

Surface mining in Appalachia

WEST VIRGINIA—the
Appalachian energy giant



CONSIDER THESE **Dart** GIANTS WORKING AT BARBOUR COAL COMPANY, PHILIPPI, WEST VIRGINIA.

THE ONLY 100-TON ^{Plus} TRUCK & LOADER PACKAGE
DESIGNED FOR EACH OTHER.

For detailed information how DART 100-ton mechanical-drive trucks & 45,000 lbs. capacity front-end loaders can reduce your loading/hauling costs and increase your productivity...

CONTACT:

Dart TRUCK COMPANY
A DIVISION OF **PACCAR**

1301 CHOUTEAU TRAFFICWAY, P.O. BOX 321,
KANSAS CITY, MISSOURI 64141, U.S.A. TELEPHONE: 816-483-7679

W. Va. Truck Sales, Inc.

Tuppers Creek Rd.
Between I-77 and Rt. 21
Charleston, W. Va.
Telephone (304) 984-0081

West Virginia Surface Mining & Reclamation Association's

Green Lands

QUARTERLY
WINTER 1978-79



On Top.



CCMP
Policy

More coal operators look to Flat Top Insurance Agency than any other insurer to provide them with insurance protection they want and the times demand.

The reason: Flat Top's CCMP (Comprehensive Coal Mining Packages). Our CCMP is recognized by coal operators in all coal producing states as the most flexible, workable insurance protection they can obtain. Anywhere. That's why we're on top in coal mining insurance.

OFFERING PERSONALIZED COVERAGE FROM
NINE STRATEGIC LOCATIONS IN FIVE STATES

FLAT TOP INSURANCE AGENCY

320 Federal Street / BLUEFIELD, WEST VIRGINIA 24701 / Phone: (304)327-6111

Charleston, W. VA. • Grundy, Pearisburg & Wise, VA.
Pikeville & Lexington, KY. • Knoxville, TENN. • St. Clairsville, OHIO

Cummins Service



Rely on Cummins Experts

As the owner of a Cummins diesel, you've got one of the most reliable engines you can buy. But if something does go wrong, we'll get you turned around fast with trained Cummins technicians and a complete inventory of Genuine Cummins Parts and ReCon® rebuilt assemblies. We're on call 24 hours

a day, and if you can't get to us, we'll get to you with a service truck and a diesel technician.

We also have the maintenance programs and diagnostic equipment to spot trouble before it strikes. And service training courses are available for your mechanics.

Cummins service is just a phone call away... we're in the Yellow Pages under "Engines — Diesel". Cummins Service. Why gamble on anything else?

Cummins Engines of West Virginia, Inc.

Charleston
Fairmont

304-744-6373
304-367-0196

Published Quarterly
the by WVSMRA
1624 Kanawha Blvd. E.
Charleston, WV 25311
Tel. (304) 346-5318

PRESIDENT
BENJAMIN C. GREENE

VICE-PRESIDENT
WILLIAM B. RANEY

CHAIRMAN OF THE BOARD
JOHN J. FALTIS

1ST VICE-CHAIRMAN
CHARLES T. JONES

2ND VICE-CHAIRMAN
LAWRENCE A. STREETS

SECRETARY
GARNIE R. STIDHAM

TREASURER
WILLIAM C. BUTLER

CHAIRMAN-ASSOCIATE DIVISION
BERNARD J. FOLIO

DIRECTORS
J. W. ANDERSON
E. B. BASHAM
C. E. COMPTON
CARL DELSIGNORE
D. R. DONELL
G. B. FREDERICK
L. W. HAMILTON, JR.
J. H. HARLESS
T. L. HORN, JR.
T. W. HYLTON
F. D. JENNINGS
C. I. JOHNSTON
J. C. JUSTICE
H. L. KENNEDY
R. C. LONG
F. B. NUTTER
W. S. RITCHIE, JR.
J. W. STURM
E. F. SURGEON
G. R. SWANSON
W. J. TATTERSALL
O. R. THOMAS
F. W. VIGNEAULT
R. N. WELCH
J. R. WHITE

EDITOR
R. DANIEL MILLER

CIRCULATION
BRENDA GARNETT

TYPIST
PAM SHAFER



Green Lands

INDEX TO ADVERTISERS

Ashland Gas Service	8
Beckwith Machinery	22
Cecil I. Walker Machinery	9
Chamberlaine & Flowers	66
Cline Truck Sales	16
Cody Equipment & Supply	inside cover
Cummins Engines	1
Dart Truck	back cover
D&D Reclamation	66
Dravo Doyle	51
Fairchild	50
Flat Top Insurance	inside cover
Green Mountain	14
J. D. Hinkle & Sons	21
JHM Laboratories	58
Machinery	57
McDonough-Caperton-Shepherd Group	68
Miller & Miller Auctioneers	65
Mountaineer Euclid	4
Mountaineer Industrial Engines	14
Mountaineer Mack Sales	64
Patterson, Bell & Crane	8
Penn Line Service	5
Robins & Associates	5
Rish Equipment	15
Tire City	21
West Virginia Tractor	20
Willco Reclamation	58
W. W. Williams	47



Volume 8 Number 4

Winter 1978-79

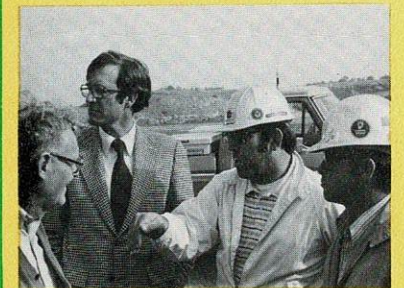
Editorials	6
Thoughts generated by recent OSM hearings	
Princess Susan Is Not Alone	10
A look at some of West Virginia's "other" haulbacks	
West Virginia's Amended Regulations	17
As issued by the Department of Natural Resources	
The Law of '78	23
Technical Section	
Coming to the Mountain	48
The President's Coal Commission visits West Virginia	
Leo Vecellio	52
Coal Man of the Year	
Stregulation	59
Testimony to the Coal Commission	
Paperwork	62
Read 'em and weep	
Association Notebook	67
Once over briefly	

Our Cover

Although it may be difficult to characterize such a picturesque scene as typical of a company's work, it is fair to say that this is indicative of the professionalism of a group of Beckley based companies. For details, see 52.



p-10



p-49



p-52



p-56

EUC[®] R-85 a great hauler for simple reasons

- GREATER PAYLOAD CAPACITY
- BETTER, FASTER LOADING
- LONGER TIRE LIFE
- EASILY SERVICED
- YOU CAN MATCH IT TO THE JOB

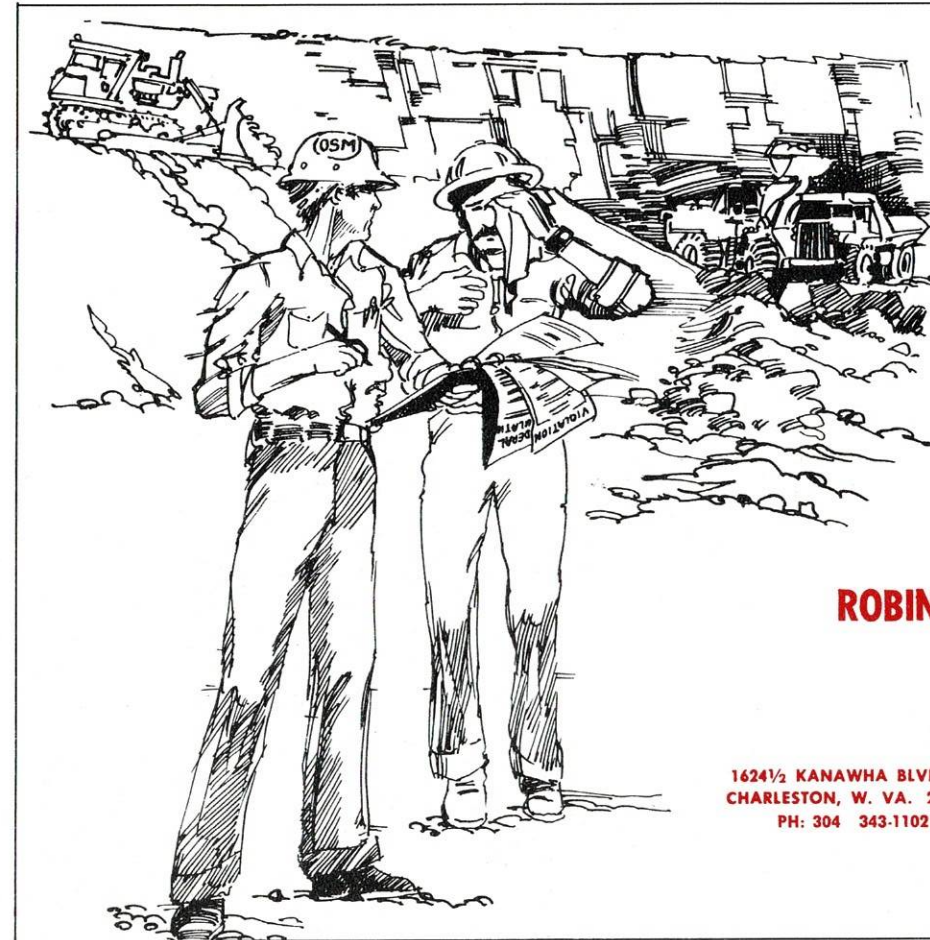


MOUNTAINEER **Euclid** INC.

6406 MacCorkle Avenue, S.W.
P. O. Box 8515
So. Charleston, West Virginia 25303
Phone: 304/768-0081

P. O. Box 1561
U.S. Route 50 East
Clarksburg, West Virginia 26301
Phone: 304/624-7624

112 Harper Park Drive
P. O. Box 1773
Beckley, West Virginia 25801
Phone: 304/255-4133



Avoid Needless
Construction and
Costly Violations. . .

Let us design an
effectively engineered
mining and reclamation
plan tailored to your
specific needs.

ROBINS AND ASSOCIATES

MINE PLANNING
and
DESIGN SERVICES

1624½ KANAWHA BLVD. E.
CHARLESTON, W. VA. 25311
PH: 304 343-1102

P. O. BOX 170
MECHANICSBURG, PA. 17055
PH: 717 238-3528

Support the West Virginia COALITION

For further information, contact

the West Virginia Coal Association

Charleston, W. Va. Telephone (304) 342-4153

From air or ground,
Penn Lines can do that
hydroseeding job

—For helicopter seeding CALL—
Dub Bailey

—For truck hydroseeding CALL—
Ron Hill

Call our toll-free number
800 - 245 - 6800



PENN LINE SERVICE, INC.

SCOTTDALE, PENNSYLVANIA
15683

Are They Really Listening?

The recent OSM hearings on proposed final regulations for the Surface Mining Control and Reclamation Act of 1977, proved instructive in several areas. We stated in our last issue that the people of West Virginia do not speak with one voice. We stand by that statement.

However, it should have been illuminating to all authorities concerned, that the coal industry, the United Mine Workers, and the West Virginia Department of Natural Resources were united in their opposition to the federal approach to controlling the industry.

Certainly, it is a noteworthy occurrence when three such diverse groups think similarly on any subject. It should be obvious by now to federal authorities that the overwhelming majority of those familiar with the coal industry look with disfavor upon the regulations as a whole. It would be incredible indeed if this point were lost on those charged with issuing final regulations.

Why then does each succeeding set of regulations spell out, in ever greater detail, how to fix what isn't broken? If the Office of Surface Mining is really listening, why can't we expect a major revision, a vast reduction, of the final regulations?

Kentucky's Double Jeopardy

You can't necessarily preserve any of your eggs by placing them in different baskets.

Witness Senator Wendell Ford of Kentucky, who must spend quite a lot of his time shuttling back and forth between HEW and OSM in an effort to shield his state's two major industries from over restrictive government regulation. Reference is made to ongoing efforts to move the tobacco industry toward extinction. Proposals will go before the 96th Congress to place heavier taxes on cigarettes and to further restrict smoking in public places.

It only remains for the federal government to ban bourbon, horse racing and UK basketball to close the lid on Kentucky's coffin.

Every major industry in this country suffers from the effects of an ever thickening blanket of federal regulation. Few, however, fall into the category of the coal industry, which exists under the constant reality of instability through the influence of the federal government and its all-encompassing bureaucracy. Fewer still are so affected in such a geographically compact area as the Appalachian region. The tobacco industry probably is one which meets these unfortunate criteria.

Perhaps, tobacco's problems will bear more directly on the consuming public, which presumably will pay more for the privilege of smoking less. Perhaps the highly visible, easily understood public effects of further restraints on the tobacco industry will lead the average citizen to

realize just how much American life has been permeated by a philosophy of government which presumes its constituents to be irresponsible and incompetent to conduct their own affairs.

Tobacco farmers and coal miners are not an inherent threat to the moral or physical well-being of this country. Neither are cigarette or coal companies; nor are smokers or those who wish to consume electricity at a reasonable cost.

Therefore, the legitimate concerns which the federal government has with these industries should be tempered by the knowledge of their importance to the governed.

An Analogy

An analogy is in order. Many people, including some important people, seem to have difficulty grasping the idea that West Virginia can attack federal surface mining and reclamation regulations, yet simultaneously support a tightening of environmental standards nationally.

The idea, of course, is that if other states were required to abide by West Virginia's reclamation standards, then the Mountain State would be restored to its competitive position in the coal market. That situation has not been accomplished by the Surface Mining Control Act of 1977.

As stated above, an analogy is in order. Most everyone knows that college athletics is governed by the National Collegiate Athletic Association (NCAA). Suppose a given school requires its athletes to maintain a grade average of 2.6 (B-). That school is obviously at a competitive disadvantage with its rivals, but its regents have insisted on this balance of academics and athletics, and are happy with it.

Now suppose the NCAA decided to strike its own balance, and therefore initiated rules requiring athletes to maintain a grade average of 2.0 (C) AND to follow a specific course of study to achieve that average. Now, the athletes at our mythical college are stuck with both standards.

Outside influences have upset the academic-athletic balance, and the school remains at a competitive disadvantage.

This is what has happened to West Virginia's surface mining industry. We now are asked to live with everyone's standard, plus our own. Thus, West Virginia remains the most regulated state, but to no constructive end.

Before leaving the subject of athletics, it should be noted that it is entirely possible to maintain simultaneously outstanding academic and athletic programs, as the University of Notre Dame has done.

It is also possible to maintain a viable surface mining industry alongside a responsible reclamation program. This the state of West Virginia has done, and the federal government's cookbook approach toward solving reclamation problems on a national basis can only harm that delicate balance.



Ashland Gas Service, Inc.

P. O. Box 1754
Beckley, West Virginia 25801

Distributors for Ashland and Valvoline products. Serving the coal industry with diesel fuel, automotive and industrial oils and greases.

Distributor for Fram automotive and industrial filters. Automotive and industrial batteries.

Distributor for "Conwed" Hydro Mulch used in soil reclamation.

The above products are distributed by Ashland Gas Service, Inc. in the Beckley, Summersville and Montgomery areas. For service please contact:

*Ashland Gas Service, Inc., Box 1754, Beckley, West Virginia 25801
Phone 255-2151*

COAL & PBC

DYNAMIC DUO!

**PATTERSON BELL & CRANE
INSURANCE AND BONDS**



1110 ONE VALLEY SQUARE
TELEPHONE 304/344-4051



A
CENTURY
OF
SERVICE



When you've reached the top of the hill, you'll want a Cat 777 off-highway truck.

Only a few coal operators make it to the top. Most never get to the point where their operation is big enough to get a Caterpillar 777 off-highway truck.

But if you're among the few operators who have reached the "big time," nothing else can take the place of the Cat 777.


The truck's specs are mind boggling. It has an 85-ton capacity, an 870-horsepower engine and a top speed (loaded) of 37 mph. And its braking system is what you'd expect from Caterpillar, so

you don't have any worries as these big trucks come down from the top of the hill.

And that's just the beginning. If you're one of the few coal operators who has made it to the top of the hill, write or call Walker Machinery and ask for our full-color booklet on the Caterpillar 777 off-highway truck.



Charleston 304/949-4441 Beckley 304/253-2706 Summersville 304/872-4303 Parkersburg 304/485-4547

Caterpillar, Cat and  are Trademarks of Caterpillar Tractor Co.



Princess Susan's haulback, a traditional showcase operation, is growing old gracefully, acquiring a more natural appearance with each passing season.

Princess Susan Is Not Alone

The Princess Susan Coal Co., Inc., of Kanawha County, West Virginia, has become a familiar name to most persons familiar with surface mining and reclamation in the eastern United States.

As one of the earliest practitioners of the steep slope haulback mining method, Princess Susan was quickly established as one of West Virginia's showcase mining and reclamation operations. As such, it has been well publicized in various trade publications and slide shows, and even in a U.S. congressional report. The Kelley's Creek operation has also become a "must stop" for the frequent tour groups which visit West Virginia jobs.

Proud as the industry should be of Princess Susan's accomplishments, it should be pointed out that many other West Virginia companies are achieving excellent results with the haulback technique.

In this and succeeding issues of **Green Lands Quarterly**, we hope to illustrate that success. As described in an earlier issue, haulback is "putting it back Mountain State style." Here's how our people do it.



Pratt Mining's operations in Kanawha County reflect a great deal of pride and outstanding workmanship.



Cedar Coal, which operates on the Kanawha-Boone County line, has adapted haul-back techniques to maximize reclamation benefits on this mountaintop mining job.



Eagle Ridge Coal, in Fayette County, became the second haul-back operation to be honored by an appearance in Wonderful West Virginia, a state magazine devoted to scenic photography. The first was Princess Susan.

Green Mountain Company

RECLAMATION AND ENVIRONMENTAL MATERIALS & SERVICES TO THE MINING INDUSTRY

Green Mountain Company is a multidisciplinary firm aiding the mining industry in resource development during exploration and planning, environmental monitoring during operation, reclamation projects and finally in support of reclamation - bond release.

● RECLAMATION MATERIALS & SERVICES

Seed
Agricultural limestone
Fertilizer
Hydromulches
Soil Stabilents
Bark Mulch
Hydroseeding
Limespreading
Water Analysis

● STATE AND FEDERAL PERMIT ACQUISITION

● PRE-MINING LAND USE ASSESSMENT

● ENVIRONMENTAL BASELINE SURVEYS

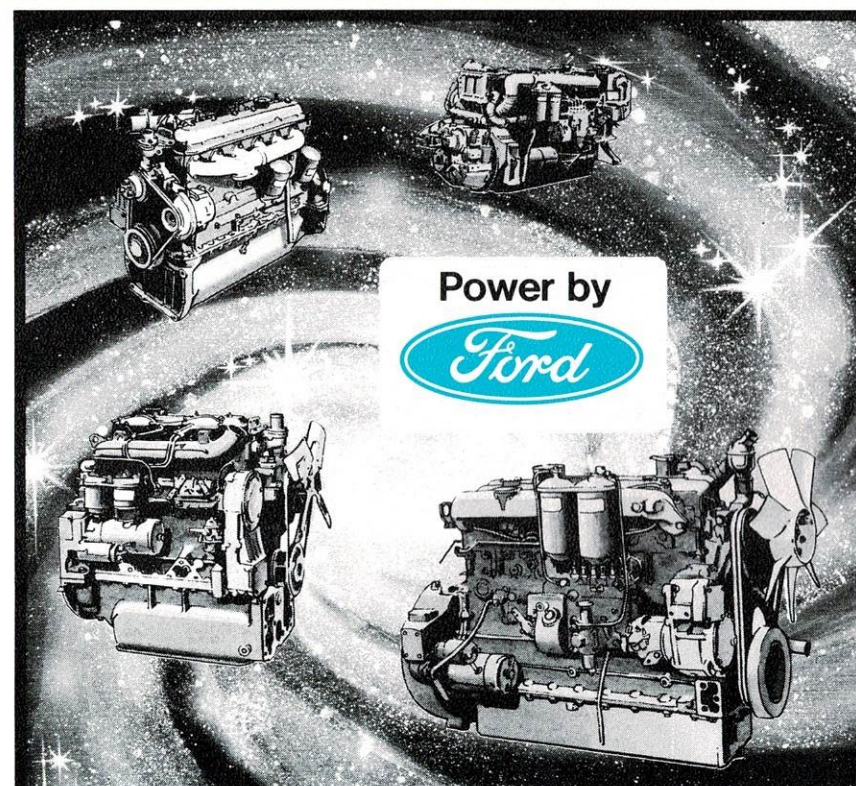
● POST MINING LAND USE PLANNING

GREEN MOUNTAIN COMPANY

Port Amherst
Charleston, W. Va. 25306
(304) 925-1171

KEN FAERBER

TANDY JONES



Powerful News! Four Ford SSD Industrial Diesels

See us today! Because now we can offer you more choices in Ford power than ever before. Four SSD Ford diesels from 2.7 to 8.1 litres (168 to 495 CID). 51 to 143 intermittent gross horsepower. Engineered for a wide range of applications.

We'll help you tailor these engines to meet your needs. We will provide comprehensive parts and service support. And Ford will provide us with comprehensive parts, service and engineering support.

Look into the Wide World of Ford Power for all your power needs. Stop in. Or let us come out and see you with full details on these SSD Ford diesels.

**MOUNTAINEER
INDUSTRIAL
ENGINES**

Division of Fitzgerald Enterprises

5650 Rt. 60, East, Huntington, W. Va. 25705
Phone (304) 736-8961
Charleston 722-4275 / W. Va. Watts 1-800-642-3404



CHAMPION®

WE'RE NOT CALLED CHAMPION FOR NOTHING



A Champion is described as one who has defeated all opponents and is ranked first... This dictionary definition of a Champion could not be more apropos for the Champion line of 700 series Motor Graders. Whether the application is heavy grading work on haul roads, highway work or heavy duty snow removal, Champion Motor Graders are ranked first by all standards of comparison.

Starting from the top, the Champion offers patented, easy to operate power hydraulic, control levers which adjust instantly, forward or back for stand-up or seated operation. Power steering wheel adjusts forward or back, up or down at a touch of a button. You've got a choice of transmissions from Manual Shift to Power Shift. You've got options available such as a Bulldozer matched perfectly to the Grader, a Ripper/Scarifier built by Champion, and Articulation or non-articulated frame.

Qualities of a Champion. All possessed by Champion's 700 series Motor Graders. Be sure to check out the Champion at RISH EQUIPMENT COMPANY. We're the home of the Champion.



**EQUIPMENT
COMPANY**



Airport Rd. near U.S. 52
BLUEFIELD, W. VA.

127 Pikeview Drive
BECKLEY, W. VA.

U.S. 50 at Bridgeport
CLARKSBURG, W. VA.

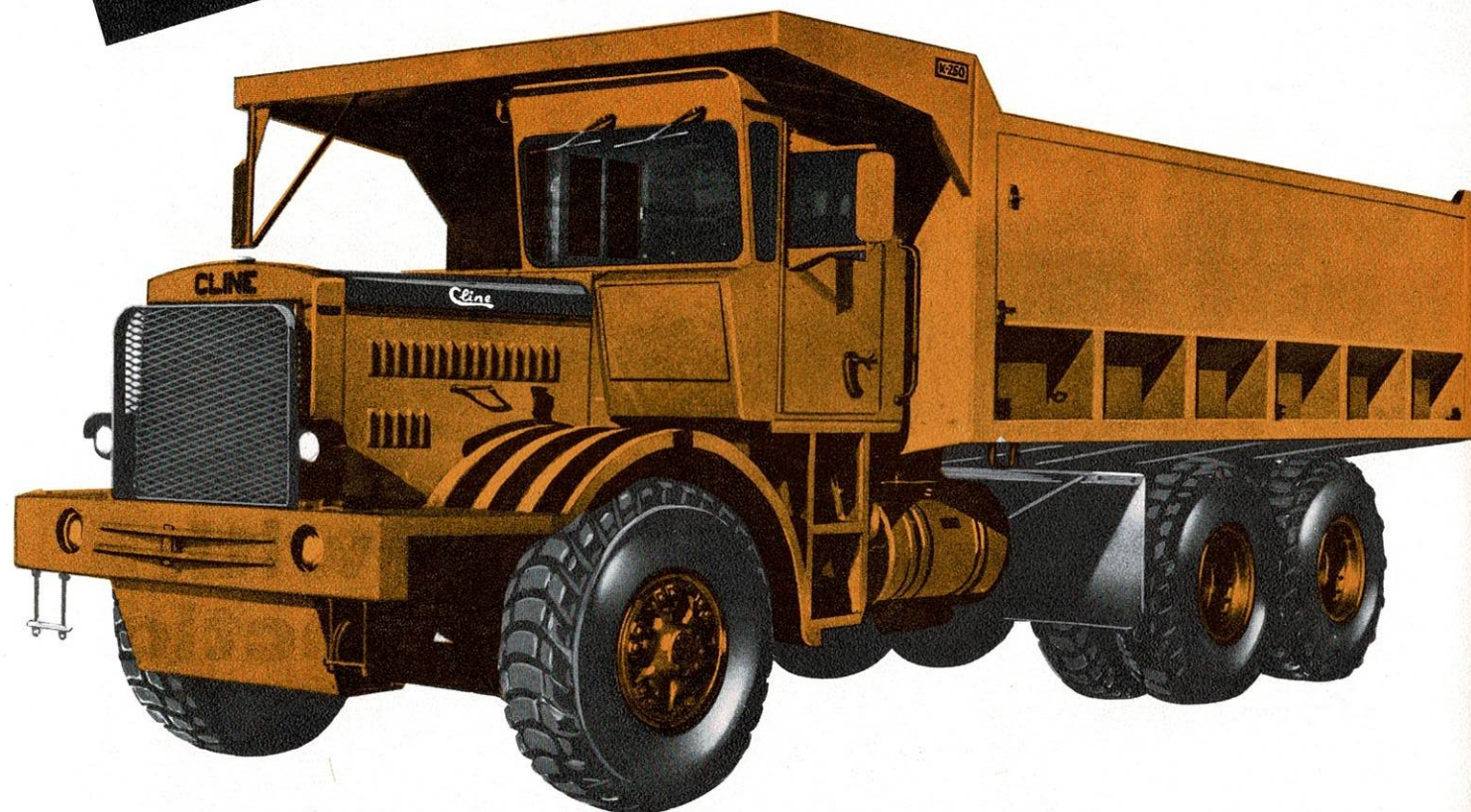
Rt. 35
ST. ALBANS, W. VA.

Rt. 14 at Vienna
PARKERSBURG, W. VA.

101 Frostburg Industrial Park
FROSTBURG, MD.

Cline

SERIES
"B"



IC-250 C 50-TON REAR DUMP COAL HAULER

LARGE PARTS DEPOT and COMPLETE SERVICE
CLINE TRUCK SALES, Inc.

P.O. BOX 6724, CHARLESTON, WEST VIRGINIA 25302

PHONE: 304-345-3090

West Virginia's Amended Regulations

Editor's Note: In our last issue, we published the newly proposed regulations promulgated by the West Virginia Department of Natural Resources to comply with federal law. On these pages appear the changes to those regulations, which are now in effect.

SECTION 1. GENERAL

1.02. **Authority** — These regulations are issued under the authority of Article 6, Chapter 20, Code of West Virginia, as amended. These regulations supplement regulations which were promulgated by the West Virginia Reclamation Commission on August 14, 1978 and became effective on August 14, 1978.

1.03. **Effective Date** — These regulations were promulgated on October 6, 1978 and become effective on October 6, 1978.

1.04. **Filing Date** — These regulations were filed in the Office of the Secretary of State on the 6th day of October, 1978.

SECTION 2. DEFINITIONS: UNLESS THE CONTEXT IN WHICH USED CLEARLY REQUIRES A DIFFERENT MEANING, AS USED IN THESE REGULATIONS OR AS REFERRED TO IN ARTICLE 6, CHAPTER 20, CODE OF WEST VIRGINIA, AS AMENDED.

2.04. Acid-producing overburden shall mean material that may cause spoil which upon chemical analysis, show a pH of 4.0 or less. Seams commonly associated with such material may include, but not be limited to Waynesburg, Washington, Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and Stockton-Lewiston.

2.11. Buffer zone shall mean an undisturbed border along or around an intermittent or perennial stream.

2.15. Lightly buffered stream shall mean any stream or its tributaries that contains less than 15 ppm methyl orange alkalinity (to pH 4.5) and a conductivity of less than 50 micro MHO.

2.44. Prospecting shall mean the use of excavating equipment in an area not covered by a surface mining permit for the purpose of removing the overburden to determine the location, quantity or quality of a natural coal deposit, or to make feasibility studies, or for any other purpose.

SECTION 5. HAULAGEWAYS OR ACCESS ROADS

5.17. Infrequently Used Access Road Exemption — Access roads constructed for and used only to provide infrequent service to surface facilities such as ventilators, monitoring devices and sedimentation ponds shall be exempt from the requirements of sub-sections 5.02, 5.03, 5.04, 5.05, 5.06, 5.07, 5.08, 5.12, 5.13 and 5.15, provided adequate stabilization to control erosion is achieved through use of alternate measures. This exemption shall not apply should environmental harm in the form of additional contributions of suspended solids or erosion occur and in such instances the director may order that any or all of the requirements of Section 5 be met.

SECTION 6. BLASTING

6.06. Audible Blast Warning — Three (3) minutes prior to blasting a warning signal audible to within a range of 1/2 mile from blast site will be given. This pre-blast warning shall consist of three (3) short blasts of five (5) seconds duration with five (5) seconds between each blast. One (1) long audible warning signal of twenty (20) seconds duration shall be the "all clear" signal.

6.14. Blast Record — A blasting log record book shall be kept current daily and is to be made available at the operation for inspection by the director and the public. These blasting log records are to include seismograph reports, shall be retained for three (3) years and should include as a minimum the following data:

- a. Name of permittee, operator, or other person conducting the blast;
- b. Location, date and time of blast;
- c. Name, signature and certification number of blaster-in-charge;
- d. Direction and distance, in feet, to nearest dwelling, school, church or commercial or institutional building neither owned nor leased by the operator;
- e. Weather conditions;
- f. Type of material blasted;
- g. Number of holes, burden, and spacing;
- h. Diameter and depth of holes;
- i. Types of explosives used;
- j. Total weight of explosives used;
- k. Maximum weight of explosives detonated within any 8 millisecond period;
- m. Method of firing and type of circuit;
- n. Type and length of stemming;
- o. If mats or other protections were used;
- p. Type of delay detonator used and delay periods used;
- q. Seismograph records, where required, including but not limited to:
 1. Seismograph reading, including exact location of seismograph and its distance from the blast;
 2. Name of person taking the seismograph reading;
 3. Name of person and firm analyzing the seismograph record, and;
- r. Shot location.

The format for the arrangement and the recording of items in the blasting log record book is to be on forms prescribed by the director.

SECTION 7. PROTECTION OF THE HYDROLOGIC SYSTEM

7C. Water Rights and Replacement

7C.01. Applicability — The operator shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the owner of interest has established that such supply has been affected by contamination, diminution or interruption resulting from the surface mining operation. The replacement of the water supply will not be required if the owner of interest waives the replacement thereof.

7D. Daily Monitoring Exception

7D.01. Applicability — The requirements of Section 7, sub-sections 7A.02b and 7A.02c shall not apply where an operator demonstrates by sufficient data that there is a reasonable expectation that a violation of federal or state water discharge permits will not occur. If such a violation occurs, then the director may require daily monitoring until it has been demonstrated to his satisfaction that the violation or pollution problem has been abated.

SECTION 8. DRAINAGE SYSTEM

8.02. Sediment Control

- c. The structures shall be cleaned out when the sediment accumulation reaches 80% of the sediment storage volume required. Sediment removal shall be done in a manner that minimizes adverse effects on surface water due to its chemical and physical characteristics, on infiltration, on vegetation, and on surface and ground water quality and in a manner consistent with the provisions of Section 9 (Abandonment Procedures for Sediment Control Structures) of the "Drainage Handbook for Surface Mining" published by the West Virginia Department of Natural Resources and hereby incorporated by reference.

SECTION 9. METHOD OF OPERATION

9.06. [Reserved]

9.09. Regrading or Stabilizing Rills and Gullies — Any rills or gullies deeper than nine (9) inches forming in areas that have been regraded and the topsoil replaced but where vegetation has not yet been established will be deemed unacceptable and any such rills or gullies shall be filled, graded, or otherwise stabilized and revegetated. Rills or gullies of lesser size shall also be stabilized if they will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

9.11. Keeping Operation Current — Grading, backfilling and water management practices as approved in the plans shall be kept current as follows:

- a. Should the operation include only stripping (no augering or highwall mining), the grading and backfilling shall follow the mineral removal by a period not to exceed sixty (60) days or 3,000 linear feet.
- b. Should the operation include stripping and augering, the augering shall follow the stripping by a period not to exceed sixty (60) days, and the grading and backfilling shall follow the augering by not more than thirty (30) days or 1,000 linear feet.
- c. Should the operation include stripping and highwall mining, the highwall mining shall follow the stripping within sixty (60) days, or a reasonable time as prescribed by the director. Grading and backfilling shall follow the highwall mining by not more than thirty (30) days or 1,000 linear feet.
- d. Should the operation include only augering or highwall mining, the grading and backfilling shall follow the augering or highwall mining by a period not to exceed thirty (30) days or 1,000 linear feet.
- e. Should the particular site conditions or weather make adherence to these guidelines impractical the period of time or the distance required to be current may be reasonably extended.

9F. [Reserved]

SECTION 16. SURFACE EFFECTS OF UNDERGROUND MINING OPERATIONS

16.01. Applicability — Where surface mining operations are incident to a mine as defined in Chapter 22, Article 1, Code of West Virginia, as amended, all applicable requirements set forth in Chapter 22, Article 2, Section 63; Chapter 20, Article 6, Section 1 et. seq. of Code of West Virginia, as amended; excepting Chapter 20, Article 6, Sections 8, 11a, 13, 13a, 17, 18, 18a, 19, 20a, 20b and 31 and all rules and regulations promulgated pursuant to Chapter 20, Article 6 excepting Sections 4.01, 4.12, 6 and 10 shall apply.

Day after day after day.



Every day reliability. It's your primary concern in big crawler tractors. Fiat-Allis knows it. And we've got three big tractors that deliver it.

In tough hard rock mining or surface coal operations, the 21-C, 31 and 41-B provide job-proved reliability for ripping, stripping, benching, backfilling. And team effectively with loaders and scrapers for overburden removal. Ripper-equipped, they cut through shale, dense conglomerates or rock. And demonstrate outstanding dozing capability at lower cost per yard. Massive strength and rugged construction give you more machine for your dollar—plus the parts commonality to make standardization on Fiat-Allis paid dividends. For day after day reliability, it pays to Think Twice before buying any other big crawler tractor.

HARD FACTS

- 300, 425, and 524 fwhp direct injection diesels for outstanding fuel economy
- Power shift 3 x 3 transmission, for smoother directional changes
- Exclusive automatic input clutch for built-in drive train protection
- Exclusive test panel for fast checking of major drive line component hydraulic pressures
- Spacious operator's compartment with unique control console for operator efficiency
- Working weights to 85,920—134,320—157,830 lb.

FIAT-ALLIS

**WEST VIRGINIA
TRACTOR &
EQUIPMENT CO.**

CONSTRUCTION, MINING & INDUSTRIAL EQUIPMENT
CHARLESTON 346-5301 CALL TOLL FREE 800-642-8245
CLARKSBURG 624-7311 / BECKLEY 255-2155

We can handle it.

J. D. Hinkle and Sons supplies mine fuel and lubricants to customers in all aspects of the mining industry. But there's more. . . Not only do they have quality products, but their business is built on service and competitive prices.

They also have a wealth of ideas to help you in your business. And with bulk fuel storage tanks from 2,000 to 12,000 gallon capacity and skids in stock for mobile or permanent installation, they can handle your needs to the fullest. When it comes to quality diesel fuel and lubricants, J. D. Hinkle and Sons can handle it!

Specializing in UNION 76
diesel suppliers in

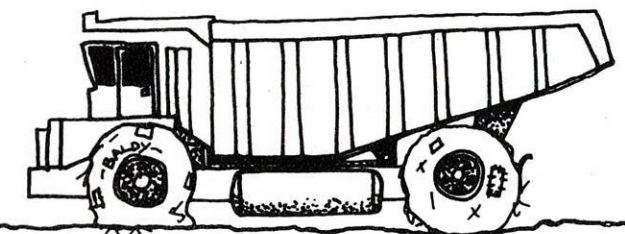


lubricants and multiple
10 locations in three states.

**j.d.HINKLE
& sons, inc.**

P.O. BOX 70
BUCKHANNON, W.V. 26201
(304) 472-3367

YOUR EQUIPMENT IS ONLY AS GOOD AS THE TIRES IT ROLLS ON.



**Tire City is your complete service facility.
Give us a call today. We are your statewide
supplier, specializing in off-highway tires,
recaps and fast service.**

Also Available at Tire City are:

- Off-Highway Trucks
- Large Inventory
- Tire Consignment
- In-House Recapping
- Invoice Incentives
- Fast Pick-up and Delivery Service



Tire City
15 S. Spring St.
Buckhannon, WV 26201
304/472-1313



MICHELIN

B.F. Goodrich

Firestone

COOPER


See Beckwith Machinery Company for the difference. We can serve *all* your needs. For construction equipment, for parts availability, for parts exchange programs... for service and preventive maintenance programs that keep your equipment productive.

And isn't that the kind of equipment dealer you're looking for?

At **Beckwith**, the difference is the time and money you save.



YOUR CATERPILLAR DEALER
Beckwith
 MACHINERY COMPANY
 PITTSBURGH, PA. SOMERSET, PA.
 BRADFORD, PA. ERIE, PA.
 CLEARFIELD, PA. CLARKSBURG, W.VA.
 Service Center Altoona, Pa.

Caterpillar, Cat and  are Trademarks of Caterpillar Tractor Co.
 Caterpillar Lift Trucks are manufactured by Towmotor Corporation,
 subsidiary of Caterpillar Tractor Co.

The Law of '78

Editors Note:

The following is excerpted from the WEST VIRGINIA CODE, and reflects the most recent changes in State law regarding surface mining and reclamation activities. These changes were instituted during the 1978 legislative session to accommodate requirements of the federally enacted Surface Mining Control and Reclamation Act of 1977.

ARTICLE 6.

SURFACE MINING AND RECLAMATION.

- Sec.
- 20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.
 - 20-6-2. Definitions.
 - 20-6-3. Division of reclamation; duties and functions; selections, duties and compensation.
 - 20-6-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
 - 20-6-5. Duties of surface-mining reclamation inspectors.
 - 20-6-6. Reclamation commission; duties, functions and compensation.
 - 20-6-7. Prospecting permit; bond; postponement of reclamation.
 - 20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.
 - 20-6-8a. Limitation on the issuance of new permits for surface mining.
 - 20-6-9. Preplans.
 - 20-6-9a. Installation of drainage system.
 - 20-6-10. Alternative plans; time.
 - 20-6-11. Limitations; mandamus.
 - 20-6-11a. Blasting restriction; formula; filing preplan; penalties; notice.
 - 20-6-12. Time in which reclamation shall be done.
 - 20-6-13. Requirements regarding surface-mined areas where benches result.
 - 20-6-13a. Requirements regarding surfacemined areas where benches do not result.
 - 20-6-14. Obligations of the operator.
 - 20-6-14a. Cessation of operation by inspector.
 - 20-6-15. Completion of planting; inspection and evaluation.
 - 20-6-16. Performance bonds.
 - 20-6-17. Special reclamation tax.
 - 20-6-18. Exception as to highway construction projects from reclamation requirements.
 - 20-6-18a. Special permits for the removal of coal incidental to the development of land.
 - 20-6-19. Existing permits and performance bonds.
 - 20-6-20. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.
 - 20-6-20a. Surface miner; certification required.
 - 20-6-20b. Certification of surface mine foremen.
 - 20-6-21. Monthly report by operator.
 - 20-6-22. Leasing of lands owned by the State for the surface mining of coal therefrom.
 - 20-6-23. Participation with federal government and other governmental agencies.
 - 20-6-23a. Implementing federal surface mining and control standards under Public Law 95-87 and expanding rule-making authority of the director and reclamation commission; expiration of authority.

Sec.

- 20-6-24. Rules and regulations.
- 20-6-25. Noncompliance.
- 20-6-26. Adjudications, findings, etc., to be by written order; contents; notice.
- 20-6-27. Reclamation board of review.
- 20-6-28. Appeals to board; hearing; record; findings and orders of board.
- 20-6-29. Appeal from order of board.
- 20-6-30. Offenses; penalties; prosecutions; treble damages; injunctive relief.
- 20-6-31. Effective date of article.
- 20-6-32. Severability of provisions.

W. Va. Law Review—For article, "Strip Mining and the 1971 West Virginia Surface Mining and Reclamation Act," see 75 W. Va. L. Rev. 319 (1973). For article, "Prohibition of Surface Mining in West Virginia," see 78 W. Va. L. Rev. 445 (1976). For note, "The Federal Water Pollution Control Act Amendments of 1972 as Applied to the Surface Mine in West Virginia," see 78 W. Va. L. Rev. 213 (1976).

§20-6-1. Jurisdiction vested in department of natural resources; legislative purpose; apportionment of responsibility.

Except as otherwise provided in section twenty-one [§20-6-21] of this article, the department of natural resources is hereby vested with jurisdiction over all aspects of surface mining and with jurisdiction and control over land, water and soil aspects pertaining to surface-mining operations, and the restoration and reclamation of lands surface mined and areas affected thereby.

The legislature finds that, although surface mining provides much needed employment and has produced good safety records, unregulated surface mining causes soil erosion, pyritic shales and materials, landslides, noxious materials, stream pollution and accumulation of stagnant water, increases the likelihood of floods and slides, destroys the value of some lands for agricultural purposes and some lands for recreational purposes, destroys aesthetic values, counteracts efforts for the conservation of soil, water and other natural resources, and destroys or impairs the health, safety, welfare and property rights of the citizens of West Virginia, where proper reclamation is not practiced.

The legislature also finds that there are wide variations regarding location and terrain conditions surrounding and arising out of the surface mining of minerals, primarily in topographical and geological conditions, and by reason thereof, it is necessary to provide the most effective, beneficial and equitable solution to the problems involved.

The legislature further finds that authority should be vested in the director of the department of natural resources to administer and enforce the provisions of this article.

The director of the department of natural resources and the director of the department of mines shall cooperate with respect to departmental programs and records so as to effect an orderly and harmonious administration of the provisions of this article. The director of natural resources may avail himself of any services which may be provided by other state agencies in this State and other states or by agencies of the federal government, and may reasonably compensate them for such services. He may also receive any federal funds, state funds or any other funds for the reclamation of land affected by surface mining. The department of mines and all departments, schools and colleges of West Virginia University shall cooperate fully with the division of reclamation of the department of natural resources in administering and enforcing the provisions of this article.

No public officer or employee in the department of natural resources, the department of mines, or the office of attorney general, having any responsibility or duty either directly or of a supervisory nature with respect to the administration or enforcement of this article shall (1) engage in surface mining as a sole proprietor or as a partner or (2) be an officer, director, stockholder, owner or part owner of any corporation or other business entity engaged in surface mining or (3) be employed as an attorney, agent or in any other capacity by any person, partnership, firm, association, trust or corporation engaged in surface mining. Any violation of this paragraph by any such public officer or employee shall constitute grounds for his removal from office or dismissal from his employment, as the case may be. (1967, c. 145.)

ALR references.—Mandamus against municipality to compel repair or improvement of drain, 46 ALR 271.

Taxation for drainage of land as within constitutional provisions prohibiting legislature from imposing taxes for county, city or corporate purposes, or providing that legislature may invest the power to levy such taxes in local authorities, 46 ALR 702; 106 ALR 917.

Deeds for drainage purposes as creating fee or easement, 136 ALR 407.

Discrimination between property within and that outside municipality and other governmental district as to rates for use of drains or sewers, 4 ALR2d 610.

§20-6-2. Definitions.

Unless the context in which used clearly requires a different meaning as used in this article:

(a) "Adequate treatment" shall mean treatment of water by physical, chemical or other approved methods in a manner that will cause the analyzed pH level of the treated water to be 5.5 or more and analyzed content of iron of the treated water to be ten milligrams per liter or less or approved treatment which will not lower the water quality standards established for the river, stream or drainway into which such water is released.

(b) "Breakthrough" shall mean the release of water which has been trapped or impounded underground, or the release of air into any underground cavity, pocket or area.

(c) "Director" shall mean the director of natural resources or his authorized agents.

(d) "Disturbed land" or "land disturbed" shall mean (1) the area from which the overburden has been removed in surface-mining operations, (2) the area covered by the spoil, and (3) any areas used in surface-mining operations which by virtue of their use are susceptible to excessive erosion including all lands disturbed by the construction or improvement of haulageways, roads or trails.

(e) "Minerals" shall mean coal, clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

(f) "Mulch" shall mean any natural or plant residue, organic or inorganic material, applied to the surface of the earth to retain moisture and curtail or limit soil erosion.

(g) "Multiple bench" or "multiple seam" shall mean a form of surface mining in which two or more benches are produced, one above the other, in order to allow the removal of minerals from superjacent seams.

(h) "Operator" shall mean any individual, partnership, firm, association, trust or corporation who or which is granted a permit to engage in any activity covered by this article.

(i) "Permit area" shall mean the area of land indicated on the approved map submitted by

the operator with the reclamation plan as specified in section nine [§20-6-9] of this article showing the exact location of end strip markers, permit markers and monument.

(j) "Person" shall mean any individual, partnership, firm, association, trust or corporation.

(k) "Surface mine" shall mean all areas surface mined or being surface mined, as well as adjacent areas ancillary to the operation, together with preparation and processing plants, storage areas and haulageways, roads or trails: Provided, that mines subject to the provisions of articles one, two, four, five and seven [§§22-1-1 et seq., 22-2-1 et seq., 22-4-1 et seq., 22-5-1 et seq., and 22-7-1 et seq.], chapter twenty-two of said Code, are not "surface mines" within this definition.

(l) "Surface mining" shall mean all activity for the recovery of minerals, except those activities subject to the provisions of articles one, two, four, five and seven, chapter twenty-two of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, and subject to such exception, shall include any and all plants and equipment used in processing said minerals: Provided, however, that the bonding and reclamation provisions of this chapter shall not apply to surface mining of limestone, sandstone and sand, and that the surface mining of limestone, sandstone and sand shall be subject to separate rules and regulations to be promulgated by the commission.

(m) "Surface of a regraded bench" shall mean the top portion or part of any regraded area (1967, c. 145; 1971, c. 112.)

Certain surface-mine operators under no duty to obtain permit.—This article does not place a duty on the limestone, sandstone and sand surface-mine operators to obtain a permit. Op. Att'y Gen., June 25, 1971.

§20-6-3. Division of reclamation; duties and functions; selections, duties and compensation.

There is hereby created within the department of natural resources a division of reclamation, and the director of natural resources shall appoint and fix the compensation of the head of said division who shall be known as the chief of the division of reclamation. Said chief shall have graduated from an accredited four-year college or university with a degree in the field of engineering, agriculture, forestry or related resource field, and shall have four years of full-time paid employment in some phase of natural resources management, two years of

which must have been in a supervisory or administrative capacity.

Except as otherwise provided in this article, the division shall administer all of the laws of this State relating to surface mining and subject to the approval of the director of natural resources shall exercise all of the powers and perform all of the duties by law vested in and imposed upon said director in relation to said operations. The division of reclamation shall have within its jurisdiction and supervision all lands and areas of the State, mined or susceptible of being mined, for the removal of minerals and all other lands and areas of the State deforested, burned over, barren or otherwise denuded, unproductive and subject to soil erosion and waste. Included within such lands and areas shall be lands seared and denuded by chemical operations and processes, abandoned coal-mining areas, swamplands, lands and areas subject to flowage easements and backwaters from river locks and dams, and river, stream, lake and pond shore areas subject to soil erosion and waste. The jurisdiction and supervision exercised by the division shall be consistent with other provisions of this chapter, and the division shall cooperate with other offices and divisions of the department. (1967, c. 145.)

§20-6-4. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.

The director shall determine the number of surface-mining reclamation supervisors and inspectors needed to carry out the purposes of this article and appoint them as such. All such appointees shall be qualified civil service employees, but no person shall be eligible for such appointment until he has served in a probationary status for a period of one year to the satisfaction of the director of natural resources: Provided, that the provisions of this section shall not affect the status of persons employed on the effective date of this article [July 1, 1967] as reclamation inspectors under the former provisions of this article, if such persons are qualified civil service employees.

Every surface-mining reclamation supervisor or inspector shall be paid not less than fifteen thousand dollars per year. (1967, c. 145; 1976, c. 93.)

§20-6-5. Duties of surface-mining reclamation inspectors.

The surface-mining reclamation inspectors

shall make all necessary surveys and inspections of surface-mining operations, shall administer and enforce all surface-mining laws, rules and regulations, and shall perform such other duties and services as may be prescribed by the director. Such inspectors shall give particular attention to all conditions of each permit to insure complete compliance therewith. The director shall cause inspections to be made of each active surface-mining operation in this State by a surface-mining reclamation inspector at least once every fifteen days. Said inspector shall note all violations of law thereat and immediately report such violations to the director in writing, furnishing at the same time a copy of such report to the operator concerned and to the prosecuting attorney of the county wherein the operation lies. (1967, c. 145; 1971, c. 112.)

§20-6-6. Reclamation commission; duties, functions and compensation.

There is hereby created and established in the department of natural resources a reclamation commission which shall be composed of the director of natural resources, serving as chairman, the chief of the division of reclamation, the chief of the water resources division and the director of the department of mines. The members of the commission shall receive no compensation for their services on the commission, but shall be reimbursed for expenses necessarily incurred in performing their functions. The commission shall meet upon the call of any member. The director shall request the attorney general to appoint one or more assistant attorneys general who shall perform such duties as may be required by the director. The attorney general, in pursuance of such request, may select and appoint one or more assistant attorneys general, to serve at the will and pleasure of the attorney general, and such assistant or assistants, shall be paid out of any funds made available for that purpose by the legislature to the department of natural resources.

The commission shall have authority to:

(a) Promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-A [§29A-1-1 et seq.] of this Code, to implement the provisions of this article;

(b) Make investigations or inspections necessary to insure complete compliance with the provisions of this article;

(c) Conduct hearings under provisions of this article or rules and regulations adopted by the commission and for the purpose of any investigation or hearing, hereunder, the commission or any member thereof may administer oaths or affirmations, subpoena witnesses, compel their attendance, take evidence and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records relevant or material to the inquiry;

(d) Order, through the director, the suspension or revocation of any permit for failure to comply with any of the provisions of this article or any rules and regulations adopted pursuant thereto;

(e) Order, through the director, a cease and desist order of any operation that is started without a permit as required by law;

(f) Appoint such advisory committees as may be of assistance to the commission in the development of programs and policies: Provided, that such advisory committees shall, in each instance, include members representative of the general public; and

(g) Review orders and decisions of the director. (1967, c. 145; 1971, c. 112.)

§20-6-7. Prospecting permit; bond; postponement of reclamation.

It shall hereafter be unlawful for any person to use excavating equipment in an area not covered by a surface mine permit for the purpose of removing the overburden to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a prospecting permit shall be made in writing on forms prescribed by the director and shall be signed and verified by the applicant. The application shall be accompanied by: (1) A fee of three hundred dollars; (2) a United States geological survey topographic map showing by proper markings the crop line and the name, where known, of the seam or seams to be prospected; (3) a reclamation plan for the proposed disturbed areas as required for holders of surface-mining permits in section nine [§20-6-9] of this article; and (4) a bond, or cash or collateral securities or certificates of the same type, form and amount and in the same manner as provided in section sixteen [§20-6-16] of

this article in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed acreage. If such bond is used, it shall be payable to the State of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to reclamation of the disturbed acreage. The prospecting permit and the bond accompanying said permit shall be released by the director in the same manner as surface-mining permits and bonds are released. In the event the holder of a prospecting permit desires to mine the area covered by the prospecting permit, the director shall permit such holder to convert the prospecting permit to a surface-mining permit, providing the holder of said permit shall comply with the provisions of this article as they relate to surface-mining permits: Provided, that the prospecting permit fee shall be a credit toward the surface-mining permit fee if the area covered by the prospecting permit is converted to a surface-mining permit.

In the event the holder of a prospecting permit desires to surface mine the area covered by the prospecting permit, and has fulfilled all the remaining requirements of a surface-mining permit, the director may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with application for a surface-mining permit within a period of three months following completion of each separate excavation under the prospecting permit. Any excavation carried out under a prospecting permit and not incorporated into the complete reclamation plan shall be reclaimed within a period of three months: Provided, that nothing herein shall prevent a landowner from obtaining coal from his own property for use in his own household if the same is not produced on a commercial basis. (1967, c. 145; 1971, c. 112.)

§20-6-8. Permit required; applications; issuance and renewals; fees and use of proceeds.

It shall hereafter be unlawful for any person to engage in surface mining without having first obtained from the department of natural resources a permit therefor as provided in this section. Application for a surface-mining permit shall be made in writing on forms prescribed by the director of natural resources, and shall be signed and verified by the applicant.

The application, in addition to such other information as may be reasonably required by the director, shall contain the following information: (1) The common name and geologic title, where applicable, of the mineral or minerals to be extracted; (2) maps and plans as provided in section nine [§20-6-9] hereof; (3) the owner or owners of the surface of the land to be mined; (4) the owner or owners of the mineral to be mined; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) a reasonable estimate of the number of acres of land that will be disturbed by mining on the area to be covered by the permit; (7) the permanent and temporary post-office addresses of the applicant and of the owners of the surface and the mineral; (8) whether any surface-mining permits are now held and the numbers thereof; (9) the names and post-office addresses of every officer, partner, director (or person performing a similar function), applicant, together with all persons, if any, owning of record or beneficially (alone or with associates), if known, ten percent or more of any class of stock of the applicant: Provided, that if such list be so large as to cause undue inconvenience, the director may waive the requirements that such list be made a part of such application, except the names and current addresses of every officer, partner, director and applicant must accompany such application; (10) if known, whether applicant, any subsidiary or affiliate or any person controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a surface or strip-mining permit issued under the laws of this State revoked or has ever had a surface-mining bond, or security deposited in lieu of bond, forfeited; and (11) names and addresses of the reputed owner or owners of all surface area within five hundred feet of any part of proposed disturbed land, which such owners shall be notified by registered or certified mail of such application and such owners shall be given ten days within which to file written objections thereto, if any, with the director. There shall be attached to the application a true copy of an original policy of insurance issued by an insurance company authorized to do business in this State covering all surface-mining operations of the applicant in this State and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, pro-

tection in an amount of not less than three hundred thousand dollars.

The director shall upon receipt of the application for a permit, cause to be published, as a Class III legal advertisement in accordance with the provisions of article three [§59-3-1 et seq.], chapter fifty-nine of this Code, a notice of the application for the permit. Such notice shall contain in abbreviated form the information required by this section, together with the director's statement that written protests to such application will be received by him until a specified date, which date shall be at least thirty days after the first publication of the notice.

The publication area of the notices required by this section shall be the county or counties in which the proposed permit area is located. The cost of all publications required by this section shall be borne by the applicant.

Upon the filing of an application in proper form, accompanied by the fees and bond required by this article and said true copy of the policy of insurance, and after consideration of the merits of the application and written protests, if any, the director may issue the permit applied for if the applicant has complied with all of the provisions of this article. If the director finds that the applicant is or has been affiliated with or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who or which has had a surface or strip-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, that no surface-mining permit shall be refused because of any past revocation of a permit and forfeiture of a bond or other security if such revocation and forfeiture occurred before July one, one thousand nine hundred seventy-one, and if, after such revocation and forfeiture, the operator whose permit has been revoked and bond forfeited shall have paid into the surface-mining reclamation fund the full amount of the bond so forfeited, and any additional sum of money determined by the director to be adequate to reclaim the land covered by such forfeited bond: Provided, further, that in no event shall such additional sum be less than sixty dollars per acre.

The permit shall be valid for one year from its date of issue. Upon verified application, containing such information as the director may rea-

sonably require, accompanied by such fees and bond as are required by this article, and a true copy of the policy of insurance as aforesaid, the director shall from year to year renew the permit, if the operation is in compliance with the provisions of this article.

The registration fee for permits for surface mining, whether by open cut, auger method or by highwall mechanical mining or modification thereof, shall be five hundred dollars. The annual renewal fee for permits for surface mining shall be one hundred dollars payable on the anniversary date of said permit upon renewal.

The permit of any operator who fails to pay any fees provided for in this article shall be revoked.

An operator who has been issued a surface-mining permit may use any of the usual methods of mining, including the auger method or highwall mechanical mining or any combination of mining methods defined as "surface mining" in section two [§20-6-2] of this article, unless otherwise provided by law. Any modifications of these methods shall also be under the director's jurisdiction.

All registration and renewal fees for prospecting and surface mining shall be collected by the director and shall be deposited with the treasurer of the State of West Virginia to the credit of the surface reclamation fund. (1967, c. 145; 1971, c. 112.)

Disposition of permits issued under former provisions.—See Op. Att'y Gen., July 31, 1968.

The precise wording and mandatory language of this section require that all information required by this section must be set forth in the notice in abbreviated form. Op. Att'y Gen., June 19, 1972.

Application considered public information.—An application for a surface-mining permit prior to the permit's issuance is considered public information, even in view of the publication of a Class III legal advertisement as required by this section. Op. Att'y Gen., June 14, 1972.

Director may not deny copies because confidential information may be included.—The director of the department of natural resources may not deny copies of the true copy of an insurance policy, reclamation surety bond or cash collateral because confidential information may at times be included therein. Op. Att'y Gen., June 14, 1972.

§20-6-8a. Limitation on the issuance of new permits for surface mining.

On and after the effective date of this section [July 1, 1977], no new permits, including prospecting permits, may be issued under the provisions of article six [§20-6-1 et seq.] of this chapter for the surface mining of coal in any county, unless the operator is required to perform the following:

(1) Ensure to the satisfaction of the director that, when engaged in surface mining on slopes of twenty degrees or greater, 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 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;

(2) Backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials) and grade to restore the approximate original contour of the disturbed land with all highwalls, spoil piles and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this article); and

(3) Comply with all other provisions of article six [§20-6-1 et seq.] of this chapter: Provided, that in the event of any inconsistency between the provisions of this section and other provisions of article six of this chapter, the provisions of this section shall govern and control.

This subdivision shall not be construed so as to abrogate or limit in any way the authority of the director to modify reclamation requirements to bring about more desirable land uses or watershed control, including, but not limited to, mountain top removal and valley fill techniques: Provided, that the use of any such technique shall be subject to the prior written approval of the director.

This subdivision shall not be construed so as to prohibit the retention of a properly maintained haul road on the disturbed land after reclamation has been completed or to prohibit the installation of diversion ditches and other minor deviations from the approximate original contour of the disturbed land: Provided, that the director has given his prior written approval for the haul road, diversion ditch or other minor deviation.

(4) Notwithstanding the provisions of sections nineteen [§20-6-19] and thirty-one [§20-6-31], section six of this article, all surface-mining permits previously issued which are valid on the effective date of this section

[July 1, 1977] and all applications for surface-mining permits which have been received by the department of natural resources on the effective date of this section and all surface-mining operations conducted or to be conducted thereunder are hereby exempted from the requirements of this section. (1977, c. 141.)

§20-6-9. Preplans.

Under the provisions of this article, and rules and regulations adopted by the commission, the operator shall prepare a complete reclamation and mining plan for the area of land to be disturbed. Said reclamation and mining plan shall include a proposed method of operation prepared by a registered professional engineer or a person approved by the director for grading, backfilling, soil preparation, mining and planting and such other proposals as may be necessary to develop the complete reclamation and mining plan contemplated by this article. In developing this complete reclamation and mining plan all reasonable measures shall be taken to eliminate damages to members of the public, their real and personal property, public roads, streams and all other public property from soil erosion, rolling stones and overburden, water pollution and hazards dangerous to life and property. The plan shall be submitted to the director and the director shall notify the applicant by certified mail within thirty days after receipt of the plan and complete application if it is or is not acceptable. If the plan is not acceptable, the director shall set forth the reasons why the plan is not acceptable and he may propose modifications, delete areas or reject the entire plan. Should the applicant disagree with the decision of the director, he may, by written notice, request a hearing before the commission. The commission shall hold such hearing within thirty days after receipt of this notice. When a hearing is held by the commission, it shall notify the applicant of its decision by certified mail within twenty days after the hearing. Any person aggrieved by a final order of the commission made after the hearing or without a hearing may appeal to the reclamation board of review.

The application for a permit shall be accompanied by two copies of an enlarged United States geological survey topographic map meeting the requirements of the subdivisions below. Aerial photographs of the area shall be acceptable if the plan for reclamation can be shown to the satisfaction of the director. The maps shall:

(a) Be prepared and certified by or under the supervision of a registered professional civil engineer, or a registered professional mining engineer, or a registered land surveyor, who shall submit to the director a certificate of registration as a qualified engineer or land surveyor;

(b) Identify the area to correspond with the application;

(c) Show probable limits of adjacent deep-mining operations, probable limits of adjacent inactive or mined-out deep-mined areas and the boundaries of surface properties and names of surface and mineral owners of the surface area within five hundred feet of any part of the proposed disturbed area;

(d) Be of such scale as may be prescribed by the director;

(e) Show the names and locations of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, active abandoned or plugged oil and gas wells, and utility lines on the area of land to be disturbed and within five hundred feet of such area;

(f) Show by appropriate markings the boundaries of the area of land to be disturbed, the crop line of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land to be disturbed;

(g) Show the date on which the map was prepared, the north point and the quadrangle sketch and exact location of the operation;

(h) Show the drainage plan on and away from the area of land to be disturbed. Such plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving or to receive this discharge. Upon receipt of such drainage plan, the director shall furnish to the chief of the division of water resources a copy of all information required by this subdivision, as well as the names and locations of all streams, creeks or other bodies of public water within five hundred feet of the area to be disturbed;

(i) Show the presence of any acid-producing materials which when present in the overburden, may cause spoil with a pH factor below 3.5, preventing effective revegetation. The presence of such materials, wherever occurring in significant quantity, shall be indicated on the map, filed with application for permit. The

operator shall also indicate the manner in which acid-bearing spoil will be suitably prepared for revegetation and stabilization, whether by application of mulch or suitable soil material to the surface or by some other type of treatment, subject to approval of the director.

The certification of the maps shall read as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the surface-mining laws of this state." The certification shall be signed and notarized. The director may reject any map as incomplete if its accuracy is not so attested.

In addition to the information and maps required above, each application for a permit shall be accompanied by a detailed reclamation plan as required by this article.

A monument as prescribed by the department of natural resources shall be placed in an approved location near the operation. If the operations under a single permit are not geographically continuous, the operator shall locate additional monuments and submit additional maps before mining other areas.

Upon an order of the director, the operator shall, within thirty days after service of a copy of said order upon said operator by certified United States mail, furnish to the department of natural resources three copies of a progress map prepared by or under the supervision of a registered professional civil engineer or registered professional mining engineer, or by a registered land surveyor, showing the area disturbed by operations to the date of such map. Such progress map shall contain information identical to that required for both the proposed and final maps, required by this article, and shall show in detail completed reclamation work, as required by the director. Such progress map shall include a geologic survey sketch showing the location of the operation, shall be properly referenced to a permanent landmark, and shall be within such reasonable degree of accuracy as may be prescribed by the director. If no land has been disturbed by operations during the preceding year, the operator shall notify the director of this fact. A final map shall be submitted within sixty days after completion of mining operations. Failure to submit maps or aerial photographs or notices at specified times shall cause the permit in question to be suspended. (1967, c. 145; 1971, c. 112.)

Maps which are a part of a reclamation and mining plan and

which have been prepared and certified by a registered civil or mining engineer or a registered land surveyor are acceptable so long as the engineer or surveyor who prepares them has submitted his certificate of registration to the director. Op. Att'y Gen., Feb. 2, 1973.

§20-6-9a. Installation of drainage system.

Prior to the beginning of surface-mining operations, the operator shall complete and shall thereafter maintain a drainage system including any necessary settling ponds in accordance with the rules and regulations as established by the commission. (1971, c. 112.)

W. Va. Law Review.—For note, "The Federal Water Pollution Control Act Amendments of 1972 as Applied to the Surface Mine in West Virginia," see 78 W. Va. L. Rev. 213 (1976).

§20-6-10. Alternative plans; time.

An operator may propose alternative plans not calling for backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this article. Such plans shall be submitted to the director, and if such plans are approved by the director and complied with within such time limits as may be determined by him as being reasonable for carrying out such plans, the backfilling requirements of this article may be modified.

By regulations of the commission, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before equipment necessary for such backfilling and grading is moved from the operation.

If the operator or other person desires to conduct deep mining upon the premises or use a deep-mine opening for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will be necessary to backfill as herein provided for until such deep mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. Such locations shall be described and designated on the map required by the provisions of section nine [§20-6-9] of this article.

Suitable soil material shall be used to cover the surface of the regraded and backfilled area of operation in an amount sufficient to support vegetation.

When the backfilling and grading have been completed and approved by the director, the director shall release that portion of the bond which was filed and designated to cover the backfilling and grading requirements of this

article, the remaining portion of the bond in an amount equal to two hundred fifty dollars per acre, but not less than a total amount of five thousand dollars being retained by the treasurer until such time as the planting and revegetation is done according to law and is approved by the director, at which time the director shall release the remainder of the bond.

All fill and cut slopes shall be seeded during the first planting or seeding season after the construction of a haulageway to the area. Upon abandonment of a haulageway, the haulageway shall be seeded and every effort made to prevent its erosion by means of culverts, waterbars or other devices required by the director. In proper season, all fill and cut slopes of the operation and haulageways shall be seeded and planted in a manner as prescribed by the director, as soil tests indicate soil suitability and in accordance with accepted agricultural and reforestation practices.

In any such area where surface mining is being conducted, mulch shall be required on all disturbed areas where the remaining slope exceeds twenty degrees from horizontal as shown on the preplan map filed with the director as required by the provisions of section nine [§20-6-9] of this article.

After the operation has been backfilled, graded and approved by the director, the operator shall prepare or cause to be prepared a final planting plan for the planting of trees, shrubs, vines, grasses or legumes upon the area of the land affected in order to provide a suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime, fertilizer, mulch, and any other measures necessary to provide a suitable vegetative cover shall be defined by the rules and regulations of the commission. Such rules and regulations shall be promulgated under the provisions of article three [§29A-3-1 et seq.], chapter twenty-nine-A of this Code.

The planting called for by the final planting plan shall be carried out in a manner so as to establish a satisfactory cover of trees, shrubs, grasses, legumes or vines upon the disturbed area covered by the planting plan within a reasonable period of time. Such planting shall be done by the operator or such operator may contract in writing with the soil conservation district for the district in which the operation covered by such permit is located or with a private contractor approved by the director to

have such planting done by such district or private contractor. The director shall not release the operator's bond until all haulageways, roads and trails within the permit area have been abandoned according to the provisions of this article and the rules and regulations promulgated thereunder or such operator or any other person has secured a permit to deep mine such area as required by chapter twenty-two [§22-1-1 et seq.] of the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

The purpose of this section is to require restoration of land disturbed by surface mining to a desirable purpose and use. The director may, in the exercise of his sound discretion when not in conflict with such purpose, modify such requirements to bring about a more desirable land use, including, but not limited to, industrial sites, sanitary landfills, recreational areas, building sites: Provided, that the person or agency making such modifications will execute contracts, post bond or otherwise insure full compliance with the provisions of this section in the event such modified program is not carried to completion within a reasonable length of time. (1967, c. 145; 1971, c. 112.)

§20-6-11. Limitations; mandamus.

The legislature finds that there are certain areas in the State of West Virginia which are impossible to reclaim either by natural growth or by technological activity and that if surface mining is conducted in these certain areas such operations may naturally cause stream pollution, landslides, the accumulation of stagnant water, flooding, the destruction of land for agricultural purposes, the destruction of aesthetic values, the destruction of recreational areas and the future use of the area and surrounding areas, thereby destroying or impairing the health and property rights of others, and in general creating hazards dangerous to life and property so as to constitute an imminent and inordinate peril to the welfare of the State, and that such areas shall not be mined by the surface-mining process.

Therefore, authority is hereby vested in the director to delete certain areas from all surface-mining operations.

No application for a permit shall be approved by the director if there is found on the basis of the information set forth in the application or from information available to the director and made available to the applicant that the require-

ments of this article or rules and regulations hereafter adopted will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this article.

If the director finds that the overburden on any part of the area of land described in the application for a permit is such that experience in the State of West Virginia with a similar type of operation upon land with similar overburden shows that one or more of the following conditions cannot feasibly be prevented: (1) Substantial deposition of sediment in stream beds, (2) landslides or (3) acid-water pollution, the director may delete such part of the land described in the application upon which such overburden exists.

If the director finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, then he shall delete such areas from the permit application before it can be approved.

The director shall not give approval to surface mine any area which is within one hundred feet of any public road, stream, lake or other public property, and shall not approve the application for a permit where the surface-mining operation will adversely affect a state, national or interstate park unless adequate screening and other measures approved by the commission are to be utilized and the permit application so provides: Provided, that the one-hundred-foot restriction aforesaid shall not include ways used for ingress and egress to and from the minerals as herein defined and the transportation of the removed minerals, nor shall it apply to the dredging and removal of minerals from the streams or watercourses of this State.

Whenever the director finds that ongoing surface-mining operations are causing or are likely to cause any of the conditions set forth in the first paragraph of this section, he may order immediate cessation of such operations and he shall take such other action or make such changes in the permit as he may deem necessary to avoid said described conditions.

The failure of the director to discharge the mandatory duty imposed on him by this section shall be subject to a writ of mandamus, in any

court of competent jurisdiction by any private citizen affected thereby. (1967, c. 145; 1971, c. 112.)

W. Va. Law Review.—For article, "Prohibition of Surface Mining in West Virginia," see 78 W. Va. L. Rev. 445 (1976).

§20-6-11a. Blasting restriction; formula; filing preplan; penalties; notice.

Where blasting of overburden is necessary, such blasting shall be done in accordance with established principles for preventing vibration damage to residences, buildings, and communities. Such blasting shall be considered in compliance with provisions of this article if the following measures are followed:

(1) The weight in pounds of explosive charge detonated at any one time shall conform with the following scaled distance formula: $W=(D/50)^2$. Where W equals weight in pounds of explosives detonated at any one instant time, then D equals distance in feet from nearest point of blast to nearest residence, building, or structure, other than operation facilities of the mine: Provided, that explosive charges shall be considered to be detonated at one time if their detonation occurs within eight milliseconds or less of each other.

(2) Where blast sizes would exceed the limits under subdivision (1) of this section, blasts shall be detonated by the use of delay detonators (either electric or nonelectric) to provide detonation times separated by nine milliseconds or more for each section of the blast complying with the scaled distance of the formula.

(3) A plan of each operation's methods for compliance with this section (blast delay design) for typical blasts which shall be adhered to in all blasting at each operation, shall be submitted to the department of natural resources with the application for a permit. It shall be accepted if it meets the scaled distance formula established in subdivision (1) of this section.

(4) Records of each blast shall be kept in a log to be maintained for at least three years, which will show for each blast other than secondary (boulder breaking) blasts the following information:

- (a) Date and time of blast,
- (b) Number of holes,
- (c) Typical explosive weight per delay period,
- (d) Total explosives in blast at any one time,

- (e) Number of delays used,
- (f) Weather conditions, and

(g) Signature of operator employee in charge of the blast.

(5) Where inspection by the department of natural resources establishes that the scaled distance formula and the approved preplan are not being adhered to, the following penalties shall be imposed:

(a) For the first offense in any one permit year under this section, the permit holder shall be assessed not less than five hundred dollars nor more than one thousand dollars;

(b) For the second offense in any one permit year under this section, the permit holder shall be assessed not less than one thousand dollars nor more than five thousand dollars;

(c) For the third offense in any one permit year under this section or for the failure to pay any assessment hereinabove set forth within a reasonable time established by the director, the permit shall be revoked.

All such assessments as set forth in this section shall be assessed by the director, collected by him and deposited with the treasurer of the State of West Virginia, to the credit of the special reclamation fund.

The director shall promulgate rules and regulations which shall provide for a warning of impending blasting to the owners, residents or other persons who may be present on property adjacent to the blasting area. Such warning shall be by means approved by the director. (1971, c. 112.)

§20-6-12. Time in which reclamation shall be done.

It shall be the duty of an operator to commence the reclamation of the area of land disturbed by his operation after the beginning of surface mining of that area in accordance with plans previously approved by the director and to complete such reclamation within twelve months after the permit has expired, except that such grading, backfilling and water-management practices as are approved in the plans shall be kept current with the operation as defined by rules and regulations of the commission and no permit or supplement to a permit shall be issued or renewed, if in the discretion of the director, these practices are not current. (1967, c. 145.)

§20-6-13. Requirements regarding surface-mined areas where benches result.

On lands where the mining operation necessitates, requires or produces benches, the bench width of the first cut made shall not exceed the limits specified in the table of maximum bench widths provided in this section. In the event that more than one bench results from the removal of minerals on a single slope, the limits specified in the table of maximum bench widths provided in this section, shall apply equally to every such bench: Provided, that the coal seams are more than one hundred and fifty vertical feet apart. In multiple seam mining when the interval between coal seams is less than one hundred and fifty vertical feet, all overburden will be retained on the bench immediately below the seams being mined.

The operator shall show on the map, filed with the application for a permit, the percent of slope of original surface within each two-hundred-foot interval along the contour of the operation, the first measurement to be taken at the starting point of the operation. The flagged field measurement shall be made from the estimated crop line or proposed coal seam down slope to the estimated toe of the outer spoil. All reasonable measures shall be taken so as not to overload the fill bench during the first cut. No overburden material in excess of the first cut shall be placed over the fill bench. With the exception of haulageways and auger-mining operations, trees and brush shall be removed from the upper one half of all fill sections prior to excavation, and no trees or brush removed from the cut section shall be placed therein or thereon.

MAXIMUM BENCH WIDTHS ALLOWED RELATED TO SLOPE OF ORIGINAL SURFACE	
Percent (degree) of slope of original surface	Maximum bench width allowed in feet
27% (15°)	250
36% (20°)	150
46% (25°)	120
58% (30°)	100
65% (33°)	60
Above 65% (33°) no fill material beyond cut section.	
No fill bench shall be produced on slopes	

of more than sixty-five percent, except for construction of haulageways, and such haulageways shall not exceed thirty-five feet in width, with very scattered forty-five-foot passing areas permitted.

Lateral drainage ditches connecting to natural or constructed waterways shall be constructed to control water runoff and prevent erosion whenever required by the director. There shall be no depressions that will accumulate water except those the director may specify and approve. The depth and width of natural drainage ditches and any other diversion ditches may vary depending on the length and degree of slope.

If the highwall is composed of materials of sufficient hardness to ordinarily require blasting to displace, where there is insufficient soil available to provide a suitable vegetative cover on the reduced highwall, or where the reduction of the highwall will result in excessive damage to undisturbed vegetated lands above the highwall, such highwall shall be backfilled with soil available from the operation. In no instance shall the backfilling be less than four feet above the seam of coal being worked, and subject to the discretion of the director, no greater than sixty percent from the horizontal. The highwall shall not exceed thirty feet in vertical rise from the surface of the regraded bench.

Suitable access to the lands above the highwall for at least a four-wheel drive vehicle shall be provided. The number and location of access roads shall be subject to the approval of the director and shall be contained in the final reclamation plan; however, in no case may access roads be spaced further apart than one-half mile.

The table portion of the restored area shall be a terrace with a slope toward the reduced highwall that will direct surface water toward the highwall in a manner to prevent water from flowing over the outer slope of the disturbed area. The restored area shall have a minimum depth of fill sufficient to cover all acid-producing material, all toxic material and all material which constitutes a fire hazard. Such fill shall also be sufficient to support vegetation, as may be prescribed by the director. Additional restoration work may be required by the director according to rules and regulations promulgated by the commission. In addition to the requirements specified in this section, the operator's

method of operation on slopes may be further regulated and controlled according to rules and regulations adopted by the commission. (1967, c. 145; 1971, c. 112.)

§20-6-13a. Requirements regarding surface-mined areas where benches do not result.

On lands where the mining operation does not produce a bench, complete backfilling shall be required, not to exceed the approximate original contour of the land. Such backfilling shall eliminate all highwalls and spoil peaks. Whenever directed by the director, the operator shall construct, in the final grading, such diversion ditches or terraces as will control the water runoff. Additional restoration work may be required by the director, according to rules and regulations adopted by the commission. (1971, c. 112.)

§20-6-14. Obligations of the operator.

In addition to the method of operation, grading, backfilling and reclamation requirements of this article and rules and regulations adopted pursuant thereto, the operator shall be required to perform the following:

- (1) Cover the face of the coal and the disturbed area with material suitable to support vegetative cover and of such thickness as may be prescribed by the director, or with a permanent water impoundment.
- (2) Bury under adequate fill to be determined by the director, all roof coal, pyritic shale and materials determined by the director to be acid-producing materials, toxic material or materials constituting a fire hazard.
- (3) Seal off, as directed by rules and regulations, any breakthrough of acid water caused by the operator.

Any breakthrough caused by the operator during the course of his operations shall be sealed immediately and reported immediately to the director. If the breakthrough is one that allows air to enter a mine, the seal shall either prevent any air from entering the mine by way of the breakthrough, or prevent any air from entering the breakthrough while allowing the water to flow from the breakthrough. If the breakthrough is one that allows acid water to escape, the seal shall prevent the acid water from flowing. Seals shall be constructed of stone, brick, block, earth or similar impervious materials which are acid resistant. Any cement

or concrete employed in the construction of these seals shall also be of an acid resistant, impervious type.

- (4) Impound, drain or treat all runoff water so as to reduce soil erosion, damage to agricultural lands and pollution of streams and other waters.

Any sizeably quantity of storm water accumulating in depressions in the area of operations or any breakthrough of water caused by the operator during the course of his operations shall be sampled immediately and analyzed for pH, total acidity and total iron content. Such analysis shall be made by a competent water analyst or chemist. The original and at least one copy of such analysis shall be retained by the operator, one copy submitted to the director and one copy to the chief of the water resources division.

In the case of storm water accumulations or any breakthrough of water, adequate treatment shall be undertaken by the operator so as to prevent pollution occurring from the release of such water into the natural drainway or stream. Treatment may include check-dams, settling ponds and chemical or physical treatment. In the case of a breakthrough of water, where it is possible, the water released shall be impounded immediately. All water so impounded shall receive adequate treatment by the operator before it is released into the natural drainway or stream.

Storm water or water which escapes, including that which escapes after construction of the seals, and is polluted as defined in this Code, or as defined in the rules and regulations promulgated under this Code, shall be subject to the requirements of article five-A [§20-5A-1 et. seq.] of this chapter.

- (5) Remove or bury all metal, lumber, equipment and other refuse resulting from the operation. No operator shall throw, dump or pile; or permit the throwing, dumping, piling or otherwise placing of any (1) overburden, (2) stones, (3) rocks, (4) coal, (5) particles of coal, (6) earth, (7) soil, (8) dirt, 9) debris, (10) trees, (11) wood, (12) logs or (13) other materials or substances of any kind or nature beyond or outside the area of land which is under permit and for which bond has been posted; nor shall any operator place any of the foregoing listed materials in such a way that normal erosion or slides brought about by natural physical causes

will permit the same to go beyond or outside the area of land which is under permit and for which bond has been posted. (1967, c. 145; 1971, c. 112.)

§20-6-14a. Cessation of operation by inspector.

Notwithstanding any other provisions of this article, a surface-mining reclamation inspector shall have the authority to order the immediate cessation of any operation where (1) any of the requirements of this article or the rules and regulations promulgated pursuant thereto or the orders of the director or the commission have not been complied with or (2) the public welfare or safety calls for the immediate cessation of the operation. Such cessation of operation shall continue until corrective steps have been started by the operator to the satisfaction of the surface-mining reclamation inspector. Any operator who believes he is aggrieved by the actions of the surface-mining reclamation inspector may immediately appeal to the director, setting forth reasons why the operation should not be halted. The director shall determine when and if the operation may continue. (1971, c. 112.)

§20-6-15. Completion of planting; inspection and evaluation.

When the planting of an area has been completed, the operator shall file or cause to be filed a planting report with the director on a form to be prescribed and furnished by the director, providing the following information: (1) Identification of the operation; (2) the type of planting or seeding, including mixtures and amounts; (3) the date of planting or seeding; (4) the area of land planted; and (5) such other relevant information as the director may require. All planting reports shall be certified by the operator, or by the party with whom the operator contracted for such planting, as aforesaid. (1967, c. 145; 1971, c. 112.)

§20-6-16. Performance bonds.

Each operator who shall make application for a permit under section eight [§20-6-8] of this article shall, at the time such permit is requested, furnish bond, on a form to be prescribed and furnished by the director, payable to the State of West Virginia and conditioned that the operator shall faithfully perform all of the requirements of this article. The amount of the bond shall be not less than six hundred dollars for each acre or fraction thereof of the land to be disturbed: Provided, that the director shall have the discretion to determine the

amount per acre of the bond that shall be required before a permit is issued, such amount to be based upon the estimated reclamation costs per acre, not to exceed a maximum of one thousand dollars per acre or fraction thereof. The minimum amount of bond furnished shall be ten thousand dollars. Such bond shall be executed by the operator and a corporate surety licensed to do business in the State of West Virginia: Provided, however, that in lieu of corporate surety, the operator may elect to deposit with the director cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land banks, or of the home owners' loan corporation; full faith and credit general obligation bonds of the State of West Virginia, or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this State, which certificates shall be in favor of the commission. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The director shall, upon receipt of any such deposit of cash, securities or certificates, immediately place the same with the treasurer of the State of West Virginia whose duty it shall be to receive and hold the same in the name of the State in trust for the purpose for which such deposit is made. The operator making the deposit shall be entitled from time to time to receive from the state treasurer, upon the written order of the director, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him in lieu thereof, cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

It shall be unlawful for the owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the State for the reclamation of lands disturbed by him. If the owner or owners of the surface rights or the owner or owners of the mineral rights desire another operator or other operators to conduct mining operations on lands disturbed by the operator furnishing bond hereunder, it shall be the duty of said owner or owners to require the other operator or operators to secure the necessary mining permit and furnish suitable bond as herein provided. The director may then release an equivalent amount of the bond of the operator originally furnishing bond on the disturbed area. The director shall deter-

mine the amount of bond per acre required for other mining operations within the limitations of this section: Provided, however, that the minimum bond for this type of operation shall be one thousand dollars. The director shall take into consideration the character and nature of the overburden, the future use of the land and all costs of backfilling, grading and adequate reclamation, including planting, and shall determine the total bond required for other mining operations.

The director shall not release that portion of any bond filed by any operator which is designated to assure faithful performance of, and compliance with, the backfilling and regrading requirements of the reclamation plan until all acid-bearing or acid-producing spoil within the permit area has received adequate treatment as specified in section ten [§20-6-10] of this article. (1967, c. 145; 1971, c. 112.)

Forfeiture of performance bond under former law.—See State v. Elder, 152 W. Va. 571, 165 S.E.2d 108 (1968).

§20-6-17. Special reclamation tax.

In addition to the fees required by the provisions of section eight [§20-6-8] of this article, every applicant for a permit to surface mine coal shall, before such permit may be issued, pay to the director a special reclamation tax of sixty dollars for each acre of land to be disturbed in the mining operation, with the exception of exempted roadways, storage areas and processing plants. The director shall in due course determine whether the special reclamation tax for each acre of land disturbed has been paid by such operator. In the event that all such taxes have not been paid, said operator shall pay such taxes, as above set forth. In the event that said operator shall have paid taxes for more acres than were actually disturbed, the director shall certify such overpayment to the treasurer who shall refund out of the special reclamation fund such overpayment.

The director shall deposit with the treasurer of the State of West Virginia, to the credit of the special reclamation fund, all special reclamation taxes collected.

The special reclamation fund shall be administered by the director. The director shall cause to be prepared plans for the reclamation and rehabilitation of lands which are unreclaimed and for which bond either has not been posted or is uncollectible and shall prepare specifications for reclamation of such lands. The director, as funds become available in the spe-

cial reclamation fund, shall reclaim and rehabilitate such lands in accordance with such plans and specifications, and in so doing the director shall comply with the provisions of article three [§5A-3-1 et seq.], chapter five-A of this Code in obtaining supplies, materials, equipment and contractual services deemed necessary by the director for the purposes of reclamation and rehabilitation of said lands: Provided, that during the first year after the effective date of this act [March 13, 1971], twenty-five percent of the special reclamation taxes collected may be used by the director to pay inspectors, provide necessary equipment, conduct research and conduct inspection of permit areas and surface-mined areas: Provided, however, that during the first year a maximum of four hundred fifty thousand dollars from the special reclamation taxes collected shall be made available for the director's use as provided above: Provided further, that during the second year after the effective date of this act [March 13, 1971] and each year thereafter, fifteen percent of the special reclamation taxes collected may be used by the director for the same purposes: And provided further, that a portion of the special reclamation taxes allocated for the director's use may be used by the director to provide a subsistence allowance not to exceed one hundred fifty dollars per month to each inspector.

Some of the special reclamation taxes collected may be made available for the purchase of orphaned surface-mined lands, for the reclamation thereof, and for the engineering, administrative and research costs necessary to said reclamation, providing federal funds on a matching basis are made available for the purpose of reclaiming said orphaned surface-mined lands.

The director shall make an annual report to the governor and to the legislature setting forth the number of acres reclaimed and rehabilitated through the use, in whole or in part, of the special reclamation fund provided for herein. Such report shall identify each such reclamation project, state the number of acres reclaimed thereby, show the county wherein located, and furnish a detailed accounting of expenditures from the special reclamation fund. (1967, c. 145; 1971, c. 112.)

No financing of pure research.—Moneys comprising the special reclamation fund created by this section may not be used to finance pure research, but rather the special reclamation fund may only be used for actual reclamation of surface-mined lands and to purchase orphaned lands to be reclaimed in conjunction with federal funds, and for research related to such state-owned lands. 52 Op. Att'y Gen. 594 (1968).

Private association as party to agreement with federal agencies.—The department of natural resources has the authority to enter into an agreement with federal agencies to conduct research in the field of reclamation; the fact that a private association is also a party to such an agreement and is providing part of the financing thereof is of no legal consequence. 52 Op. Att'y Gen. 594 (1968).

Expenditures prohibited for certain related reclamation work.—Expenditures may not legally be made from the special reclamation fund for "related reclamation work," which includes deep mining, coal mining refuse and stream channel improvement, even though the expenditures will be reimbursed by the terms of a federal grant. Op. Att'y Gen., Jan. 11, 1973.

Refund of overpayment.—Where bankrupt mining company has overpaid reclamation tax, surety of company has right to refund as against the trustee in bankruptcy. Op. Att'y Gen., April 5, 1974.

§20-6-18. Exception as to highway construction projects from reclamation requirements.

Any provision of this article to the contrary notwithstanding, a person or operator shall not be subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal for borrow and fill material for grading in federal and state highway construction projects: Provided, that the provisions of the highway construction contract requires the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity. (1967, c. 145.)

§20-6-18a. Special permits for the removal of coal incidental to the development of land.

It shall hereafter be unlawful for any person to engage in surface mining as defined in this article as an incident to the development of land for commercial, residential, industrial or civic use without having first obtained from the department of natural resources a surface-mine permit therefor as provided in section eight [§20-6-8] of this article, unless a special permit therefor shall have been first obtained from the department as provided in this section.

Application for a special permit to engage in surface mining as an incident to the development of land for commercial, residential, industrial or civic use shall be made in writing on forms prescribed by the department and shall be signed and verified by the applicant. The application shall be accompanied by:

(1) A site preparation plan prepared and certified by or under the supervision of a registered professional civil engineer or by a land surveyor approved by the director, showing the tract of land which the applicant proposes to develop for commercial, residential, industrial or civic use; the probable boundaries and areas of the natural coal deposit to be mined and re-

moved from said tract of land incident to the proposed commercial, residential, industrial or civic use thereof, and such other information as prescribed by the director;

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

(3) The owner or owners of the surface of the land to be developed;

(4) The owner or owners of the mineral to be mined incident to the development of the land;

(5) A reasonable estimate of the number of acres of mineral that would be mined as a result of the proposed development of said land: Provided, that in no event may such number of acres to be mined exceed five acres;

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

There shall be attached to the application for the special permit a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to do business in this State covering all development operations of the applicant in this State and affording personal injury protection in an amount not less than one hundred thousand dollars and property damage, including blasting damage, protection in an amount not less than three hundred thousand dollars.

The application for the special permit shall also be accompanied by a bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of three thousand dollars per acre, for a maximum disturbance of five acres. A special reclamation tax of sixty dollars for each acre of land to be disturbed in the mining operation, with the exception of roadway, storage areas and processing plants shall be paid to the director before a permit is issued.

The bond shall be payable to the State of West Virginia and conditioned that the applicant shall complete the site preparation for the proposed commercial, residential, industrial or civic use of said land. At the conclusion of the site preparation, in accordance with the site prepara-

tion plan submitted with the application, the bond conditions shall be satisfied and the bond released and any cash, securities or certificates furnished with said bond shall be returned to the applicant.

The filing fee for the special permit shall be one thousand dollars.

The special permit shall be valid until work permitted is completed.

The purpose of this section is to vest jurisdiction in the department of natural resources over the aspect of surface mining involved where the surface mining is incidental or secondary to preparation of land for commercial, residential, industrial or civic use and where, as an incident to such preparation of land, coal must be removed, such as the building and construction of highways, railroads, shopping malls, factory and industrial sites, residential and building sites, recreational areas, etc. Anyone who has been issued a special permit shall not be issued an additional special permit on the same or adjacent tract of land unless satisfactory evidence has been submitted to the director that the same is necessary to subsequent development or construction. As long as the operator complies with the purpose and provisions of this section, the other sections of this article shall not be applicable to the operator holding a special permit: Provided, that this section shall not apply to a landowner engaged in the construction of a single family dwelling which construction does not require the disturbance of more than one acre of privately owned land. (1977, c. 141.)

§20-6-19. Existing permits and performance bonds.

Any operator holding a valid surface-mining permit under which tonnage has been produced within one year preceding the effective date of this article [July 1, 1967] or any operator holding a valid surface-mining permit under which mining operations have not been commenced prior to the effective date of this article shall within one hundred twenty days after the effective date hereof convert such permit, and the bond or bonds posted therefor, to comply with the provisions of this article, as to all mining operations conducted and to be conducted after said effective date. The provisions of this section shall not be construed to require the regrading or replanting of any area on which

such work was satisfactorily performed prior to the effective date of this article. (1967, c. 145.)

Extension of requirements prior to satisfactory performance.—Satisfactory reclamation work actually performed and completed prior to the effective date of a new enactment cannot be made unsatisfactory by a subsequent amendment, but reclamation requirements can be extended or expanded prior to satisfactory performance of the approved reclamation plan. Op. Att'y Gen., June 25, 1971.

§20-6-20. Applicability of laws safeguarding life and property; rules and regulations; supervision of operations.

All provisions of the mining laws of this State intended to safeguard life and property shall extend to all surface-mining operations insofar as such laws are applicable thereto. The director of the department of mines shall promulgate reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-A [§29A-1-1 et seq.] of said Code, to protect the safety of those employed in and around surface mines, and the enforcement of all laws, and rules and regulations relating to the safety of those employed in and around surface mines is hereby vested in the department of mines. (1967, c. 145.)

§20-6-20a. Surface miner; certification required.

After the first day of July, one thousand nine hundred seventy-six, certification shall be required of all surface miners in accordance with the provisions of articles six [§22-6-1 et seq.] and six-A [§22-6A-1 et seq.], chapter twenty-two of this Code. (1974, c. 67.)

§20-6-20b. Certification of surface mine foremen.

(a) In every surface mine where five or more persons are employed in a period of twenty-four hours, the operator shall employ at least one person certified in accordance with the provisions of article six-A [§22-6A-1 et seq.], chapter twenty-two as a mine foreman. Each applicant for certification as a mine foreman shall, at the time he is issued a certificate of competency: (1) Be a resident or employed in a mine in this State; (2) have had at least three years' experience in surface mining, which shall include at least eighteen months' experience on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia or of another accredited mining engineering school and have had at least two

years' practical experience in a surface mine, which shall include at least eighteen months' experience on or at a working section of a surface mine; and (3) have demonstrated his knowledge of mine safety, first aid, safety appliances, emergency procedures relative to all equipment, state and federal mining laws and regulations and other subjects by completing such training, education and examinations as may be required of him under article six-A, chapter twenty-two.

(b) In surface mines in which the operations are so extensive that the duties devolving upon the mine foreman cannot be discharged by one man, one or more assistant mine foremen may be designated. Such persons shall act under the instruction of the mine foreman who shall be responsible for their conduct in the discharge of their duties. Each assistant so designated shall be certified under the provisions of article six-A, chapter twenty-two. Each applicant for certification as assistant mine foreman shall, at the time he is issued a certificate of competency, possess all of the qualifications required of a mine foreman: Provided, that he shall at the time he is certified be required to have at least two years' experience in surface mining, which shall include eighteen months on or at a working section of a surface mine or be a graduate of the school of mines at West Virginia University or of another accredited mining engineering school and have had twelve months' practical experience in a surface mine, all of which shall have been on or at a working section.

(c) The director shall by the first day of July, one thousand nine hundred seventy-eight, promulgate such rules and regulations as may be necessary to carry out the provisions of this section. (1977, c. 121.)

§20-6-21. Monthly report by operator.

The operator of every surface mine shall, on or before the end of each calendar month, file with the director of mines a report covering the preceding calendar month on forms furnished by the director. Such reports shall state the number of accidents which have occurred, the number of persons employed, the days worked and the actual tonnage mined. (1967, c. 145.)

§20-6-22. Leasing of lands owned by the State for the surface mining of coal therefrom.

No land or interest in land owned by the

State shall be leased, and no present lease shall be renewed by the State, nor any agency of the State, for the purpose of conducting surface-mining operations thereon, unless said lease or renewal shall have been first authorized by an act of the legislature. (1967, c. 145.)

§20-6-23. Participation with federal government and other governmental agencies.

In the reclamation of land disturbed by surface mining for which the department of natural resources has funds available, the director may avail himself of any services which may be provided by other state agencies or by agencies of the federal government, and may compensate them for such services. The director may also receive any federal funds, state funds or any other funds for the reclamation of land disturbed by surface mining. The director may cause the reclamation work to be done by his own employees or employees of other governmental agencies or soil conservation districts, or through contracts with qualified vendors. Such contracts shall be awarded to the lowest responsible bidder upon competitive bids after reasonable advertisement. The director and any other agency and any contractor under a contract with the department of natural resources shall have the right of access to the land affected to carry out such reclamation.

Any funds legally available to the director and any public works program legally available (both funds and services) may be expended and used to reclaim and rehabilitate any lands that have been subjected to surface mining that have not been reclaimed and rehabilitated in accordance with standards set by the director and which are not covered by bond to guarantee such reclamation. (1967, c. 145.)

§20-6-23a. Implementing federal surface mining and control standards under Public Law 95-87 and expanding rule-making authority of the director and reclamation commission; expiration of authority.

The legislature finds that the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), hereinafter cited as P.L. 95-87, and specifically subsection 502 (c) therein may prohibit the State from issuing surface-mining permits for coal after the third day of February,

one thousand nine hundred seventy-eight, unless such permits contain conditions requiring compliance with the provisions of said federal law. Because the inability of the State to issue permits after that date would prevent the operation of surface mines which are needed to supply coal to meet energy needs for the preservation of the public health, safety and welfare and, since authority to regulate the surface mining of coal in the State has already been vested in the department of natural resources and the reclamation commission, the legislature does hereby intend to expand the authority of the department and the commission to issue permits in compliance with the federal law.

In addition to the other powers, duties and authority of the reclamation commission provided elsewhere in this chapter and article two [§22-2-1 et seq.], chapter twenty-two of this Code, the commission may promulgate rules and regulations necessary to require the surface mining of coal in this State to be in compliance and conformity with section 515, Title V of P.L. 95-87.

In addition to the other powers, duties, and authority of the director of the department of natural resources provided elsewhere in this chapter, the director may promulgate rules and regulations adequate to enforce the rules and regulations promulgated by the reclamation commission in accordance with the preceding paragraph.

The expanded rule-making authority above mentioned may include the promulgation and enforcement of rules and regulations as prescribed by section 515, Title V of P.L. 95-87 and such authority shall specifically include the authority to regulate and enforce rules and regulations regulating the surface effect of deep mining in this State in conformity with section 515, Title V of P.L. 95-87 and article two, chapter twenty-two of this Code.

The director shall cause a copy of P.L. 95-87 to be filed in the office of the secretary of state for public inspection.

The expanded rule-making authority as expressed herein shall be of an interim and temporary effect in that such expanded authority for both the director of natural resources and the reclamation commission and all such rules and regulations promulgated pursuant to the authority granted by this section shall expire and have no force and effect after the thirtieth

day of August, one thousand nine hundred seventy-nine.

All rules and regulations promulgated pursuant to the authority granted under this section shall be subject to the provisions of chapter twenty-nine-A [§29A-1-1 et seq.] of the Code: Provided, that this requirement shall in no way limit the application of said chapter twenty-nine-A to any other rules and regulations promulgated by the reclamation commission or the director of the department of natural resources. (1978, c. 63.)

Effective date.—The act adding this section was passed March 11, 1978, and made effective from passage.

§20-6-24. Rules and regulations.

The commission shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-A [§29A-1-1 et seq.] of said Code, for the effective administration of this article. (1967, c. 145.)

§20-6-25. Noncompliance.

If any of the requirements of this article or rules and regulations promulgated pursuant thereto or the orders of the director and the commission have not been complied with within the time limits set by the director or the commission or by this article, the director shall cause a notice of noncompliance to be served upon the operator, which notice shall order the operation to cease, or where found necessary, the director shall order the suspension of a permit. A copy of such notice or order shall be handed to the operator in person or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice of noncompliance or order of suspension shall specify in what respects the operator has failed to comply with this article or the rules and regulations of the commission or orders of the director and the commission. If the operator has not reached an agreement with the director or has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set therein, the permit may be revoked by order of the director and the performance bond shall then be forfeited. If an agreement satisfactory to the director has not been reached within thirty days after suspension of any permit, any and all suspended permits shall then be declared revoked and the performance bonds with respect thereto forfeited.

When any bond is forfeited pursuant to the provisions of this article, the director shall give notice to the attorney general who shall collect the forfeiture without delay. (1967, c. 145.)

§20-6-26. Adjudications, findings, etc., to be by written order; contents; notice.

Every adjudication, determination or finding by the commission or director affecting the rights, duties or privileges of any person subject to this article shall be made by written order and shall contain a written finding by the commission or director of the facts upon which the adjudication, determination or finding is based. Notice of the making of such order shall be given to the person whose rights, duties or privileges are affected thereby by mailing a true copy thereof to such person by certified mail. (1967, c. 145.)

§20-6-27. Reclamation board of review.

There is hereby created a reclamation board of review consisting of five members to be appointed by the governor with the advice and consent of the senate for terms of five years, except that the terms of the first five members of said board shall be for one, two, three, four and five years, respectively, as designated by the governor at the time of the appointment and except that any vacancy in the office of member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the appointees to such board shall be a person who, by reason of his previous vocation, employment, or affiliations, can be classed as a representative of coal surface-mine operators. One of the appointees to such board shall be a person, who, by reason of his previous training and experience, can be classed as one learned and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who, by reason of his previous training and experience, can be classed as one capable and experienced in water conservation problems. Not more than three members shall be members of the same political party.

The board may designate an employee of the reclamation division to act as its secretary. Such secretary shall perform such duties as the board prescribes.

Three members shall constitute a quorum and no action of the board shall be valid unless it has the concurrence of at least three members. The board shall keep a record of its proceedings.

Each member shall be paid as compensation for his work as such member, from funds appropriated for such purposes, twenty-five dollars per day when actually engaged in the performance of his work as a member and when engaged in travel necessary in connection with such work. In addition to such compensation each member shall be reimbursed for all traveling, hotel and other expenses necessarily incurred in the performance of his work as a member.

Annually, one member shall be elected as chairman and another member shall be elected as vice chairman. Such officers shall serve for terms of one year.

The governor may remove any member of the board from office for inefficiency, neglect of duty, malfeasance, misfeasance or nonfeasance, after delivering to such member the charges against him in writing, together with at least ten days' written notice of the time and place at which the governor will publicly hear such member, either in person or by counsel, in defense of the charges against him, and affording such member such hearing. If such member is removed from office, the governor shall file in the office of the secretary of state a complete statement of the charges made against such member and a complete report of the proceedings thereon. In such case the action of the governor removing such member from office shall be final. (1967, c. 145.)

§20-6-28. Appeals to board; hearing; record; findings and orders of board.

Any person claiming to be aggrieved or adversely affected by any rule and regulation or order of the reclamation commission or order of the director or by their or his failure to enter

an order may appeal to the reclamation board of review for an order vacating or modifying such rule and regulation or order, or for such order as the commission or director should have entered.

The person so appealing to the board shall be known as the appellant and the commission and/or director shall be known as the appellee or appellees. The appellant and appellee or appellees shall be deemed to be parties to the appeal.

Such appeal shall be in writing and shall set forth the rule and regulation, order or omission complained of and the grounds upon which the appeal is based. Where the appellant claims to be aggrieved or adversely affected by an order, such appeal shall be filed with the board within thirty days after the date upon which the appellant received notice by certified mail of the making of the order complained of. Where the appellant claims to be aggrieved or adversely affected by any rule and regulation or omission, such appeal may be filed with the board at any time. A notice of the filing of such appeal shall be filed with the commission and director within three days after the appeal is filed with the board.

Within seven days after receipt of such notice of appeal, the commission or director shall prepare and certify to the board a complete record of the proceedings of the reclamation commission or director out of which the appeal arises, including all documents and correspondence relating to the matter. The expense of preparing the record shall be taxed as a part of the costs of the appeal.

Upon the filing of such appeal, the board shall fix the time and place at which the hearing on the appeal will be held, which hearing shall be held within twenty days after the notice of appeal is filed, and shall give the appellant and the commission and director at least ten days' written notice thereof by certified mail. The board may postpone or continue any hearing upon its own motion or upon application of the appellant or of the commission or director.

The filing of an appeal provided for in this section shall not stay execution of the order appealed from.

The board shall hear the appeal de novo, and any party to the appeal may submit evidence.

For the purpose of conducting a hearing on

an appeal, the board may require the attendance of witnesses and the production of books, records and papers, and it may, and at the request of any party it shall, issue subpoenas for witnesses or subpoenas duces tecum to compel the production of any books, records or papers, directed to the sheriff of the county where such witnesses, books, records or papers are found, which subpoenas and subpoenas duces tecum shall be served and returned in the same manner as subpoenas and subpoenas duces tecum in civil litigation are served and returned. The fees and allowances for mileage of sheriffs and witnesses shall be the same as those permitted in civil litigation in trial courts. Such fees and mileage expenses incurred at the request of the appellant shall be paid in advance by the appellant, and the remainder of such fees and expenses shall be paid out of funds appropriated for the expenses of the division of reclamation.

In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which such disobedience, neglect or refusal occurs, or any judge thereof in vacation, on application of the board or any member thereof, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such court or a refusal to testify therein. Witnesses at such hearings shall testify under oath, and any member of the board may administer oaths or affirmations to persons who so testify.

At the request of any party to the appeal, a stenographic record of the testimony and other evidence submitted shall be taken by an official court shorthand reporter at the expense of the party making the request therefor. Such record shall include all of the testimony and other evidence and the rulings on the admissibility of evidence, but any party may at the time object to the admission of any evidence and except to the rulings of the board thereon, and if the board refuses to admit evidence the party offering same may make a proffer thereof, and such proffer shall be made a part of the record of such hearing.

If upon completion of the hearing the board finds that the rule and regulation or order appealed from was lawful and reasonable, it shall

make a written order affirming the rule and regulation or order appealed from; if the board finds that such rule and regulation or order was unreasonable or unlawful, it shall make a written order vacating or modifying the rule and regulation or order appealed from; and if the board finds that the commission or director has unreasonably or unlawfully failed to enter an order, it shall enter such order as it finds the commission or director should have made. Every order made by the board shall contain a written finding by the board of the facts upon which the order is based. Notice of the making of such order shall be given forthwith to each party to the appeal by mailing a certified copy thereof to each such party by certified mail.

The order of the board shall be final unless vacated upon judicial review thereof. (1967, c. 145).

§20-6-29. Appeal from order of board.

Any party adversely affected by an order of the reclamation board of review, other than an order affirming, modifying, or vacating a rule and regulation of the commission, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha county or the circuit court of the county in which the surface-mining operation to which the order relates is or was conducted or is or was proposed to be conducted. Any party adversely affected by an order of the reclamation board of review, which order affirms, modifies or vacates a rule and regulation of the commission, may obtain judicial review thereof by appealing therefrom either to the circuit court of Kanawha county or the circuit court of the county in which the surface-mining operation to which the rule and regulation in question relates is or was conducted or is or was proposed to be conducted. Any party desiring to so appeal shall file with the board a notice of appeal designating the order appealed from and stating whether the appeal is taken on questions of law, questions of fact or questions of law and fact. A copy of such notice shall also be filed by the appellant with the court and shall be mailed or otherwise delivered to the appellee or appellees. Such notice and copies thereof shall be filed and mailed or otherwise delivered within thirty days after the date upon which the appellant received notice from the board by certified mail of the making of the order appealed from. No appeal bond shall be required to make an ap-

peal on questions of law, questions of fact or questions of law and fact effective.

The filing of a notice of appeal shall not automatically operate as a suspension of the order of the board. If it appears to the court that an unjust hardship to the appellant will result from the execution of the board's order pending determination of the appeal, the court may grant a suspension of such order and fix its terms.

Within fifteen days after receipt of the notice of appeal, the board shall prepare and file in the court the complete record of the proceedings out of which the appeal arises, including a transcript of the testimony and other evidence which was submitted before the board. The expense of preparing and transcribing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Upon demand by a party, the board shall furnish, at the cost of the party requesting the same, a copy of such record. In the event such complete record is not filed in the court within the time provided for in this section, either party may apply to the court to have the case docketed, and the court shall order such record filed.

Appeals taken on questions of law, fact or both, shall be heard upon assignment of error filed in the case or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued.

The hearing before the court shall be upon the record made before the reclamation board of review. The court may set aside any order of the reclamation board of review which is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or which is determined by the court to involve a clearly unwarranted exercise of discretion. The judgment of the court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals of West Virginia, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided for civil appeals generally. (1967, c. 145.)

§20-6-30. Offenses; penalties; prosecutions; treble damages; injunctive relief.

(a) Any person who shall conduct any sur-

face-mining operation, or any part thereof, without a permit or without having furnished the required bond, or who shall carry on such operation or be a party thereto on land not covered by a permit, or who shall falsely represent any material fact in an application for a permit or in an application for the renewal of a permit, or who willfully violates any provision of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment not exceeding six months, or by both. Any person who deliberately violates any provision of this article or conducts surface-mining operations without a permit shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one thousand nor more than ten thousand dollars or by imprisonment not exceeding six months, or by both. Each day of violation constitutes a separate offense. It shall be the duty of the director to institute prosecutions for violations of the provisions hereof. Any person convicted under the provisions of this section shall, in addition to any fine imposed, pay to the director for deposit in the surface-mining reclamation fund an amount sufficient to reclaim the area with respect to which such conviction relates. The director shall institute any suit or other legal action necessary for the effective administration of the provisions of this article.

(b) In addition to and notwithstanding any other penalties provided by law, any operator who directly causes damage to the property of others as a result of surface mining shall be liable to them, in an amount not in excess of three times the provable amount of such damage, if and only if such damage occurs before or within one year after such operator has completed all reclamation work with respect to the land on which such surface mining was carried out and all bonds of such operator with respect to such reclamation work are released. Such damages shall be recoverable in an action at law in any court of competent jurisdiction. The director shall require, in addition to any other bonds and insurance required by other provisions of this article, that any person engaged in the business of surface mining shall file with the director a certificate of insurance, or other security in an amount of not less than ten thousand dollars, to cover possible damage to property for which a recovery may be sought under the provisions of this subsection.

(c) Upon application by the director, the attorney general, or the prosecuting attorney of the county in which the major portion of the permit area is located, any court of competent jurisdiction may by injunction compel compliance with and enjoin violations of the provisions of this article. The court or the judge thereof in vacation may issue a preliminary injunction in any case pending a decision on the merits of any application filed.

An application for an injunction under the provisions of this section may be filed and injunctive relief granted notwithstanding that all of the administrative remedies provided for in this article have not been pursued or invoked against the person or persons against whom such relief is sought and notwithstanding that the person or persons against whom such relief is sought have not been prosecuted or convicted under the provisions of this article.

The judgment of the circuit court upon any application filed under the provisions of this article shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with said supreme court of appeals within thirty days from the date of entry of the judgment of the circuit court. (1967, c. 145; 1971, c. 112.)

§20-6-31. Effective date of article.

This article shall become effective on July first, one thousand nine hundred sixty-seven. Irrespective of the date of issuance of a permit, all operators shall immediately conform to any statutes enacted or rules and regulations adopted on the effective date of such statute or rule and regulation. The provisions of this section shall not be construed to require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of the statute or rule and regulation. (1967, c. 145.)

Extension of requirements prior to satisfactory performance.—Satisfactory reclamation work actually performed and completed prior to the effective date of a new enactment cannot be made unsatisfactory by a subsequent amendment, but reclamation requirements can be extended or expanded prior to satisfactory performance of the approved reclamation plan. Op. Att'y Gen., June 25, 1971.

§20-6-32. Severability of provisions.

If any of the provisions of this article shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions of the article, and to this end,

the provisions of this article are declared to be severable. (1967, ch. 145.)

ARTICLE 6A.

LIMITATIONS ON SURFACE MINING.

Sec.

20-6A-1. Limitation on the issuance of new permits for surface mining.

20-6A-2. Limitation on mining in the Cranberry wilderness study area.

W. Va. Law Review.—For article, "Strip Mining and the 1971 West Virginia Surface Mining and Reclamation Act," see 75 W. Va. L. Rev. 319 (1973).

§20-6A-1. Limitation on the issuance of new permits for surface mining.

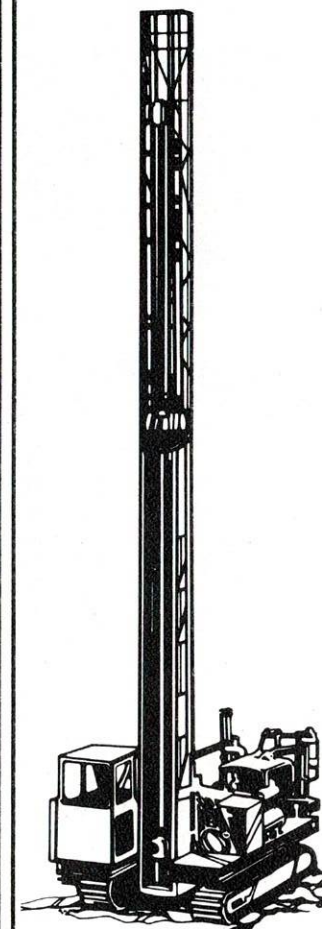
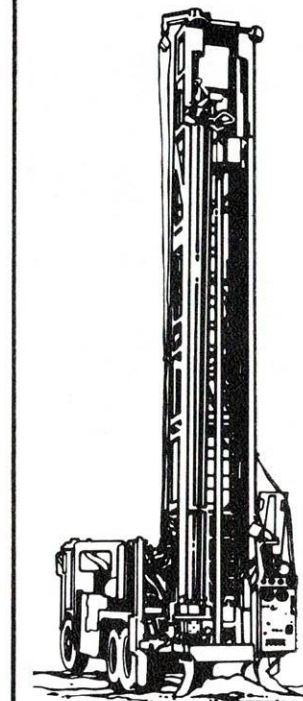
Commencing on the thirteenth day of March, one thousand nine hundred seventy-five, and ending on the twelfth day of March, one thousand nine hundred seventy-seven, no new permits, including prospecting permits, shall be issued under the provisions of article six [§20-6-1 et seq.] of this chapter for the surface mining of coal in any county where no surface mining of coal existed under lawful permit during the calendar year one thousand nine hundred seventy. (1971, c. 112; 1973, c. 76; 1975, c. 175.)

§20-6A-2. Limitation on mining in the Cranberry wilderness study area.

Commencing on the effective date of this section [March 11, 1978], and ending on the last day of December, one thousand nine hundred eighty, no new permits, including prospecting permits, shall be issued, or any existing permits renewed, under the provisions of article six [§20-6-1 et seq.] of this chapter for the surface mining of coal or any other mineral or under the provisions of article two [§22-2-1 et seq.], chapter twenty-two of this Code for the underground mining of coal within or underneath what is known as the Cranberry wilderness study area, located in Webster and Pocahontas counties as the same is described in the Eastern Wilderness Act, Public Law No. 93-622, 42 U.S.C.A., section 1132, et seq.; and any such existing permits to surface or underground mine within or underneath such area shall immediately terminate and all land restoration and reclamation required pursuant thereto shall be completed prior to the first day of January, one thousand nine hundred seventy-nine. (1978, c. 81.)

Effective date.—The act adding this section was passed March 11, 1978, and made effective from passage.

Tough drills for rough work **INGERSOLL-RAND now from WILLIAMS!**



We're your new source for the full line of I-R blasthole drills:

- Drillmaster top-drive rigs for rotary or downhole drilling of holes 5" to 12¼" diameter;
- Rotary-table rigs for holes to 7⅞" diameter, up to 60 feet in a single pass;
- Crawlair® drills for drifter or downhole drilling.

See us for Ingersoll-Rand rock drills, compressors and compaction equipment for construction, quarry work, open pit mining.

Ingersoll-Rand equipment and Williams experience make the tough jobs easier!



Ingersoll-Rand.



The W. W. WILLIAMS Co.

Charleston 304/755-8361, Beckley 304/252-6571, Clarksburg 304/623-3747



Chairman John D. Rockefeller IV opens the Charleston hearing.

Coming To The Mountain

The President's Coal Commission made it an early point of business to see first hand what mining looks like in the nation's richest, but most troubled coal fields.

An October field trip took the five voting commissioners to Raleigh County. Accompanied by a sizable entourage of staff, counsel, and media, the commissioners went underground at Westmoreland Coal Co.'s No. 5 mine, and later toured, by helicopter and on foot, Piney Creek Coal Co.'s Sullivan surface mine.

Sullivan, a mountaintop removal job accomplished through haulback techniques, impressed the visitors. Former Labor Secretary Willard Wirtz was heard to comment, "I've already learned more about surface mining here today than I knew previously."

Following evening meals in the homes of area miners, the commissioners reconvened in Charleston for the next day's public hearings. There they heard that labor-management relations are on the upswing following the disastrous 1978 strike.

They also heard a brief version of what coal affiliated people have been telling the Office of Surface Mining—that government regulation and over-regulation is fast becoming the industry's number one problem.

The commission has been charged by President Carter with identifying problems besetting the coal industry and offering possible solutions. The Commission's report is due one year from its first meeting. The five voting members of the Commission are; West Virginia Governor John D. Rockefeller, IV, chairman, Willard Wirtz, Jesse Core, Marvin Friedman, and Dewey Presley.



Jim White with former Labor Secretary Willard Wirtz.



Gov. Rockefeller confers with Jim White, reclamation manager for Vecellio & Grogan, Inc.



V&G's Shelby Jarrell (center) describes operating procedure at the Sullivan operation.

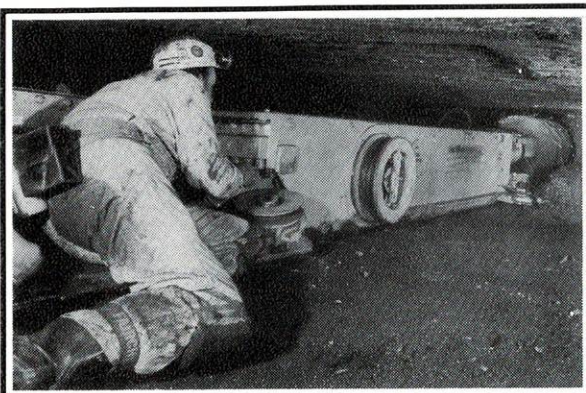
Pay dirt



The performance miner that makes you more money.

Fairchild's Wilcox Mark 20 Pivot Jack Miner is a high performance machine engineered to give you easier operation. Simple to run and maintain, it provides dependability that produces maximum tonnage, day after day, month after month. It is the most efficient, effective, and practical miner ever available for thin seam mining. Combine the simplicity of operation, low maintenance cost, and the low purchase price of the Mark 20 with our continuous haulage system and you'll discover your lowest possible cost per ton.

The Wilcox Continuous Mining System — giving you more coal at less cost through a quarter century of mining experience . . . this is Fairchild . . . today!



for complete sales and marketing information call
FAIRCHILD INCORPORATED
304/255-2131
TWX 710-938-8463

fairchild
INCORPORATED

Equipment for Tomorrow's Energy

"I believe for my purpose this American dragline is a perfect machine."

"I think it's met all my expectations. It does a real good job. Right now it's on 20 hours a day, 2 shifts, and it's really been an asset to the company."

"The American is a fast-duty cycle machine. It will cycle anywhere from 30 seconds up to 45 depending on what you're in and how high the drag is. With most of the others it's about a minute for a cycle."

"One other factor that's an advantage to this American is the mobility of it. It can be moved from place to place with a minimum amount of trouble and at a minimum expense. That had a lot to do with my decision because of what we're doing in this area. We're doing small jobs so this drag can be torn down and moved in a day and a half, where most of your other drags would take a week or two



Leroy Burton, owner, Cardinal Coal and Contracting Co., Clearfield, Pa., talks about the 9260 American dragline.

before you can get them torn down and set up.

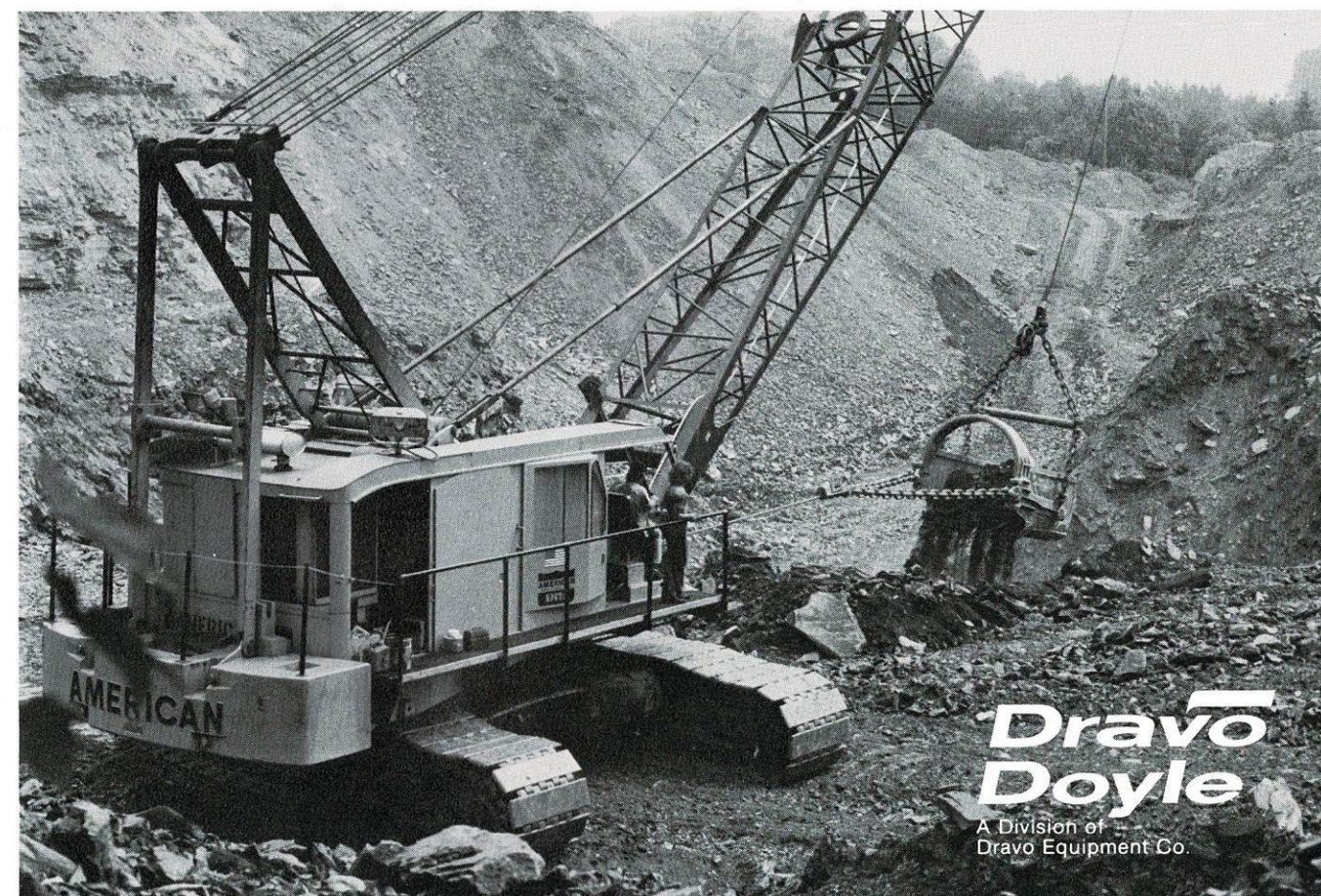
"This American has been real good with fuel and oil. Maintenance is very low. I mean if you keep it greased and

oil changed according to the hours that you're supposed to and take care of it.

"The Federal inspectors have commented that American machines have the best lighting setup of any drag. They have two 1,000-watt mercury vapor lights on the boom and 400-watt vapor lights on the cab. Of course, the inspectors like that factor because of safety."

"The American is very easy to operate. I think it's one of the easiest drags on the market and that's what the operators tell me."

"And, we haven't had too many problems. But anything we've had Dravo Doyle was here right away to help us straighten it out. So our service on the drag through Dravo Doyle has been excellent."



Dravo Doyle
A Division of
Dravo Equipment Co.

West Virginia office: Fairmont 304-366-9600 • Box 2110, Route 5, Pleasant Valley Road, Fairmont, W. Va. 26554 • Clarksburg 304-624-5201
Pennsylvania offices: Warrendale (Pittsburgh) 412-322-4500 • Berlin (Somerset) 814-267-4671 • Shawville (Clearfield) 814-765-2626

Leo Vecellio

Coal Man Of The Year



Leo A. Vecellio, Sr.

Leo A. Vecellio, Sr., has been honored as West Virginia's "Coal Man of the Year" for 1977. The presentation was made at the Association's Annual Meeting by Dr. Gene Budig, president of West Virginia University.

Vecellio is the third prominent Association member to receive the award, presented annually for service to the community and the state, as well as the mining industry. C. E. Compton was the recipient for 1975, and James H. Harless was honored for 1976.

A native of Logan County, Leo Vecellio is now based in Beckley, where he is involved with several companies, primarily in the construction and coal mining businesses. He is a Civil Engineer and began in the construction business in 1938. He has been involved with coal for the last 25 years.

In 1966, he was instrumental in the founding of the West Virginia Surface Mining and Reclamation Association, serving as the organization's first president. Since that time, he has been a leader in the industry's attempts to improve both its performance and its public image. Today surface mining operations conducted by Vecellio & Grogan, Inc., and its subsidiaries, stand as models of efficient mineral recovery and responsible reclamation, as the pictures on the following pages illustrate.



V&G and its affiliates excel in virtually every phase of the reclamation process. This Coal City work, performed by Sterling Smokeless, exemplifies the Vecellio touch in revegetation and contour reshaping.



Piney Creek's haul road design and upkeep, seen here on an operation near Beckley, is second to none.



This Piney Creek operation, visible from the West Virginia turnpike, just south of Beckley, was entered in a congressional report as an example of outstanding reclamation.



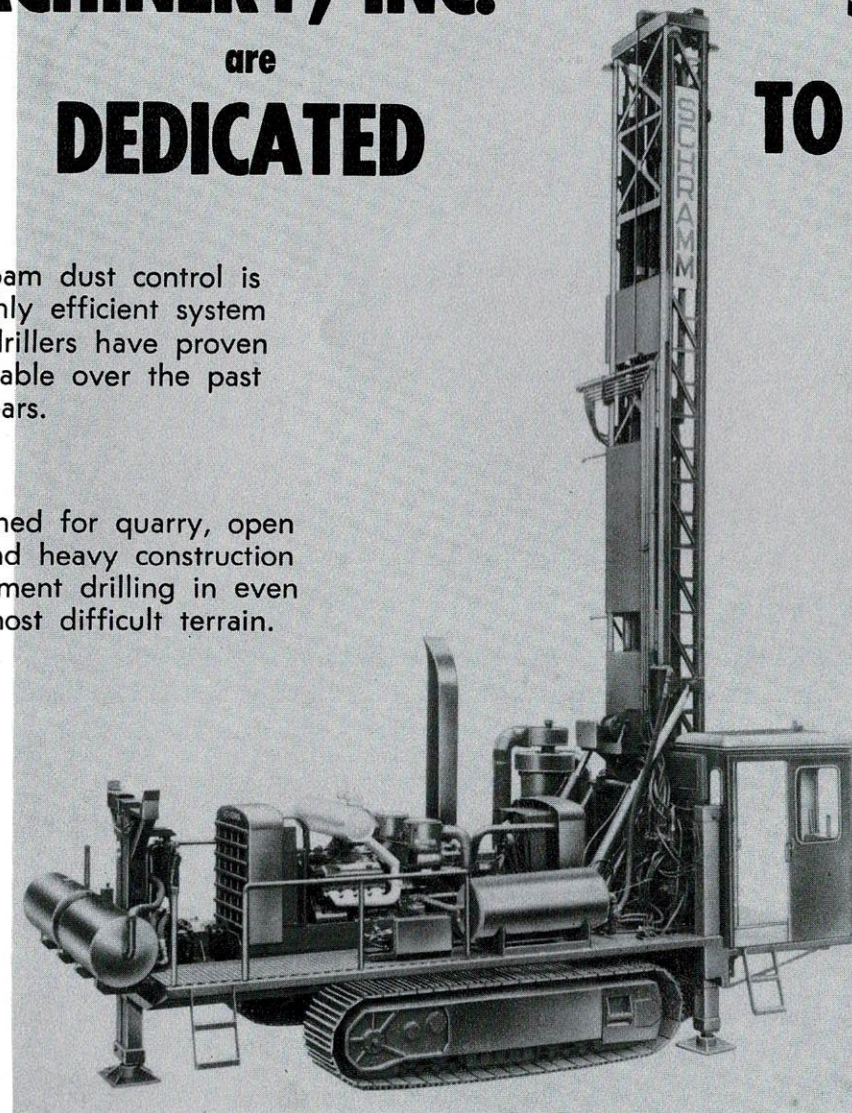
This Sterling Smokeless job, also in Raleigh County, utilizes the haulback techniques to achieve concurrent reclamation. Coal extraction is ongoing just a few hundred yards away.

DRILL WITH DEPENDABILITY

MACHINERY, INC. and SCHRAMM are DEDICATED TO UNEXCELLED QUALITY

Rotafoam dust control is a highly efficient system that drillers have proven invaluable over the past 18 years.

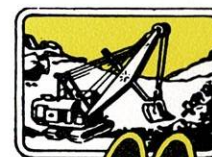
Designed for quarry, open pit and heavy construction equipment drilling in even the most difficult terrain.



SCHRAMM Air Compressors are the most advanced piston, positive displacement design in operation and will provide you with years of excellent operation.

Nine models — Crawler & Rubber tired, all completely self contained for complete mobility in any terrain.

PARTS ★ SALES ★ SERVICE



Machinery
inc.
Dedicated to those who are
keeping the Tri-State foremost

5800 McCorkle Ave., S.E.
Charleston, W. Va. 25330
(304) 925-4741

5638 U.S. Rte. 60E
Huntington, W. Va. 25705
(304) 736-5244

U.S. Rte. #23
Allen, Ky. 41601
(606) 874-9288

LABORATORY SERVICES

- Laboratory Analysis
- SMA Permit Applications
- Sampling Programs
- NPDES Monitoring Reports

J. H. M. Laboratories, Inc., provides a full service analytical laboratory for your water and wastewater requirements. All methods conform to standard methods for the examination of water and wastewater and the U.S. EPA Manual of Methods for Chemical Analysis of Water and Wastes.

Discount to WVSMRA Members
for
EPA and DNR Compliance Monitoring
CONTACT

J. H. M. Laboratories, Inc.

1400 Ohio Avenue — Dunbar, W. Va. — 304-768-5493

Lab Director—Dayton Carpenter

Lab Manager—Orvie Nicholson

If you want it green

Call Willco

Reclamation and Hydroseeding • Landscape Seeding
Erosion Control



Ed Williams, President

WILLCO RECLAMATION, INC.

619 Open Rocks Rd. — Summersville — 304 / 872-2287

Stregulation

Remarks by

HERBERT E. JONES, JR.

President, Amherst Coal Company

October 20, 1978

THE PRESIDENT'S COMMISSION ON COAL

State Capitol

Charleston, West Virginia

Chairman Rockefeller and esteemed members of the President's Commission on Coal, I am Herbert Jones, President of Amherst Coal Company, an independent company mining coal exclusively in southern West Virginia. I have come today to speak with you briefly on the status and future of the coal industry in Appalachia, with particular reference to the small and medium sized independent coal operations, a group which accounts for nearly one-third of West Virginia's total coal output.

Many of the matters I will discuss will of course be pertinent to large as well as small operators, although the intensity of concern is perhaps greater for the smaller enterprise. After touching briefly on the issues of the market, labor-management relations, and transportation, I would like to focus on the most critical and all-pervasive problem facing the small coal operator today, the problem of suffocating over-regulation.

THE MARKET

Any analysis of the coal industry must start with at least a rudimentary understanding of the market. Make no mistake about it, the market is **master** in the coal industry. In contrast to less competitive industries, in the coal business, the market, not the producer, determines the price which customers are willing to pay. And the instability of the market is a greater threat to the small operator, whose capital resources and abilities to obtain long-term contracts are generally more limited than is the case for larger producers.

Although the producer's total vulnerability to the market is an important characteristic of our

industry which this Commission should keep in mind as its work progresses, the market itself is **not** the problem. The problem is producing coal at a cost which enables the producer to sell his product at a competitive price. We are evidently becoming less competitive, because not only are we exporting less domestic coal, but we are now importing increasing quantities of foreign coke and coal, steam as well as metallurgical. Cost is partly the reason Kentucky has pulled ahead of West Virginia in coal production, and is also responsible for Australia threatening our world export position. The problem is that production costs are increasing while productivity is falling. Some of the reasons for this phenomenon will be discussed later, but keep in mind that government regulations significantly impact on both the cost of production and the demand for coal.

LABOR-MANAGEMENT RELATIONS

Although unauthorized work stoppages and absenteeism have unquestionably reduced productivity and restrained the development of coal in Appalachia, this problem is largely one of labor-management relations and one about which I believe significant improvements are presently being made. Most coal operators in Appalachia today recognize that the evolution of the Union was historically justified and that the existence of the Union of Appalachia is an unalterable reality. The problem has been the unfortunate inability of management and the Union to communicate effectively and their failure to perceive their mutual dependence upon a healthy coal industry, healthy both in terms of a safe work environment and in terms

of economic viability. In this area, the independent company whose upper level management is more personally involved in day-to-day operations should be particularly well situated to deal with the problem positively.

I believe the improvements presently being made are the result of a concerted effort on the part of both union and management to resolve their differences at an early stage and within the contractual framework and thus in a way which is not destructive to the production of coal upon which the continued survival and well-being of everyone employed in the coal business depends.

In addition, the payment of productivity and safety bonuses, authorized under the new labor contract, provides a promising means by which the individual miner can appreciate that the success of his labors and the success of his company are inseparably linked. In the less than seven months which have passed since the labor contract was signed, my employer has paid its roughly 900 union employees over a quarter of a million dollars in production bonuses, and we are optimistic that this will engender a positive and harmonious work environment. There is no reason why a unionized company where good and mature labor-management relations exist cannot be every bit as productive as its non-union counterparts.

TRANSPORTATION

On the matter of transportation, I will not spend much time belaboring the obvious fact that our ability as a nation to utilize greater quantities of coal in the future is necessarily limited by our ability to deliver the coal from the mine site to the user. From the point of view of the individual coal operator, the quantity of coal which he can mine and, thus, the revenues which he can generate from the sale of his production, is obviously limited by the volume he can ship. In spite of the assurance of many railroad companies to the contrary, there is presently a severe rail car shortage, and this is a serious problem to which the Commission should direct itself.

GOVERNMENT REGULATION

I turn now to the problem which presents the greatest threat to the independent coal operator, the problem of excessive government regulation. I would like to emphasize at the outset, however, that contrary to popular belief, most coal producers support the concept of government regulation, which enables them to compete fairly with others, to provide a safer work place, and to protect the environment in a more responsible manner than would be possible in the absence of regulation. Vis-a-vis the Kentucky problem.

The problem is not government regulation per se, the problem is a phenomenon called "stregulation": the strangling growth of complex and counter-productive regulations which, if unabated, could bring about the demise of the small coal operator in Appalachia, and perhaps even of our national energy goals as well. These regulations affect, if not guide, the conduct of virtually every aspect of the coal business. Yet these regulations are not promulgated or implemented by elected officials or for the most part even by persons with practical knowledge and experience in the field.

Particularly for the small operator who is unable to afford the increased overhead of additional administrative personnel required to handle the tremendous volume of regulations and resulting paperwork, the prospect is a discouraging one. To illustrate the point, I have brought with me a compilation of some of the documents to which reference must be made in order to obtain an underground mining permit. I also have a partial list of the forms which must be submitted by a coal operator in the course of a year. As a practical matter, however, no oral remarks can effectively illustrate the constrained environment in which the coal operator must now function. Consequently, on behalf of the West Virginia Coal Association, I would like to invite the Commission to return to Charleston at a later date for a first hand, more practical demonstration of the prevailing regulatory environment.

The effect of over-regulation and duplicative federal and state regulations has been uncertainty and confusion. This in turn retards the capital formation necessary for opening new mines and operating existing mines. The effects of excessive and duplicative regulation are well understood by the Chairman of this Commission, who recently told the Senate Energy Natural Resources Committee that implementation of the interim surface mine regulations have caused "confusion and chaos" which "has resulted in the deterioration of what was once a sound reclamation program in West Virginia." He went on to recommend that the interim regulations should be revised "in such a way as to remove those provisions which are unduly restrictive without redeeming environmental benefits." The impact of "stregulation" has also been noted by John Shenefield, head of the Justice Department's Antitrust Division. Mr. Shenefield recently noted that the effect of over-regulation in the energy field would ultimately be to reduce competition to the detriment of the ultimate consumer, stating that in order to correct the inequities caused by regulation, "too often, some form of subsidy, rather than less regulation, will be the selected antidote."

Over-regulation suffocates management's efforts to innovate and restricts management's prerogatives. Management today spends more time trying to survive the regulatory obstacle course than it does in innovatively and productively managing the resources for which it is responsible. The growth of government regulation, always clothed in laudatory objectives, obscures a simple fact: only when a given quantity of resources, both human and capital, are deployed and utilized in such a way as to produce more than had been previously been attainable from the same quantity of resources will there be more available for all persons in our economy. In other words, without increased productivity, the pie from which we all share grows smaller. Although labor and government play a vital role in the productive process and although they are essential for the

protection of legitimate objectives other than production, it is management which is the vital source which can, by application of managerial skills and technology, improve the productive capacity of the resources. But in the present stifling environment of over-regulation, management's ability to innovate is all but eliminated.

Yes, we **must** protect the environment from the negative effects of coal mining. And yes, we **must** provide a safe and healthful work place for the miner. The surest way to achieve these admittedly legitimate objectives would be to prevent the mining of coal altogether, but I refuse to believe that Congress intended choking off the productive process which the regulatory agencies are currently inflicting upon the industry. A reasonable balance must be achieved.

I hope this Commission will take a close look at the impact of the regulatory process on the coal industry and take affirmative steps to eliminate duplicative and counter productive regulations and to centralize and harmonize the process as a whole.

In closing, I would like to say that I have appreciated this opportunity to address the Commission. I hope my comments will be of some assistance to you in the performance of your duties, for you have been charged by President Carter with a complex, challenging and important task. The coal industry is a paradox of great potentials: On one hand, the stated national goal of increased coal production promises to provide energy for the continued healthful growth of our nation and employment and economic stability for the areas where it is mined. On the other hand, there is tremendous potential for disappointment if these goals cannot be achieved. Particularly here in Appalachia where coal and related industries are our greatest employers, the failure of the coal industry to achieve its potential would be tragic. I earnestly hope this Commission will be successful in resolving the impediments to the realization of the positive potential for coal.

Paperwork

Editor's note: The following is taken from testimony given to the President's Commission of Coal. It consists of a listing of the various reports which a West Virginia coal company must file in order to comply with existing laws and regulations. It may not be complete. Altogether, it lists 83 separate reports, 43 due to the federal government, and 38 to the State. The Mine Safety and Health Administration would appear to be the most prolific agency, requiring 23 separate pieces of paperwork.

GOVERNMENT AGENCY	ACTIVITY	FILINGS PER YEAR
WV State Tax	Motor Carrier Tax	4
WV State Tax	Corporation License Tax	1
WV State Tax	Business Franchise Tax	1
WV State Tax	Business and Occupation Tax	4
WV State Tax	Corporate Income Tax	1
WV State Tax	Payroll Tax Return	12
WV State Tax	Fuel Refund	12
WV Dept. Highways	License, Titles, Fuel Users Permits for On-Highway Vehicles	12
WV Dept. Mines	Oil and Gas Extension	As Required
WV Dept. Mines	Mine Injury Report	Each Injury
WV Dept. Mines	Permit Report	12
WV Work. Comp.	Injury Report	Each Injury
WV Work. Comp.	Tax Return	4
WV Dept. Emp. Sec.	Benefit Claim Report	Each Filing
WV Dept. Emp. Sec.	Tax Return	4
WV C-W Pneu Fund	Tax Return	4
Dept. Natural Res.	Yearly Planting Report	1
Dept. Natural Res.	Final Planting Plan	As Required
Dept. Natural Res.	Monthly Water Quality Report	12
Dept. Natural Res.	Surface Mine Permit Removal	1
Dept. Natural Res.	Water Discharge Permit	As Required
Dept. Natural Res.	Water Approval Surface Mine Permit	As Required
Dept. Natural Res.	Water Approval Drainage Permit	As Required
Dept. Natural Res.	Water Prep. Plant Const. Permit	As Required
Dept. Natural Res.	Water Prep. Plant Operation Permit	As Required
Dept. Natural Res.	Dam and Refuse Prep. Plant Operation Permit	As Required
Dept. Natural Res.	Refuse Disposal Permit	As Required
Dept. Natural Res.	Dam Construction Permit	As Required
Dept. Health	Sewage Facilities Application	2
Dept. Health	Sewage System Info. and Design Data Sheet	2
Dept. Health	Water Treatment System Design and Date Sheet	2
Dept. Health	Water Supply Application	2
Dept. Health	Certificate of Supervision	2
Dept. Health	Waste Load Allocation Form	2
Air Pol. Con. Comm.	App. Registration of Prep. Plant	1
Air Pol. Con. Comm.	App. Construction—Stationary Source	1
Air Pol. Con. Comm.	App. for Operation	2

GOVERNMENT AGENCY	ACTIVITY	FILINGS PER YEAR
Air Pol. Con. Comm.	App. to Register Refuse Disposal Areas	2
IRS	Use Tax on Highway Vehicles	1
IRS	Use Tax on Civil Aircraft	1
IRS	Corporate Income Tax Return	1
IRS	1099 Report	1
IRS	Form 941 Tax Return	1
IRS	Form 941 Tax Return	4
IRS	Form 941 Tax Deposits	26
Dept. Interior	Distribution of Bituminous Coal Shipments Report	4
Dept. Interior	Reclamation Tax Return	4
Dept. Interior	Progress Maps	1
Dept. Interior	Surface Mine Permit App.	As Required
Dept. Interior	Surface Water Monitoring Report	4
Dept. Interior	Ground Water Monitoring Report	4
Dept. Interior	Permit Renewal	1
Dept. Interior	R. P. E. Inspection and Report	4
MSHA	Employment and Production Report	12
MSHA	Mine Injury Report	Each Injury
MSHA	New Mine Permit Sample Forms	1
MSHA	New Mine Permit Legal Identity Report	1
MSHA	New Mine Permit Preliminary Plans	1
MSHA	New Mine Permit Proposed Training Program	1
MSHA	New Mine Permit Training Course Form	1
MSHA	New Mine Permit Fire Drill Form	1
MSHA	New Mine Permit Evacuation Drill Form	1
MSHA	New Mine Permit Fire Fighting and Evacuation Plans	1
MSHA	New Mine Permit Fire Fighting Procedures and Protection	1
MSHA	New Mine Permit Smoking Program Plan	1
MSHA	New Mine Permit Noise Level Survey Form	As Required
MSHA	New Mine Permit First Aid for Supervisors	1
MSHA	New Mine Permit Sanitary Toilet Facilities	1
MSHA	New Mine Permit Emergency Medical Assistance	1
MSHA	New Mine Permit Hearing Conservation Plans	1
MSHA	New Mine Permit Dust Sampling and Reporting	2
MSHA	New Mine Emergency Transportation	1
MSHA	Health and Safety Individual Training Record	1
MSHA	Ground Control Plan	1
MSHA	Request for Permit to Enter Auger Holes	1
MSHA	Field Change Application	As Required
Dept. Labor	Employment-Payroll-Hours Report	12
Bureau of Mines	Temporary Surface Certificate	2
EPA	Application for Discharge	As Required
EPA	Discharge Monitoring Report	Daily
EPA	Environmental Impact Statement	As Required
EPA	Air Pollution Control Existing Source Permit	As Required
EPA	Air Pollution Control New Source Permit	As Required

Linda Says When It's
Good Bodies, Service
and Trucks
You Want...

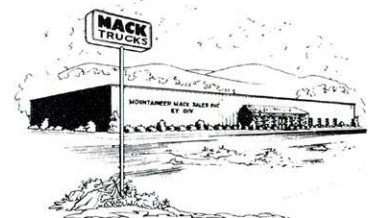


...Make Mine
Mountaineer Mack!

Now Serving You At Two Big Locations!



Mountaineer Mack Sales
Rt. 60 East, Near I-64
Huntington, W. Va.



Mountaineer Mack Sales
U.S. Rt. 23
Lowmansville, Ky.

Nothing succeeds like success.

Of course, success doesn't just happen. It has to be cultivated; specific elements have to exist in order for success to emerge.

In the auction business, elements of success include an experienced sales staff, a genuine concern for the client's needs and goals, an exact knowledge of construction equipment and its market value.

These factors combine to create the professional attitude with which Miller & Miller Auctioneers, Inc. approaches an auction. This attitude and the successful results it produces on sale day have made us the nation's leader in heavy construction equipment sales.

Contact Miller & Miller Auctioneers, Inc. when your company needs professional auction services, and benefit from our success.



**Miller
& Miller**
AUCTIONEERS, INC.

2525 Ridgmar Boulevard
Fort Worth, Texas 76116
817-732-4888
TELEX: 75-8440

Chamberlaine & Flowers INC.

128 South Second Street
Clarksburg, West Virginia 26301
304/623-3721

745 Chestnut Ridge Road
Morgantown, West Virginia 26505
304/599-8735

18 West Main Street
Buckhannon, West Virginia
304/472-2402



INSURANCE

COAL
OPERATORS
INSURANCE

"TOTAL SERVICE
is what we're all about."

"Let Us Evaluate and Bid Your Next Job.
You'll Be Glad You Did!"

Approved Private Contractor Since 1972.

"Land Stabilization Specialists"
Over 30 Years Combined Experienced

David J. Ozmina
President
Professional Fisheries Biologist
Certified Fisheries Scientist
Certified Wildlife Biologist

D & D
Reclamation, Inc.

Charles E. Massie
Vice President
763-2134

Water Sampling
Service

Tree Planting
Hydroseeding

Erosion and
Sediment Control

P. O. Box 1004 Tel. 304-253-8309 Beckley, W. Va. 25801

ASSOCIATION NOTEBOOK

TENTATIVE PROGRAM

SIXTH ANNUAL WEST VIRGINIA SURFACE MINING SYMPOSIUM

Holiday Inn—Charleston House, Charleston, West Virginia

January 10 and 11, 1979

TUESDAY, JANUARY 9TH

6:30 - 8:00 P.M. Registration Main Lobby

WEDNESDAY, JANUARY 10TH

8:30 A.M. Registration Main Lobby

9:00 A.M. Welcome and Introduction Wertz Room

Benjamin C. Greene, President, West Virginia
Surface Mining & Reclamation Association

9:15 A.M. Technical Sessions Wertz Room

"Blasting, Record Keeping & Compliance"
John Oldsen—E. I. du Pont de Nemours & Co.

"Pre-Post Blasting Surveys"
Speaker—Gordon French, Vibra-Tech Associ-
ates, Inc.

"Hydrology and Sediment Control"
Dr. Erkan Esmer—President, Esmer & Associ-
ates, Inc., Boomer, West Virginia

"Effect of Federal Regulations on the Surety
Industry"—Jerry Walsh, Manager, Surety Di-
vision, Travelers Indemnity Company, Pitts-
burgh, Pennsylvania

11:30 A.M. Registration Mayor's Hall

12:00 Noon Luncheon Hutchinson Ballroom

1:30 P.M. Technical Sessions Continue Wertz Room

Moderator—Dr. Charles H. Beasley, Acting OSM
Regional Director, Region I,
Charleston, West Virginia

Panel—Key OSM Personnel (to be announced)

"The Interim Program and Insight to the Per-
manent Program—Where We Are and Where
We're Headed"

6:00 P.M. Registration Mayor's Hall

6:30 - 7:30 P.M. Legislative Reception Hutchinson Ballroom

THURSDAY, JANUARY 11TH

8:30 A.M. Registration Main Lobby

9:00 A.M. Session Chairman William B. Raney

Vice-President, West Virginia Surface Mining
and Reclamation Association

9:15 A.M. Technical Session Continues Wertz Room

Moderator—James E. Pitsenbarger, Chief,
Division of Reclamation,
West Virginia Department of
Natural Resources

Panel—Key Division of Reclamation Personnel
(to be announced)

"Operating Under the Interim Program and
Proposed Legislation for 1979"

11:30 A.M. Registration Mayor's Hall

12:00 Noon Awards Luncheon Hutchinson Ballroom

1:00 P.M. Awards Presentation David C. Callaghan

Director, West Virginia Department of Natural
Resources





WHY ARE COAL OPERATORS TURNING TO THE McDONOUGH CAPERTON INSURANCE GROUP?

WHO ELSE ... is uniquely capable of handling all of these insurance needs?

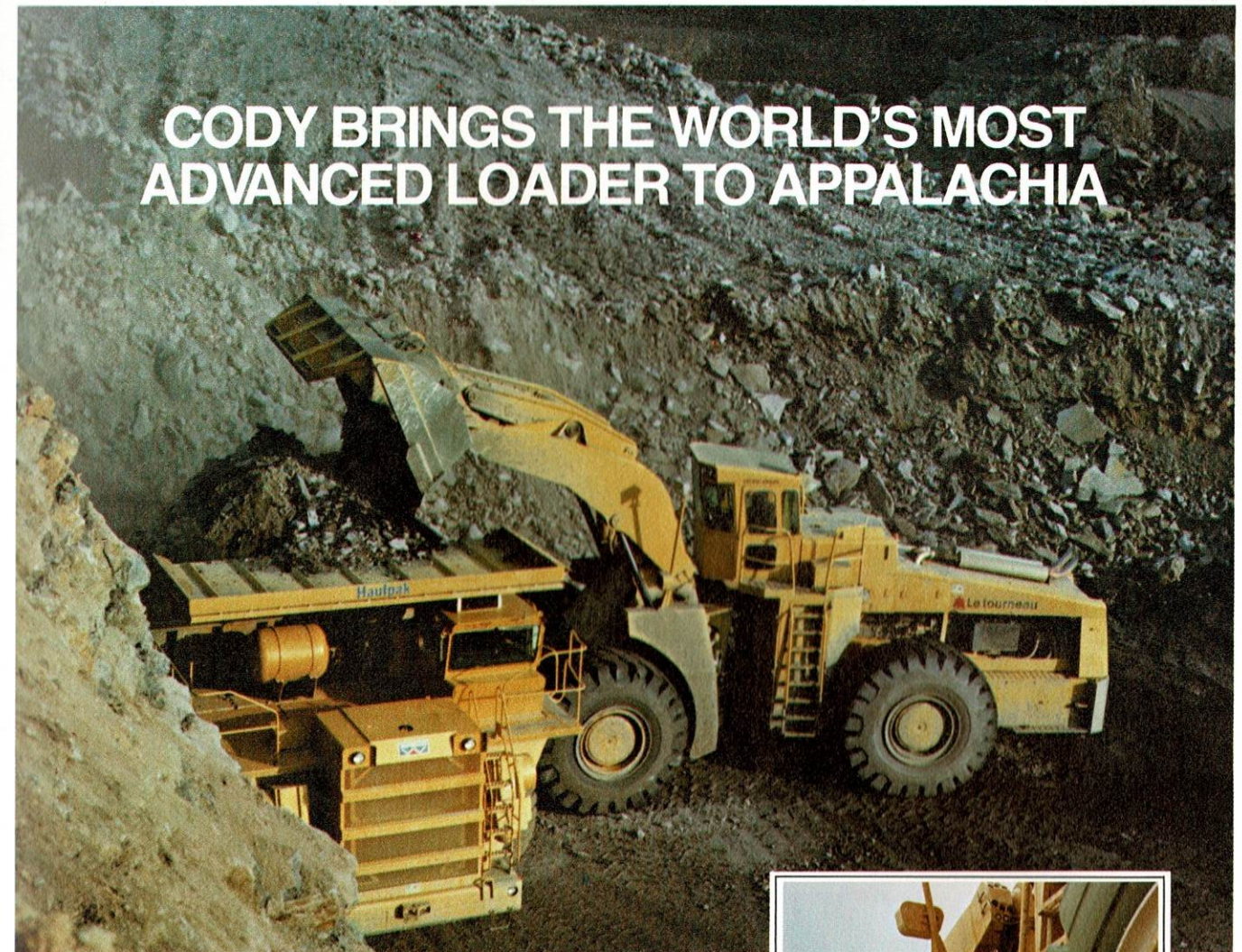
- General Liability Insurance for Underground and Surface Operations
- Auto Liability and Physical Damage Coverage
- Rolling Stock and Equipment Coverage
- Real and Personal Property Insurance
- Loss of Earnings Insurance
- Builders Risks Insurance
- Bonds
- Workmens Compensation Administration
- UMW Benefits

**MCDONOUGH
CAPERTON
SHEPHERD
GROUP**

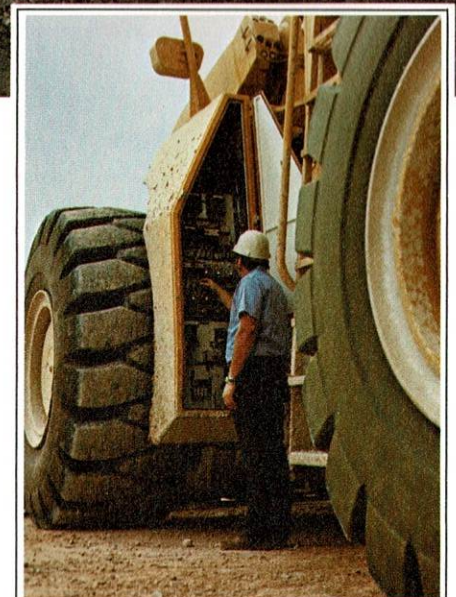
1014 Kanawha Boulevard E., Charleston, West Virginia 25326

Offices in: Charleston • Beckley • Parkersburg • Wheeling • Fairmont • Washington, D.C. • Bermuda BWI.

CODY BRINGS THE WORLD'S MOST ADVANCED LOADER TO APPALACHIA



Mining, reclamation, and construction projects are more efficient and profitable when you use the Marathon LeTourneau LeTro-Loader. This front-end loader has the most advanced design features in the business: Powerful electric motors *in each wheel*, computer controls, solid-state circuitry, constant speed hydraulics. A traction control system and a 90° steering angle contribute to the loader's efficient operation. A built-in diagnostic meter simplifies servicing. For more information about the world's most advanced loader, contact Cody Equipment & Supply Co., Inc., Route 16 South, Beckley, West Virginia (Phone 304/255-1411), or Route 23, Wise, Virginia (Phone 703/679-5250), an authorized Marathon LeTourneau sales and service representative.



Compare these advantages:

- Peak performance
- Optimum maneuverability
- Shorter cycle time
- Longer tire life
- Traction control
- Constant speed hydraulics
- Faster service

