H. B. 2419

(By Delegate Manypenny)

[Introduced February 13, 2013; referred to the Committee on the Judiciary then Finance.]

A BILL to amend and reenact §22-3-9 and §22-3-13 of the Code of West Virginia, 1931, as amended, all relating to dual liner requirements in new coal-waste impoundments, new coal-waste impoundments at existing facilities, replacement coal-waste impoundments at existing facilities and lateral coal-waste expansions of existing impoundments; and requiring the Director of the West Virginia Department of Environmental Protection to promulgate rules for liners in these surface, coal-waste impoundments including that no impoundment may be situated closer than three miles up stream from any incorporated town of fifteen hundred population or more; and providing abatement procedures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

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

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

(1) The names and addresses of:

(A) The permit applicant;

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

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

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

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

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

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

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

application;

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

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

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

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

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

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

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

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

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

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

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

(9) A description of the legal documents upon which the applicant's legal right to enter and conduct surface-mining operations on the proposed permit area is based and whether that right is the subject of pending court litigation. ~~*Provided*, That Nothing in this article may be construed as vesting in the director~~ Nothing in this article vests the director with the jurisdiction to

adjudicate property-rights disputes;

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

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

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

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

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

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

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

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

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

(E) Other things specified by the director.

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

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

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

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

the seam to be mined;

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

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

(F) Existing or previous surface-mining limits;

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

(H) The location of any significant aquifers;

(I) The estimated elevation of the water table;

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

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

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

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

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

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

(A) Logs of the drill holes;

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

(C) The sulfur content of any coal seam;

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

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

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

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

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

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

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

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

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

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

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

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

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

advertisement.

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

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

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

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

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

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

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

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

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in

the future through surface mining;

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

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

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

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

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

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

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

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material. ~~*Provided*, That~~ If topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator

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

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

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

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

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

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

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

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

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

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

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

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

(I) Preventing or removing water from contact with toxic producing deposits;

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

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

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

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

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

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

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

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

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

(G) Any other actions prescribed by the director.

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

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

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

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

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

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

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

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

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

(A) If the director finds in writing that:

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

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

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

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

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

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

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

(C) If variances granted under the provisions of this

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

may not be unreasonably withheld if the site is suitable;

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

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

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

(A) Natural barriers do not provide adequate stability;

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

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

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

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

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

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

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

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

(B) The applicant presents specific plans for the proposed

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

(I) Compatible with adjacent land uses;

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

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

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

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

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

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

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

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

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

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

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

(I) Natural barriers do not provide adequate stability;

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

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

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

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

(B) The reclaimed area is stable;

(C) The resulting plateau or rolling contour drains inward from the outslopes except at specific points;

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

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

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

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

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

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

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

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

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

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

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

the identified impoundments will have dual liners to prevent the migration of contaminants into the groundwater and surface water: *Provided,* That a new coal-waste impoundment may not be situated closer than three miles up stream from any incorporated town of fifteen hundred population or more. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action. Whenever the director finds that any impoundment constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates an impoundment or the landowners involved, enter upon the premises where any impoundment exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the surface impoundment and to abate the conditions which cause the danger to human life. The cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds

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