractor
163 under a federally financed or state financed reclamation
164 contract shall be deemed to satisfy the requirements of
165 this section: *Provided, however*, That the amount of such
166 bond is equivalent to or greater than the amount deter-
167 mined by the criteria set forth in this subsection.

168 (f) Any person engaging in coal extraction pursuant to
169 this section is subject to the following:

170 (1) Payment of all applicable taxes and fees related to
171 coal extraction;

172 (2) Replacement or restoration of the water supply of an
173 owner of interest in real property who obtains all or part
174 of the owner's supply of water for domestic, agricultural,
175 industrial or other legitimate use from an underground or
176 surface source where such supply has been affected by
177 contamination, diminution or interruption proximately
178 caused by coal extraction;

179 (3) Extraction pursuant to this section cannot be initi-
180 ated without the consent of the surface owner for right of
181 entry and consent of the mineral owner for extraction of
182 coal.

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

Randy Schorner
.....
Chairman Senate Committee

Nick Fontana
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David R. Palmer
.....
Clerk of the Senate

Gregory A. King
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

R. Fai
.....
Speaker House of Delegates

The within *is approved* this the *5th*.....
day of *May*....., 1997.

Jeff K. Kasper
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/97

Time 3:06 pm