

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Division of Environmental Protection  
Mining & Reclamation TITLE NUMBER: 38

CITE AUTHORITY WV Code 22-1-3, 22-1-3a, 22-4-18

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2B

TITLE OF RULE BEING AMENDED: Quarry Mining & Reclamation Standards

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Roger T. Hall  
Roger T. Hall  
Special Asst. to Director

19.60 (with comments)  
8.80 (w/o)



**DIVISION OF ENVIRONMENTAL PROTECTION**

10 McJunkin Road  
Nitro, WV 25143-2506

GASTON CAPERTON  
GOVERNOR

DAVID C. CALLAGHAN  
DIRECTOR

September 1, 1994

Ms. Judy Cooper  
Director, Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
Charleston, West Virginia 25305

RE: CSR-38-2B - Quarry Mining and Reclamation  
Standards

Dear Ms. Cooper:

This is to advise you that I am giving approval for the filing of the above-captioned rule with your Office and with Legislative Rule-Making Review Committee as an agency-approved rule.

Your cooperation in this regard is very much appreciated. If you have any questions or require additional information, please feel free to contact Roger T. Hall at 759-0515.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "D. Callaghan", written over the typed name and title.

David C. Callaghan  
Commissioner  
Bureau of Environment

DCC;RTH:cc

Attachment

## STATEMENT OF CIRCUMSTANCES

RECENT ATTENTION HAS BEEN BROUGHT TO BEAR ON THE ENVIRONMENTAL IMPACTS OF QUARRYING OPERATIONS IN CERTAIN AREAS OF THE STATE. PARTICULAR EMPHASIS HAS BEEN PLACED ON USE AND DETONATION OF EXPLOSIVES WITHIN THE PROXIMITY OF RESIDENTIAL DWELLINGS AND COMMERCIAL, AGRICULTURAL AND INDUSTRIAL SITES. OTHER CONCERNS HAVE BEEN RAISED REGARDING WATER QUALITY AND EROSION FROM UNRECLAIMED WASTE ROCK AREAS. PROPOSED LEGISLATION HAS BEEN UNDER CONSIDERATION FOR THE PAST THREE YEARS, BUT BILLS WHICH HAVE BEEN INTRODUCED HAVE NOT YET BEEN PASSED. THESE RULES WILL PROVIDE SOME RELIEF FOR ENVIRONMENTAL CONCERNS UNTIL LEGISLATIVE ACTION CAN BE TAKEN ON PENDING BILLS.

**APPENDIX B**

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: Quarry Mining and Reclamation Standards

Type of Rule: XX Legislative         Interpretive         Procedural

Agency: WV Division of Environmental Protection

Address: 10 McJunkin Road  
Nitro, WV 25143

**1. Effect of Proposed Rule**

	ANNUAL FISCAL YEAR				
	DECREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ -0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-
PERSONAL SERVICES	-	-	-	-	-
CURRENT EXPENSE	-	-	-	-	-
REPAIRS & ALTERNATIONS	-	-	-	-	-
EQUIPMENT	-	-	-	-	-
OTHER	-	-	-	-	-

**2. Explanation of above estimates:**

This proposed rule will not result in an increase or decrease in state revenues.

**3. Objectives of these rules:**

The development of more comprehensive standards for environmental protection from impacts of quarrying operations. (Reclamation, backfilling, use of explosives, water quality and erosion control.)

Rule Title: Quarry Mining & Reclamation Standards

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

None

C. Economic Impact on Citizens/Public at Large.

None

Date: July 13, 1994

Signature of Agency Head or Authorized Representative

Roger T. Hall  
Roger T. Hall

DATE: September 1, 1994

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Division of Environmental Protection  
Mining & Reclamation

LEGISLATIVE RULE TITLE: Quarry Mining & Reclamation Standards

1. Authorizing statute(s) citation WV Code 22-1-3, 22-1-3a  
22-4-18

2. a. Date filed in State Register with Notice of Hearing  
July 14, 1994

b. What other notice, including advertising, did you give  
of the hearing?

General news release to over 100 publications statewide

c. Date of Hearing(s) August 15, 1994

d. Attach list of persons who appeared at hearing,  
comments received, amendments, reasons for amendments.

Attached  No comments received

e. Date you filed in State Register the agency approved  
proposed Legislative Rule following public hearing:  
(be exact)

September 2, 1994

f. Name and phone number(s) of agency person(s) to  
contact for additional information:

Roger T. Hall 759-0515

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

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b. Date of hearing:           N/A          

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

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d. Attach findings and determinations and reasons:

Attached                   N/A

## SUMMARY

This proposed rule repeals the existing rule (CSR 38-2B) relating to quarry mining operations in the State. The new rule expands on the requirements for reclamation, drainage and sediment control, use of explosives, waste rock placement, etc. The intent of the rule is to provide a higher level of environmental protection from the impacts of quarry mining operations.

TITLE 38  
LEGISLATIVE RULE  
DIVISION OF ENVIRONMENTAL PROTECTION - MINING AND RECLAMATION

SERIES 2B  
QUARRY MINING AND RECLAMATION STANDARDS

**38.2B.1. General**

**1.1. Scope** - These regulations establish general and specific rules for quarry mining and reclamation operations including requirements for definitions, permits, preplans, haulageways or access roads, blasting, drainage system, method of operation, grading, backfilling and revegetation, modifications, state and federal compliance and validity of regulations and exceptions.

**1.2. Authority** - West Virginia Code 22-1-3, 22-1-3a, 22-4-18

**1.3. Filing Date** -

**1.4. Effective Date** -

**1.5. Incorporation by Reference - Federal Counterpart Regulations** - The Director has determined that there are no federal counterpart regulations.

**1.6. Determination of Stringency - Federal Counterpart Regulations** - The Director has determined that there are no federal counterpart regulations, therefore, this rule is deemed to be no more or no less stringent than federal regulations.

**1.7. Constitutional Takings Determination** - The Director has determined that this rule does not constitute a taking of real property under the State or U.S. Constitution.

**1.8. Repeal of Former Rule** - This rule repeals CSR 38-2-2B, "Regulations For Mining and Reclamation of Mineral Other Than Coal" which were filed in the Secretary of State's Office on December 30, 1982, and became effective on January 1, 1983.

**38.2B.2. Definitions** - Unless the context in which used clearly requires a different meaning, as used in these regulations or as referred to in WV Code 22-4-1 et seq, as amended:

**2.1. "Backfill"** means to place material back into an excavation and return the area to a predetermined slope.

**2.2. "Base of highwall"** means the intersection of the vertical plane with the horizontal plane at any point in the overburden, spoil, or mineral.

2.3. "Bench" means the result of quarry mining in areas where the average slope or the original ground has an inclination of more than thirty percent (30%) from the horizontal, being: (a) the leveled surface of an excavated area measured horizontally at any point in the overburden, spoil, or mineral between the base of the highwall and outer point of original fill bench; or (b) a working base extending from the base of a highwall on which excavating equipment can set, move, and operate.

2.4. "Bench width" means the width of the bench as measured horizontally from the base of the highwall to the outer point of the original fill bench.

2.5. "Completion of mining" means an operation where no mineral has been removed or overburden removed for a period of two consecutive months, unless the operator, within thirty (30) days of receipt of the Director's notification declaring completion, submits sufficient evidence that the operation is in fact not completed.

2.6. "Cross-drain" means a ditch constructed to carry away excessive drainage from a main collecting point or ditch.

2.7. "Cut" means an excavation made by excavating equipment to remove overburden in a single progressive line.

2.8. "Cut-fill" means overburden removed from an elevated portion of a road or bench and deposited in a depressed portion in order to maintain a desired grade.

2.9. "Director and/or his authorized agent" means the Director of the Division of Environmental Protection, the Chief of the Office of Mining and Reclamation, Assistant Chiefs of the Office of Mining and Reclamation and all duly authorized supervisors, inspectors, and inspectors-in-training.

2.10. "Minerals" means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metal or metallurgical ore.

2.11. "Monument" means a permanent marker consisting of metal or wood used to identify the permit area being mined under a quarry mining permit, consisting of a two-inch pipe driven three (3) feet into the earth with a minimum of four (4) feet exposed and a 2' X 3' sign affixed to the top of the pipe with company name and permit number permanently affixed. Any suitable equivalent substitute may be approved.

2.12. "Natural drainway" means any water course or channel which carries water to the tributaries and rivers of the watershed. The United States Geological Survey classification of perennial or intermittent streams will be considered as natural drainways.

2.13. "Operation" means the permit area indicated on the approved map submitted by the operator.

2.14. "Outer spoil or outer slope" means the disturbed area extending from the outer point of the bench to the extreme lower limit of the disturbed land.

2.15. "Overburden" means the earth, rock and other materials lying in the natural state above a mineral deposit before or after excavation.

2.16. "Pit" means that part of the quarry mining operation from which the mineral is being actively removed.

2.17. "Quarry Mining" means all activity for the recovery, processing, or storage of minerals, and all facilities and equipment used in processing said minerals.

2.18. "Reclamation" means the process of restoring land disturbed as a result of quarry mining operations in a manner which will support an acceptable post mining land use.

2.19. "Regrade or grade" means to change the contour of any surface by the use of leveling or grading equipment.

2.20. "Sand" means individual rock or mineral fragments having a diameter less than 2.00m but greater than .02m.

2.21. "Seepage water" means any water entering the ground from the surface through capillary action, cracks, faults or any other natural modes of entry, and finding its way to the surface again.

2.22. "Slope" means the angle of repose from the horizontal plane of spoil banks or ridges of overburden material made in the quarry mining operation - the angle of a hill or mountain. A gentle slope will mean 0% to 10%, moderate to steep slope will mean 10% to 45%; extremely steep slope will mean 45% and over.

2.23. "Soil" means any earthen material excluding bedrock.

2.24. "Solid bench" means that portion of the bench surface formed by earth or rock strata which has not been removed, as distinguished from fill bench.

2.25. "Spoil" means all overburden material removed or displaced by excavating equipment, blasting, or any other means.

2.26. "Stabilize" means to settle or fix in place by mechanical or vegetative means, including the planting of trees, grasses, vines, shrubs, or legumes.

2.27. "Surface water" means that water, from whatever source, which is flowing on the surface of the ground.

2.28. "Suspension of permit" means an order of the Director with legal justification temporarily nullifying the validity of a permit insofar as the mining and removal of the mined minerals are concerned.

2.29. "Water analyses" means those water analyses performed by or for the operator using the analytical procedures set forth in Standard Methods, Thirteenth Edition, or employing such other field testing methods which have been approved by the Director.

### 38.2B.3. Haulageways.

3.1. Location - The location of the a proposed haulageway will be identified on the site by visible markings fat the time the reclamation and mining plan is preinspected and prior to commencement of construction.

3.2. Grading - The grading of a haulageway will be such that:

3.2.1. No sustained grade will exceed ten percent (10%);

3.2.2. The maximum pitch will not exceed fifteen percent (15%) for three hundred (300) feet;

3.2.3. There will not be more than 300 feet of maximum pitch grade for each 1,000 feet of road constructed; and

3.2.4. The surface will be insloped toward the ditch line at the minimum rate of 1/2 inch per foot of surface width or crowned at the minimum rate of 1/2 inch per foot of surface width as measured from the center line of the haulageway.

3.3. Curves - The grade on switchback curves will be reduced to less than the approach grade and should not be greater than ten percent (10%).

3.4. Cut Slopes - Cut slopes should not be more than 1:1 in soils or 1/4:1 in rock.

3.5. Ditches - A ditch will be provided on both sides of a through-cut and on the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water will be intercepted before reaching a switchback or large fill and led off. Water on a fill or switchback will be released below the fill, not over it.

3.6. Culverts - Ditch relief culverts will be installed according to the following provisions:

3.6.1.	Road Grade in %	Spacing of Culverts in Feet
	2 - 5	300 - 800
	6 - 10	200 - 300
	11 - 15	100 - 200

3.6.2. The culvert will cross the haulageway at a 30 degree angle downgrade.

3.6.3. The inlet end will be protected by a headwall of suitable material and the outlet end will be placed below the toe of the fill with an apron of suitable material provided for the outflow to spill on.

3.6.4. The culvert will be covered by compacted fill to a depth of one foot or half the culvert diameter, whichever is greater.

3.7. Culvert Openings - Culvert openings installed on haulageways should not be less than one hundred (100) square inches in area, but, in any event, all culvert openings will be adequate to carry storm off and will receive necessary maintenance to function properly at all times.

3.8. Natural Drainway - Minor alterations and relocations of natural drainways as shown on the reclamation plan will be permitted if the natural drainway will not be blocked and if no damage is done to the natural drainway or to adjoining landowners.

3.9. Stream Crossings - Drainage structures will be required in order to cross a stream channel. They will be such so as not to affect the flow of the stream. Consideration will be given to the time of year the stream is crossed and length of time the stream channel is used, but, in no event, and under no condition will the flow of the stream be affected or the sediment load of the stream increased during construction and/or use.

3.10. Removal of Drainage Structures - No bridges, culverts, stream crossing, etc., necessary to provide access to the operation, may be removed until reclamation is completed and approved by the Director. The same precautions as to water quality are to be taken during removal of drainage structures as those taken during construction and use.

3.11. Stabilization of Slopes - All fill and cut slopes will be stabilized after the construction of a haulageway.

3.12. Haulageway Surfacing - Haulageways will not be

surfaced with any acid-producing or toxic material or with any material which will produce a concentration of suspended solids in surface drainage.

**3.13. Water Bars** - Water bars of the ditch and earth berm or log type will be installed according to the following table of spacings in terms of percent of haulageway grade prior to the abandonment of a haulageway:

Percent of Haulageway	Spacing of Water Bars in Feet
2	250
5	135
10	80
15	60
20	45
Above 20	25

**3.14. Dust Control** - Reasonable means will be employed to prevent loss of haulageway surface material in the form of dust.

**3.15. Abandonment of Haulageway** - Upon abandonment of a haulageway, the haulageway will be seeded and every effort made to prevent erosion by means of culverts, water bars, or other devices.

**3.16. Tolerance** - All grades referred to in this section will be subject to a tolerance of two percent (2%) grade. All linear measurements referred to in this section will be subject to a tolerance of ten percent (10%) of measurement. All angles referred to in this section will be measured from the horizontal and will be subject to a tolerance of five percent (5%).

#### **38.2B.4. Blasting.**

**4.1. Assessment** - Any assessment as set forth in WV Code 22-4-11, as amended, will be paid within ten (10) days after receipt of said assessment notice.

**4.2. Sign** - A sign permanently affixed at or near the permanent monument will describe "warning, blasting area." The sign will be a minimum of 2' x 3' with legible letters to be erected at the time mining operations begin.

**4.3. Written Notification** - Prior to mining operations, written notification of blasting will be given by certified mail to all residents, owners, or other persons who are adjacent to any part of the proposed operation. The United States Post Office Department Certified Receipt of Notification will be maintained with the blasting log.

**4.4. Blasting Time** - Blasting will be limited to the hours between sunrise and sunset. Blasting on Sunday is strictly prohibited.

**4.5. Approaches to Area** - All approaches to the blast area will be guarded against unauthorized entry prior to and immediately after blast.

**4.6. Blasting Warning** - When blasting is to be done within five hundred (500) feet of any occupied dwelling, the operator or his authorized representative will notify all persons involved that a blast is to be detonated, stating the approximate time of same. A minimum of one (1) hour notification must be given prior to detonation.

**4.7. Blasting Prohibited** - The Director or his authorized agent may prohibit blasting in specific areas where it is deemed necessary for the general safety of the area.

**4.8. Flyrock, Including Blasted Material** - Material will not be cast from the blasting site more than half-way to the nearest protected structure, or in no case beyond the bounds of the permit area.

#### **38.2B.5. Drainage System.**

**5.1. Drainage Plan** - There will be submitted with the application for quarry mining a drainage plan which will show the proposed method of drainage on and away from the area of land to be disturbed. Said plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, streams or tributaries receiving or to receive this discharge, location of sediment dams, and other silt-retarding structures, location of all water test sites, treatment, and all other data as may be required.

**5.2. Natural Drainways** - Natural drainways in the area of land disturbed by quarry mining operations shall be kept free of overburden except where over-burden placement has been approved. Such drainways shall be identified on the maps submitted with the application. Quarry mining operations will be prohibited fifty (50) feet on either side of a natural drainway unless adequate screening or other measures approved by the Director are to be utilized and the permit application so provides. Overburden placement and haulageway across natural drainways will be constructed so as not to affect the flow of the stream, or materially increase the sediment load in the stream.

#### **5.3. Constructed Drainways:**

**5.3.1. Ditch Above Highwall** - All surface water

which drains into the pit shall be effectively intercepted on the uphill side of the highwall by suitable and adequate diversion ditches and conveyed by adequate channels or other suitable means of discharge to natural drainways outside the disturbed area. The Director may, in the exercise of his sound discretion, when not in conflict with WV Code 22-4-1 et seq., as amended, waive this regulation.

**5.3.2. Ditch on Bench** - Drainage ditches will be constructed on the excavated solid bench in order to carry off storm, surface, or seepage water. The breaking point for ditches on the bench will fall at or near the midpoint between natural or constructed drainways. In no case shall water be discharged over a spoil slope. Removal of water from the bench shall be accomplished by use of adequate pipe, a rock riprap flume, asphalt or concrete chutes, or by grading a channel to nonerosive rock.

**5.3.3. Ditch Below Spoil Slope** - All surface water draining off the spoil slopes will be intercepted by suitable and adequate diversion ditches which will carry the water to suitable treatment ponds before discharge into a natural drainway. These ditches will be located within twenty-five (25) feet of the anticipated toe of the spoil slope. If at any time spoil material interferes with the flow of water in these ditches, that material shall be cleaned out immediately. The Director may, in the exercise of his sound discretion, when not in conflict with WV Code 22-4-1 et seq., as amended, waive this requirement.

**5.4. Sediment Control** - All drainage control structures will be constructed in appropriate locations in order to control sedimentation. All impoundments shall have a minimum capacity to store .125 acre-ft/acre of disturbed area in the watershed. This disturbed area will include all land affected by previous operations that is not presently stabilized and all land that will be affected throughout the life of the permit. Design criteria and construction specifications for embankment-type sediment dams, excavated ponds, and other water retarding structures will be found in the "Technical Handbook for Surface Mining." Prior to beginning of quarry mining operations within each drainage component area, the drainage and sediment control structures shall be certified by a person approved by the Director as being constructed according to the design criteria specified in the approved permit. Each sediment retention structure shall be cleaned out when the sediment accumulation reaches sixty percent (60%) of design capacity.

**5.5. Water Quality Control** - All quarry mining and reclamation activities shall be conducted to minimize the disturbance of hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to assure the protection or

replacement of water supplies. All reasonable measures shall be taken to intercept all surface water by the use of diversions, culverts, and drainage ditches or other methods to prevent water from entering the pit area. All water accumulation into the pit shall be removed as rapidly as possible with due recognition to water quality requirements. Discharge from areas disturbed by quarry mining shall not violate effluent limitations or cause a violation of applicable water quality standards. The monitoring frequency and effluent limitations shall be governed by the standards set forth in the National Pollutant Discharge Elimination System (NPDES) permit issued by the Division.

**5.5.1.** Water tests reflecting seasonal variation shall be taken before quarry mining operations begin and the results of these tests will be shown on the "drainage plan" map. The location for these preliminary tests will be:

**5.5.1.a.** On natural drainways above proposed quarry mining operations;

**5.5.1.b.** On natural drainways below proposed quarry mining operations at or near the affected drainage area boundary; and

**5.5.1.c.** On natural drainageways upstream from the mouth of a natural drainway affected by quarry mining.

**5.6. Water Replacement Rights** - Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from a underground or surface sources where such supply has been affected by contamination, diminution, or interruption proximately caused by such surface-mining operation, unless waived by said owner. Nothing in this rule affects the rights of any person to enforce or protect, under applicable law, interest in water resources affected by a quarry-mining operation.

**5.7. Treatment Facilities for Drainage from Quarry Mine Operations** - The Director of the Division of Environmental Protection or his duly authorized agent shall determine whether or not any such permit should be granted or denied. In making such investigation and determination as to any such application, the Director shall consult with the Chief of the Office of Water Resources. Such cooperation shall include, but not be limited to, a written recommendation approving or disapproving the granting of the permit and the reason or reasons for such recommendation.

**5.8. Seeding of Drainage System** - All areas disturbed in the installation of the drainage system shall be seeded and mulched

after construction in accordance with Section 9 15 of these rules.

**5.9. Technical Handbook for Surface Mining -** Design criteria and construction specifications for embankment-type sediment dams, excavated sediment ponds, stone check dams, log and pole structures, diversion ditches, outlets and other water control structures are to be found in the "Technical Handbook for Surface Mining" published by the Division of Environmental Protection.

#### **38.2B.6. Method of Operation.**

**6.1. Operator Responsibility -** In planning and executing quarry mining operations, the operator shall have, at all times, proper regard for all backfilling and regrading requirements, imposed by WV Code 22-4-1 et seq., as amended, and all rules and regulations adopted pursuant thereto, and all provisions of the approved pre-plan.

**6.2. Topsoiling or Other Material Suitable for the Post Mining Land Use -** These materials will be removed in a separate layer and distributed over the backfilled area, or if not utilized immediately, segregated and stockpiled in a separate location as specified in the pre-plan. Topsoil not immediately utilized shall be protected from wind and water erosion. Any material used for topsoiling must be capable of supporting and maintaining the approved post-mining land use.

**6.3. Treatment of Toxic Material -** All exposed mineral seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials that are exposed, shall be covered with a minimum of four (4) feet of nontoxic and noncombustible material; or test, treat, and blend material to provide materials suitable to prevent water pollution. If necessary, this material shall be treated to neutralize toxicity in order to prevent water pollution and sustained combustion and/or to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the Director shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

**6.4. Small Depressions -** The requirement to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the Director to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved post-mining land use.

**6.5. Bench Surface** - The surface of the regraded bench shall be graded so as to permit the use of farm implements and machinery.

**6.6. (Reserved)**

**6.7. Final Graded Slopes** - Final graded slopes shall mean slopes backfilled and graded to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

**6.8. Grading Outer Spoil** - All outer spoil shall be graded so as to blend into the adjoining undisturbed lands.

**6.9. 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 or 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.

**6.10. Inactive Status** - Inactive operation status will be considered for a period not to exceed one (1) year from date of approval providing that prior written approval is obtained from the Director.

**38.2B.7. Contemporaneous Reclamation Standards for Minerals Other Than Limestone, Sandstone, and Sand.**

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

**7.1.1.** 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.

**7.1.2.** 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.

**7.1.3.** 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.

**38.2B.8. Stability, Restoration, and Safety Requirements for Quarry mining of Limestone, Sandstone, and Sand.**

After the effective date of these regulations, new permit applications and permit renewal applications shall contain a plan for stabilizing and restoring mined areas to a condition that will ensure the protection of the health and safety of the public and the enhancement of the environmental quality of the mined site and surrounding areas. This plan shall include a description of the methods to be implemented in eliminating spoil peaks and depressions, and the blending of disturbed areas into the surrounding lands. All highwalls will be reduced to the extent possible using all available spoil material. Emphasis shall be given to restore mined-out areas using excess spoil materials. The plan will include a time schedule for attaining compliance in a contemporaneous manner as the mining operation progresses. Complete compliance with the restoration and stabilization plan shall be required before final release of the permit. Failure to comply with the plan may result in revocation of the permit.

**38.2B.9. Requirements for Special Land Use Purposes.**

**9.1. Alternative Plans** - Alternative plans for restoration of the disturbed area may be submitted to the Director. If such restoration will be consistent with the purpose of WV Code 22-4-1 et seq., as amended, 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 and grading requirements heretofore contained may be modified.

**9.2. Water Impoundments** - Prior to the construction of an impounding area for the storage of water after mining, approval must be obtained from the Director for such impoundment. This plan will include, but not be limited to the following:

- 9.2.1. Location of the impounding area;
- 9.2.2. Dimensions of the area as to capacity and depth (average, maximum, and minimum);
- 9.2.3. Plot plan of impoundment area;
- 9.2.4. Source of water entering the impoundment;
- 9.3.5. Quality of the water entering the impoundment;
- 9.3.6. Quality of water leaving the impoundment and mechanism of discharge;

9.3.7. Geologic strata involved with impoundment;

9.3.8. Chemical characteristics of the soils and underlying strata in the impoundment area as they relate to acid production;

9.3.9. Safety aspects considered such as spillway overflow, emergency spillway, access to area; and

9.3.10. Consent of the landowner for such impoundment with submission on specified forms.

### **38-2B-10. Steep Slope Mining.**

10.1. **Applicability** - On quarry mining operations where the natural slope exceeds twenty degrees (20), the provisions of this section in addition to other applicable provisions of these regulations shall apply. On lesser slopes that require measures to protect the area from disturbance as determined by the Director based on consideration of soils, climate, method of operation, geology, and other regional characteristics, the provisions of this section, in addition to other applicable provisions of these regulations shall also apply. These provisions do not apply where mining is done on a flat or gently-rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominately flat area.

10.2. **Downslope Placement** - Spoil or debris including that from clearing and grubbing shall not be placed on the downslope except as provided for in Section 12, Section 13 or Section 14 of these regulations.

10.3. **Highwall Elimination** - The highwall shall be eliminated and the disturbed area graded. Land above the highwall shall not be disturbed unless the Director finds that the disturbance will facilitate compliance with the requirements of this section.

10.4. **Stabilization** - The material used to backfill and eliminate the highwall shall be sufficiently compacted or otherwise mechanically stabilized so as to insure stability of the backfill. Woody materials may be buried in the backfilled area only when the burial does not cause or add to instability.

### **38.2B.11. Mountaintop Removal.**

11.1. **Applicability** - Where the mountaintop removal technique is applied, the provisions of this section in addition to other applicable provisions of these regulations, shall apply.

**11.2. Outcrop Barrier** - An outcrop barrier of sufficient width shall be retained where necessary to prevent slides and erosion. Where no outcrop exists due to previous mining, this requirement will be waived.

**11.3. The Final Graded Slopes** - The final graded top plateau slopes on the mined area shall be less than 5 horizontal to 1 vertical so as to create a level plateau or gently-rolling configuration, and the outslopes of the plateau shall not exceed 2 horizontal to 1 vertical except where approved by the Director, but in no case shall the minimum static safety factor be less than 1.5.

**11.4. Drainage** - The resulting level or gently-rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected channels.

**38.2B.12. Disposal of Spoil by Methods Other Than Valley or Head-of-Hollow Fills.**

**12.1. Applicability** - Spoil not required for backfilling shall be transported to and placed in a controlled manner in disposal areas other than the mine workings or excavation only if all the provisions of this section are met. Spoil shall not be transported and permanently placed outside the mine workings or excavation areas if it is needed for backfilling, stability, or safety purposes.

**12.2. Location of Disposal Sites** - The disposal areas shall be within the permit area and they must be approved by the Director as suitable for construction of fills. The disposal area shall be located in the most moderate slopes and naturally stable areas available. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

**12.3. Certification** - Certification of the fill shall be as follows:

**12.3.a.** The fill shall be designed using recognized professional standards and certified by an approved registered professional engineer or other approved professional specialist;

**12.3.b.** The fill shall be designed for stability by an approved registered professional engineer or other approved professional specialist after completion of the first 50-foot lift, to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction in

accordance with the approved preplan. The approved registered professional engineer or other approved professional specialist will also provide a certified report upon completion of the fill that the fill has been constructed as designed in the approved preplan; and

12.3.c. Where fills are placed on slopes less than twenty degrees (20), a certification shall not be required.

12.4. **Stabilization** - Where the slope in the disposal area exceeds 2.8 horizontal to 1 vertical (36 per cent) or where necessary to achieve a static safety factor of 1.5, measures such as keyway cuts, rock toe buttresses or other techniques shall be used. All organic material shall be removed from the disposal area and the topsoil must be removed and segregated before the overburden is placed in the disposal area. Suitable organic material may be used as mulch or may be included in the topsoil. The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to insure long-term inass stability and prevent mass movement. The fill shall be drained and graded to allow surface and subsurface drainage to be compatible with the natural surroundings.

12.5. **Drainage** - The disposal area shall not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the under drains in such a manner that infiltration of the water into the fill shall be prevented. The drains shall be designed and constructed of course rock. If no filter is designed for the under drain, sufficient capacity shall be provided to allow for partial plugging of the drain. No rock shall be used in under drains if it tends to disintegrate or if it is acid-forming or toxic-forming.

12.6. **Construction** - Construction of the fill shall be as follows:

12.6.1. All areas upon which the fill is to be placed shall first be progressively cleared of all trees, brush, shrubs, and other organic material. This material shall be removed from the fill area;

12.6.2. Depositing and compacting the fill in layers shall begin at the toe of the fill. The layers shall be constructed approximately parallel with proposed finish grade. All material shall be deposited in uniform horizontal layers and compacted with haulage equipment;

12.6.3. The thickness of the layers shall not exceed four feet;

12.6.4. The outer slope shall be no steeper than 2

horizontal to 1 vertical. A 20-foot wide bench shall be installed at a maximum of every 50 feet in vertical height of the fill with a 3% to 5% slope toward the fill area, normal to such, and a 1% slope toward a rock rip-rap channel or natural drainway; and

12.6.5. When construction of each lift (maximum of every 50 feet in vertical height) of the fill is completed, topsoil or other suitable material which will support vegetation shall be spread over the completed slope and bench. The slopes and benches shall then be seeded and mulched immediately in accordance with the approved revegetation plans.

### 38.2B.13. Disposal of Spoil Materials in Valley or Head-of-Hollow Fills.

13.1. **Applicability** - Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled manner. Spoil shall not be transported and permanently placed outside the mine workings or excavation areas if it is needed for backfilling, stability, or safety purposes. Spoil disposed of in natural valleys must be placed in accordance with the following requirements.

13.2. **Location of Spoil Areas** - The disposal areas shall be within the permit area and they must be approved by the director as suitable for construction of fills. The disposal area shall be located on the most moderate slopes and naturally stable areas available. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

13.3. **Certification** - Certification of the fill shall be as follows:

13.3.a. The fill shall be designed using recognized professional standards and certified by an approved registered professional engineer or other approved professional specialist; and

13.3.b. The fill shall be inspected for stability by an approved registered professional engineer or other approved professional specialist after completion of the first 50-foot lift, to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction in accordance with the approved pre-plan. The approved registered professional engineer or other approved professional specialist, shall also provide a certified report upon completion of the fill that the fill has been constructed as designed in the approved pre-plan.

**13.4. Stabilization** - Where the slope in the disposal area exceeds 2.8 horizontal to 1 vertical (36 percent) or where necessary to achieve a static safety factor of 1.5, measures such as keyway cuts, rock toe buttresses or other techniques shall be used. All organic material shall be removed from the disposal area and the topsoil must be removed and segregated before the overburden is placed in the disposal area. Suitable organic material may be used as mulch or may be included in the topsoil. The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to insure long-term mass stability and prevent mass movement. The fill shall be drained and graded to allow surface and subsurface drainage to be compatible with the natural surroundings.

**13.5. Drainage** - The disposal area shall not contain springs, natural water courses or wet weather seeps unless lateral drains are constructed from the wet areas to the under drains in such a manner that infiltration of the water into the fill shall be prevented. If springs, natural water courses or, wet weather seeps are encountered, a system of under drains shall be constructed from each spring or seepage area as lateral drains to the rock core. If no filter is designed for the under drain, sufficient capacity shall be provided to allow for partial plugging of the drain. No rock shall be used in under drains if it tends to disintegrate or if it is acid-forming or toxic-forming.

**13.6. Construction** - Construction of the fill shall be as follows:

**13.6.1.** All areas upon which the fill is to be placed shall first be progressively cleared of all trees, brush, shrubs, and other organic material. This material shall be removed from the fill area. No more than 3.0 acres, excluding roadway for construction of fill, shall be cleared in the valley fill site until the first lift is completed;

**13.6.2.** A rock core shall be progressively constructed as the layers are brought up through the valley fill. The rock core shall be a minimum of 16 feet in width and composed of rock with a minimum dimension of 12 inches. The rock core shall consist of no more than 10% fines as determined by visual inspection (fines being a material with a dimension of less than 12 inches);

**13.6.3.** Depositing and compacting the fill in layers shall begin at the toe of the fill. The layers shall be constructed approximately parallel with proposed finish grade. All material shall be deposited in uniform horizontal layers and compacted with haulage equipment;

**13.6.4.** The thickness of the layers shall not exceed

four feet;

**13.6.5.** During and after construction, the top of the fill shall be graded to drain back to the head of the fill on a slope no greater than 3%. A drainage pocket shall be maintained at the head of the fill at all times to intercept surface runoff. Maximum size of the drainage pocket shall be 10,000 cubic feet. The outer slope shall be no steeper than 2 horizontal to 1 vertical. A 20-foot wide bench shall be installed at a maximum of every 50 feet in vertical height of the fill with a 3% to 5% slope toward the fill area, normal to such, and a 1% slope toward a rock rip-rap channel or natural drainway; and

**13.6.6.** When construction of each lift (maximum of every 50 feet in vertical height) of the valley fill is completed, topsoil or other suitable material which will support vegetation shall be spread over the completed slope and bench excluding the rock core. The completed slope and bench shall then be seeded and mulched immediately in accordance with the approved revegetation plans.

**13.6.7. Variance -** Where it can be demonstrated that other design criteria are justified, certain requirements of this section may be waived. The basis for justification are, but not limited to, land use potential, unavailability of durable rock, and site stability.

#### **38.2b.14. Durable Rock Fills.**

**14.1.** The Director may approve the design, construction, and use of a single lift fill consisting of at least eighty (80) percent durable rock if it can be determined, based on information provided by the operator, that the following conditions exist:

**14.1.1.** Examination of core borings and the geologic column show that the overburden consists of durable sandstone, limestone, or other durable material in sufficient thickness and amounts to generate spoil material that is eighty (80) percent or greater durable rock. Where the fill will contain non-cemented clay shale, clay spoil, or other nondurable material, such material must be mixed with durable rock in a controlled manner such that no more than twenty (20) percent of the fill volume is not durable rock. Test shall be performed by a Registered Professional Engineer and approved by the Director to demonstrate that no more than twenty (20) percent of the fill volume is not durable rock.

**14.1.2.** The durable rock shall not consist of acid-producing or toxic-forming material, will not slake in water, and will not degrade to soil material. For purposes of this

paragraph only, soil material means material of which at least fifty (50) percent is finer than 0.074 mm, which exhibits plasticity, and which meets the criteria for group symbol ML, CL, OL, MH, CH, or OH, as determined by the Unified Soil Classification System (ASTM D-2487).

14.1.3. The toe of the fill will rest on natural slopes no steeper than twenty (20) percent.

14.2. The fill shall be designed based on the results of sufficient geotechnical investigations of the construction site. The investigation shall include such factors as geologic conditions, soil characteristics, depth to bedrock, locate potential effects of subsidence and a description of materials to be placed in rock cores and drains.

14.3. The design and construction of all durable rock fills must be certified by a registered professional engineer experienced in design and construction of earth and rock embankments.

14.4. The foundation of the fill and the fill shall be designed to assure a long-term static safety factor of 1.5 or greater, and meet an earthquake safety factor of 1.1.  
(5) The outer slope or face of the fill shall be no steeper than two (2) horizontal or one (1) vertical (2:1). Terraces shall be constructed on the fill at a maximum of every fifty (50) feet in vertical rise above the toe of the fill. The terraces shall be no less than twenty (20) feet in width and slope toward the fill at a three (3) to five (5) percent grade and slope laterally at one (1) percent grade to discharge channels capable of passing the peak runoff for a one-hundred (100) year twenty-four (24) hour precipitation event.

14.5. All areas upon which the fill is to be placed shall first be progressively cleared of all trees, brush, shrubs, and other organic material which is above ground level; provided that, in critical foundation areas, including, but not limited to, the toe of the fill, seepage or underdrain areas, and downstream portions of the fill that provide a resisting force against massive slope failure, all organic material both above and below the ground surface must be removed. This material shall be disposed of outside the fill area.

14.6. The underdrain system may be constructed simultaneously with excess spoil placement by the natural segregation of dumped materials; provided, that the resulting underdrain system shall be capable of carrying anticipated seepage of water due to rainfall away from the excess spoil fill and from seeps and springs in the foundation of the disposal area and the other requirements for drainage control shall be met.

14.7. Runoff from areas above and adjacent to the fill shall be diverted into stabilized diversion channels, designed and constructed to safely pass the peak runoff from a 100-year, 24-hour precipitation event around or through the fill.

14.8. The grade of the top surface of the completed fill shall not exceed five (5) percent and shall slope toward the drainage channel.

14.9. No permanent impoundments may be constructed on the completed fill except that small depressions may be allowed if they are needed to retain moisture, minimize erosion, create and enhance wildlife habitat, or assist revegetation; and if they are not incompatible with the stability of the fill.

14.10. Notwithstanding any other provisions of these regulations or the terms and conditions of a permit to the contrary, additional storage capacity or sediment control measures may be required through permit revision if sediment removal performance of the structure(s) during operation and construction of the fill is found to be deficient to the point that significant non-compliance with applicable effluent limits or water quality standards results.

14.11. The following materials are hereby prohibited from being placed, deposited, or disposed of into a durable rock fill or durable rock fill area:

14.11.1. Surface soils, provided that such soils used to establish vegetation on the surface of the fill are not prohibited; provided, however, that such soils may be placed in the fill if accounted for in design and construction as nondurable material and such soils are not deposited in critical zones of the fill;

14.11.2. Mud, silt, or sediment cleaned or removed from mining pits, roadways, sediment control structures and/or other areas of the operation;

14.11.3. Vegetative or organic materials cleared or grubbed from the permit or other areas; and

14.11.4. Coal refuse.

38.2B.15. Revegetation and Standards for Evaluating Vegetative Cover.

15.1. Approval of Private Revegetation Contractor - In the event the operator contracts with a private contractor to carry out the planting, the private revegetation contractor shall first submit to the director a written resume of his past experience and training. On the basis of such resume, he shall

be adjudged qualified or not, as the case may be, and so notified by the director in writing. Should experience warrant, a private revegetation contractor may be adjudged disqualified and so notified by the director in writing.

**15.2. Objective in Revegetation** - The objective in revegetation is to quickly establish a vegetative cover on all disturbed areas to minimize erosion, provide economic benefits, and restore aesthetic appeal. Plants that will give a quick permanent cover and enrich the soil shall be given priority. A temporary or permanent cover should be established by the end of the first growing season and a permanent cover by the end of the second growing season. All plants shall be considered a tool in achieving stabilization and an appropriate land use objective.

**15.3. Reference Areas** - Success of revegetation shall be measured on the basis of reference areas approved by the Director.

**15.4. Seeding and Planting.**

**15.4.1. Seasonal Feasibility** - Appropriate vegetation shall be planted, seeded, aerial-seeded, or hydro-seeded in accordance with accepted agricultural and reforestation practices when the season is favorable for seed germination and plant survival except as otherwise specified in these regulations.

**15.4.2. Minesoil Characteristics** - Quarry mining of minerals and removal of overburden results in minesoil which varies greatly in fertility, acidity and stoniness. These three characteristics, together with steepness of slope, shall be used in determining characterization for the purpose of establishing vegetation.

**15.4.3. Minesoil Analysis** - Tests for minesoil acidity, expressed as pH, shall be taken at points distributed uniformly over the disturbed area. Minesoil tests may be made with accepted field indicators or other approved techniques. Minesoils with chemical characteristics that could restrict vegetation establishment and growth shall be analyzed by an approved soils laboratory. The results of these tests shall be filed with the final planting plan.

**15.4.4. Function of Annual and Biennial Cover Crops** - On areas where excessive erosion is likely to occur, rapid establishment of vegetative cover shall be required. Seeding of annuals and biennials on such areas shall be considered as a means for achieving temporary vegetative cover only and not acceptable in the achievement of permanent cover. See Table 5.

**15.5. Development of Planting Plan** - Planting plans will

be a part of the approved reclamation plan. The planting plan will incorporate the seeding rates, species, time schedules and other pertinent standards as set forth in Chapter 20 of the "Technical Handbook for Surface Mining" or other approved standards. The plan will also contain at a minimum the following:

15.5.1. A prediction of the minesoil class and the basis for the same;

15.5.2. A treatment plan to neutralize acidity;

15.5.3. A description of mechanical seed bed preparation;

15.5.4. Rate and analysis of fertilization;

15.5.5. Rates and types of mulch;

15.5.6. Perennial vegetation including herbaceous and woody plants where appropriate, rate and species to be applied;

15.5.7. Areas to be planted or seeded to trees and shrubs;

15.5.8. Land use objective;

15.5.9. Maintenance schedule if appropriate; and

15.5.10. Identify who will complete revegetation treatments. Seeding will be concurrent with the operation as mining and backfilling.

15.6. **Development of Final Planting Plan** - A final planting plan shall be prepared and submitted to the director for his approval within thirty (30) days after the grading and backfilling of the operation have been approved. The planting plan developed pursuant to subsection 15.5 shall be revised as necessary to reflect post-mining conditions and submitted as the final planting plan.

#### 15.7. **Mulch.**

15.7.1. **Mulch Specifications** - Mulch shall be used on all disturbed areas. Annual grains such as oats, rye, wheat, etc., may be used instead of mulch when it is shown to the satisfaction of the Director that the substituted grains will provide adequate stability and that they will be replaced by species approved for the postmining use. Approved materials and minimum rates to be applied are as found in Table 38-2Ba as follows:

<u>Material</u>	<u>Rate/Acre</u>
Straw or Hay	1-2 tons - material may be anchored with asphalt emulsion or other techniques approved by the Director
Wood fiber or wood cellulose products	1,000 lbs.
Shredded bark	50 cubic yards

15.7.2. The following materials may be used with wood fiber or wood cellulose on a limited basis upon approval by the Director or his duly authorized agent.

<u>Material</u>	<u>Rate/Acre</u>	<u>Minimum Rate/Acre for Fiber or Wood Cellulose</u>
Genagua 743	25 gallons	500 lbs.
Curason AK or HA	25 gallons	500 lbs.
Aerospray 70	25 gallons	500 lbs.

15.7.3. Any other suitable materials including latex or plastic compounds may be approved by the Director.

#### 15.8. Standards for Evaluating Vegetative Cover.

15.8.1. Final Planting Report - A planting report shall be prepared by the operator and filed with the Director on the prescribed form when the planting of a permit area is completed. All planting reports shall be certified by the operator or by the party with which the operator contracted for planting.

15.8.2. Time for Inspection - The operator shall review all areas he has under bond prior to the recognized spring and fall planting seasons. The operator shall cause those areas deficient of vegetative cover to be treated, graded, seeded, planted, mulched, limed, or whatever, to establish a satisfactory stand of vegetation.

#### 38.2B.16. Mapping.

16.1. Maps shall be prepared from enlarged 7.5 minute USGS quadrangle, or aerial mapping showing equivalent information. The scale of these maps shall be 500' to the inch or less. Modification, progress, and final maps shall be of the same scale as the approved pre-plan map.

16.2. Map Size - All maps and plans shall be submitted on standard print paper, 24 inches by 36 inches or less. If

supplementary maps or plans are attached, match lines shall be used.

**16.3. Color Code** - A color code shall be used in preparing all maps to indicate critical features of the permit area as follows:

- 16.3.1. Red shall indicate mineral to be removed;
- 16.3.2. Yellow shall indicate the total disturbed land;
- 16.3.3. Blue shall indicate water and drainage;
- 16.3.4. Brown shall indicate special uses; and
- 16.3.5. Green shall indicate regrading.

**38.2B.17. Approval of Person to Prepare a Complete Reclamation and Mining Plan** - Any person preparing a complete reclamation and mining plan shall first submit to the director a written resume of his past experience and training. A written test may also be administered. On the basis of such resume and written test, he/she shall be adjudged qualified or not as the case may be, and so notified by the Director in writing.

**38.2B.18. Permit or End of Strip Marker** - A two-inch (2") pipe shall be driven into the earth with a minimum of three feet (3') exposed to permanently mark the beginning and ending points of the area under permit. It shall be identified by painting the exposed portion of the pipe red. Any suitable substitute may be approved. The assigned permit number shall be permanently affixed to the permit marker or end of strip marker.

**38-2B.19. Proof of Insurance** - Each applicant or permittee shall have on file in the office of the Director 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 of the applicant or permittee 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 of not less than three hundred and ten thousand dollars. Each permit application or permit renewal application shall contain an original Certificate of Insurance reflecting that this original policy of insurance is still in effect.

**38-2B-20. Mining within 100 feet of a Public Road.** - The Director shall not give approval to surface mine any area which is within one hundred feet of any public road, unless adequate screening

and other measures approved by the Director are to be utilized and the permit application so provides, except 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 and except that the Director may permit the roads to be relocated or the area affected to lie within one hundred feet of the public road if, the Director shall:

20.1. Where the public road is to be closed or relocated, require the applicant to obtain necessary permission from the authority with jurisdiction over the public road.

20.2. Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining that the interests of the public and affected landowners will be protected.

20.3. Upon request for a public hearing by any person, require the applicant to hold a public hearing and give notice of the date, time, and place of the hearing in a newspaper of general circulation in the area of the proposed mining operation at least two (2) weeks in advance of the hearing date.

20.4. Make a written finding within thirty (30) days following the hearing or after the close of the comment period as to whether or not the interests of the public and the affected landowners will be protected. Each participant of record at the public hearing shall be notified of the Director's findings.

**38.2B.21. Extraction of Coal incidental to the extraction of other minerals** - For those quarry mining operations which include the extraction of coal incidental to the extraction of other minerals, as provided for in WV Code 22-3-3 (u), coal production shall not exceed sixteen and two-thirds percent of the tonnage of all minerals produced for use or sale. Tonnage reports for coal and non-coal mineral production shall be submitted to the Director on a quarterly calendar basis. The tonnage of allowable coal production shall be calculated based upon the tonnage of all minerals produced during the current and previous three calendar quarters.

**38.2B.22. Modifications/Incidental Boundary Revisions/Permit Transfers/Operator Reassignments.**

22.1. Should the director or applicant determine that modifications to the approved permit are necessary or desirable because of geologic structure, topography, particular watershed or permit conditions, the applicant may apply to the director on forms prescribed by the director for modification to the approved permit. All modification approvals must be in conformity with WV

Code 22-4-1 et seq., as amended.

22.2. Modifications to the approved permit which involve incidental boundary revisions shall be limited to minor shifts or extensions of the permit boundary into non-mineral removal areas or areas where any mineral extraction is incidental to or of only secondary consideration to the intended purpose of the incidental boundary revision (IBR), unless, all public notice requirements and bonding requirements are in conformity with WV Code 22-4-1 et seq., as amended.

22.3. Applications for ownership transfer of permits may be made to the director on forms prescribed by the director. All permit transfer approvals must be in conformity with WV Code 22-4-1 et seq., as amended. The director may require a demonstration that the applicant has the financial resources and professional ability to carry out the approved mining and reclamation plan of the approved permit. No transfer of a permit shall be approved by the director to any applicant who is permit blocked under WV Code 22-3-1 et seq. and 22-3-4-1 , as amended.

22.4. Applications for assignment of an operator other than the permittee for a permit may be made to the director on forms prescribed by the director. All operator assignment approvals must be in conformity with WV Code 22-4-1 et seq., as amended. No application for assignment of an operator for a permit shall be approved by the director to any applicant who is permit blocked under WV Code 22-3-1 et seq., and 22-4-1 et seq.

**DIVISION OF ENVIRONMENTAL PROTECTION**  
**PUBLIC HEARING ATTENDANCE RECORD**  
**QUARRY MINING AND RECLAMATION STANDARDS**

August 15, 1994  
 Training Center, #10 McJunkin Road  
 Nitro, West Virginia

<u>Name</u>	<u>Address</u>	<u>Comment</u>
Pat Parsons	Flexible Payments Council - 2114 Kanawha Blvd., East, Chas.	Y
Ronald E. Snyder	RBJ, Inc. - P. O. Box 1050 - Princeton, WV 24740	Y
Myron Fields	" "	Y
Chris Hollifield	" "	N
William Snyder	P. O. Box 829 - Lewisburg, WV 24901	Y
Mike Deviese	1421 Lemerson Avenue - Suite 204 - Parkersburg, WV	N
Reggie Dixon	HC 40 Box 49 - Lewisburg, WV 24901	Y
Ross E. Jefferies	P. O. Box 13527 - Roanoke, WV 24035	Y
Mike Hunter	P. O. Box 105 - Pounding Mill, Virginia 24637	Y
Tony Pacifico	P. O. Box 6725 - Charleston, WV 25362	N
Calvin L. Duncan	P. O. Box 885 - Martinsburg, WV 25401	Y
Jeff Thatcher	US Silicon Box 187 Berkley Springs, WV 25411	Y
Rick Harrington	" "	Y
Rooney H. Pack	Acme Limestone Co., Inc., - Fort Spring, WV 24936	Y
Tony Dirico	" "	Y

Michael Ferrell	P. O. Box 367 - Pecks Mill, WV - Ferrell Excavating Co.	Y
Pacarr	P. O. Box 367 Parsons, WV - R.HW, Inc.	N
Andy Teeter	P. O. Box 1551 Charleston, WV 25326 - Acordia	Y
Jon P. Thompson	P. O. Box 430 - Gallipolis Ferry WV 25515	Y
Dave Yaussy	P. O. Box 1791 Charleston, WV 25306	Y
Amy Davis	" "	N
Cindy Rank	HC 78 227 - Rock Cave, WV 26234	Y
Ben Greene	WVMRA - 1624 Kanawha Blvd, E., Charleston	Y
Mike Clowser	Contractors Assoc. of WV - 2114 Kanawha Blvd, Chas	Y
Howel Long	432 Valley Drive - Richlands, VA 24641	N
Ed Treadway	Beckley Stone - P. O. Box 1284 - Beckley, WV	Y
Ken Bragg	" "	N

Transcript of Public Hearing  
AML-OMR Regs Hearing #3  
August 15, 1994

**FARKAS:** Okay, my name is Brian Farkas and I'm the Information Officer for the Division of Environmental Protection. This morning we are conducting a public hearing on Office of Surface Mining proposed regulations dealing with quarry mining in the state of West Virginia, Title 38, Series 2B. Today is Monday, August the fifteenth. I will conduct this hearing, as I will have a formal part where we'll take your comments and place them on the record, and then after we've received all comments, we will then close out the formal hearing and conduct an informal question and answer. The first person who has indicated a desire to speak at today's hearing is a gentleman, Pat Parsons.

**PARSONS:** Good morning. My name is Pat Parsons. I'm the Director of the Flexible Payments Council of West Virginia. The Council is a non-profit trade association representing the producers of hot mix asphalt and aggregates. We have a number of aggregate producers and quarry operators with us today. My role is going to be to simply introduce, if I can, the industry to you and let those producers comment on the many concerns we have about these regulations. I think the large turnout today, we have operators from around the state, further demonstrates the many concerns we have with this proposal. And we do want you to know more about these companies and the products they produce. Aggregates are a product that's often taken for granted, yet every road, building, street, parking lot, and house contains

aggregates. They're an essential element in concrete, asphalt, building blocks, and other common construction materials. Aggregates, however, remain a low-grade commodity with an average price of three to six dollars a ton, which I think anyone would agree is quite a bargain. West Virginia quarries annually produce ten to twelve million tons of limestone, sandstone, sand, and gravel each year. Again, these are used in many products for construction but also in many manufacturing concerns. The majority of these companies are small businesses, many family owned, and many that have been in business for over 70 years in the same location. And we have examples of that here with us today. These companies are also very active in their community and are doing their part to help build a better West Virginia. They attempt to work safely and to protect the thousands of employees that are either involved in the manufacturing, the mining, or the transportation process. The vast majority also attempt to utilize environmentally sound mining and production processes. We are often called upon to provide crushed limestone to treat acidic streams and rivers. Our biggest customer, Department of Highways, depends on our industry for the maintenance and construction of over 35,000 miles of paved or stabilized roads in our state. Power plants depend upon us to treat our emissions, and every citizen in the state needs to keep us out of the ... helps us ... needs us to help keep them out of the red clay and mud and to help support the roof over their head.

We have asked ourselves, and we ask you based on this brief

background, what justification is there for such a proposal to further regulate the quarry industry. We are very, very different from the coal industry. Yet, these regulations would appear to be derived mainly from coal mining regulations. Their implementation would certainly force many producers out of business and would drive up the cost of aggregate for thousands of end users. We find these proposed regulations to be first and foremost unwarranted, impractical, or impossible to comply with and economically devastating. I noticed a bumper sticker last week that read, "Aggregates are the foundation of America." And the more I thought about that, the more truth I found in that. I think the day we allow quarries to be placed on the endangered species list or to become extinct, is the day we stop the wheels of progress. We urge you to reconsider this proposal and we welcome the opportunity to discuss it with you further. Thank you.

**FARKAS:** Ronald Snyder.

**SNYDER, R.:** Pat and I didn't coordinate before we came in, but first of all I want to say, crushed stone is the foundation of our nation. And I'll let you have that, too. I'm Ronald Snyder, President of RBS, Incorporated, a family-owned business with three generations actively participating. We own two quarries in Greenbrier County. One currently operating, and the other not active at this time. The inactivity of the second quarry is primarily due to the overwhelming regulation by various state and federal agencies. We are a vertically integrated business, using crushed limestone in other activities. We've operated Greystone Quarry for 37 years, providing a reasonably-

priced, quality product to the state, to the public, and to the private market. We employ an average of 43 people, with an annual payroll of almost \$1.2 million, all of which is paid to West Virginia residents.

If the proposed rules and regulations are adopted to become law, we will be forced to close both quarries. And because of the synergy of our integration of our companies, may not be able to continue our other businesses. We will join the ranks of the small coal operators who have been forced out of business. As taxpayers we will have to pay the higher cost of transporting limestone from other states to build our roads, our homes, our schools, shopping centers, and all other projects using crushed stone, which we have an abundance of but can no longer afford to produce.

We have current rules and regulations which protect our environment and the public. We do not need these new rules, and it has not been demonstrated that we do. Thank you very much.

**FARKAS:** The next speaker is Myron Fields.

**FIELDS:** I've been asked to represent Vernon Crisp of Parkersburg and on his behalf also represent Bluestone Quarries of Princeton, a year-old rock quarry, and Century Limestone of Elkins, a third-generation quarry. We fully concur with the Flexible Pavements Council on endorsing summaries composed by W. W. Boxley and those of the West Virginia Manufacturers Association. We believe the justification of such new regulations based on three years of failed regulations to be ill-founded and unnecessary. We also believe that the economic impact of these regulations on our industry are far greater than

are stated in the briefing document. We feel the Department neglects to consider the costs involved in engineering services, bonding, and other expensive services required. Such regulations would make it very difficult for us to maintain operations. Century Limestone and Bluestone Quarries each employ around 25 employees on their payrolls and an additional 50 jobs in trucking and maintenance alone are directly affected by these two operations. If the proposed regulations are adopted, these companies, along with many others, will be forced to close their gates to employees and consumers who have grown to depend upon them. If existing quarries are forced out of business by these regulations, the economic impact will negatively affect our industry, the construction industry, and as an end result, every individual in the state of West Virginia who lives in a house or drives on a road.

Should these regulations be adopted, we will advise each of our employees as they exit our gates before we lock them permanently, that they can visit Number Ten McJunkin Road in Nitro to collect their unemployment checks, since that department is responsible for them losing their jobs. Bluestone Quarries and Century Limestone join the industry in total opposition to any and all of the proposed quarry regulations.

**FARKAS:** Thank you. The next speaker is William Snyder.

**SNYDER, W.:** My name is William Snyder. I'm from Greenbrier County. I'm part of a family-owned quarry. And first of all I'd like to object entirely to all of these regulations. But you can sum it all up by making one point. The

economical impact is stated as being zero. And I would imagine there's about 90% of the people in this room that say that's pretty preposterous. You could comply with these regulations if you started from scratch and were charging fifteen to twenty dollars a ton, it might be possible. There's a quarry in Georgia that has an 18-hole golf course, too. But there's no way that a quarry that has provided for our progress, for our infrastructure for the last 50 to 60 years to comply with these regulations. You can sum it all up with, what's the bottom line? What's it going to cost? I think that if there was an accurate estimate of what these regulations would cost, it would be fairly obvious what the rightful thing to do is. Thank you.

**FARKAS:** Thank you. The next speaker is Reggie Dixon.

**DIXON:** Good morning. I'm Reggie Dixon with Greenbrier Limestone Corporation over in Lewisburg, West Virginia. Our company employs 25 people. Our quarry relies on 30 independent truckers. The proposed regulations in effect apply coal mining regulations to quarries. This approach is both impractical and inconsistent with quarry operations and has very significant economic impact on our industry. The briefing documents gives no real justification for the need of these new regulations. There is no specific data to back up the impact citing the general justification, uh justification statement by indicating there is no ... by indicating there is no economic impact to the quarry industry, it is apparent that no economic impact analysis was conducted. Further comments are documented by our quarry or from our quarry, and a copy will be left for the DEP's review. Thank you.

**FARKAS:** Just a reminder. The comment period does end today. So if you have any written comments you'd like to submit, they need to be to us by today.  
Ross Jeffries.

**JEFFRIES:** Thank you, Mr. Chairman. My name is Ross Jeffries. I'm Vice President of Finance and Administration for the W. W. Boxley Company, the parent company of Greenbrier Limestone that Reggie just introduced. Uh, that particular quarry falls in the categories mentioned by Mr. Snyder, and it's been in operation over 25 years, so these regulations have a really significant impact. Uh, since we started operating that quarry, uh, three to four years ago, uh, we have made, uh, significant positive reclamation, uh, advances at that location, and uh, we were under the impression that things were going the way we thought DEP wanted them to be until a week or so ago. It would seem to me that inasmuch as the legislative process has failed to see the priority of the need for these regulations, there should be some sort of a message in that, in that, uh, the regulatory agency should be listening. Um, in addition to some of the impracticalities of the regulations, many of the regulations, uh, the economic impact, uh, if we were to have to do that would, has been indicated previously, close the doors on a lot of quarries. Um, it would also seem to me that should we, uh the, uh agency decide that uh, they need to change the regulations as indicated by our being here today, that there should be some sort of a discussion with the industry to get a feel for, uh, where they stand on this before the regulations are submitted. Uh, we have some, uh, detailed, uh, comments that were

prepared by our engineering vice president, Jim Crook, who a lot of you in here know. And I will leave those, as, as uh, part of this hearing. Thank you.

**FARKAS:** Thank you. The next speaker is Calvin Duncan.

**DUNCAN:** I'm Calvin Duncan. I'm vice president of operations for Capitol Cement Corporation. We're West Virginia's only cement manufacturing plant and employ about 225 people directly, and our estimates are over a thousand people depend on us. We have previously submitted written comments, and we do agree and concur with the comments that were, the written comments that were submitted by the West Virginia Manufacturers Association.

**FARKAS:** Joe Thatcher.

**THATCHER:** Good morning. My name is Joe Thatcher. I'm the Corporate Manager for Environment Health and Safety for U.S. Silica Company, headquartered in Berkeley Springs, West Virginia. We've operated, uh, a large quarry operation for over 90 years in Berkeley Springs, West Virginia. We employ, uh, something over 250 people at those operations in Berkeley Springs. We also operate other facilities in 16 states in the United States and have a great deal of working experience with quarrying regulations and reclamation requirements. Um, we respectfully request that, uh, if these progress, uh, much farther, that the division prepare a detailed economic analysis of the impacts. We believe, uh, and are happy to participate in that analysis. We believe the outcome of that will, uh, indicate that they are,

there are a number of issues which need a great deal of additional work. Uh, our business, as everyone's business here is highly competitive, and uh, operates on a scale outside of, uh, our markets are, are sometimes outside of West Virginia. As we're forced to compete with, uh, our competitors who operate in different states under different rules and regulations, we find that the impacts of, uh, any unreasonable rules and regulations have a major impact on our competitive ability to do business. I won't get into, uh, all of the legal issues that appear, uh, to, uh, to be the result of, of these proposals. I'll let the attorneys argue with those. I would say that, that uh, my background is in hard rock mining from the western United States. I'm familiar, as I said, with oper ... all of our operations in 16 states. We are not opposed as a company, nor I as an individual, to reasonable reclamation and operating regulations. We encourage them because it makes it easier for us to do business, uh, as a company in, in a very, uh, economically and environmentally concerned, uh, country. Uh, we will, and I believe have in the past worked with the division, uh, in developing reasonable rules and regulations. Um, specifically, though, with the proposals that are being addressed today, we have some, some very grave concerns. No pun intended. That issues such as grandfathering are not properly addressed. They're, they're ambiguous at best. Uh, as I said, our operations in West Virginia have been ongoing for over 90 years continuously, and attempting to bring those back into full compliance, uh, with these new regulations is simply, uh, uh, impossible.

The grandfathering issue obviously needs to be addressed in very specific language, uh, in order for us to be comfortable, uh, with even attempting to uh, to discuss the issue. Uh, obviously a lot of what's being proposed has come directly from the coal mining regulations either here in West Virginia or to the uh, the (south ??). Um, technical terms like "approximate original contour" simply do not have, uh, any meaning in the hard rock quarrying industry, particularly those operations that have been in existence for a number of years. I think one of the previous speakers indicated that, uh, if you were allowed to start fresh, you know, and all our competitors were allowed to start fresh, we might be able to, as an industry, uh, develop some mine plans that would be at least able to, to try to meet the intent of, of the requirement, the proposed requirement. However, operations that exist, uh, particularly in the, uh, topography that exists in large part in West Virginia and in most mountainous states does not lend itself easily to uh, applying the, uh, proposed regulations to existing operations. Um, the definition of surface mining in my reading of the proposed reg, regulations, seems to go beyond the original intent of the act. And, and certainly that needs to be cleared up in, in any subsequent revisions. Uh, the issue of, of, uh, DEP approved contractors and permit preparers, I'd simply like to put to bed right away. I mean, it ... we as a company have ultimate responsibility for the development and implementation and, and, and final completion of those, and we take great care and, and ultimately have a, both a legal and a financial responsibility.

Uh, it's an unnecessary, uh, layer of, of additional control. We are happy to use and do use West Virginia, uh, professional engineers in the preparation of our, of our plans and reclamation. Uh, we use uh, contractors that we feel are qualified, but ultimately the responsibility is ours.

Um, I'll just close by saying that U.S. Silica is, uh, opposed to the proposed regulations as they currently stand. We are available and happy to work with the division in, uh, revisions as they come along, uh, and we are concerned, uh, sincerely concerned about the economic impact, uh, on our business. Thank you.

**FARKAS:** Thank you. Rick Harrington.

[INAUDIBLE]

**FARKAS:** Okay. Rodney Pack.

**PACK:** Good morning. My name is Rodney Pack, and I am Vice President, Sales and Administration for Acme Limestone Company, Incorporated. We are located at Fort Spring, better known as Snow Flake in Greenbrier County, West Virginia. I have worked with this company 37 years. Acme Limestone Company has been operating in this same location for 78 years, and there was operations there prior to our assuming operation there. Acme presently employs 53 people and has, at times, through our history, employed as many as 200 people. We have supplied the crushed limestone used in the construction of such significant structures and roadways as the Bluestone Dam, Hinton, West Virginia; the Summersville Dam, Summersville, West Virginia; Big Bend Tunnel, CSX Transportation located at Talcott, West

Virginia; the New River Gorge Bridge, Fayetteville, West Virginia; Interstate 64; Interstate 77, the West Virginia Turnpike; VEPCO's pump storage project, Bath County, Virginia. And the list could go on, but time and space will not permit. The point made here in citing this history is that crushed stone is an integral part of the construction of almost anything that your eyes may see. Examples being your home, your driveway, the roadways you drive, the building in which we now reside for this hearing, and the stadium in which you may watch your favorite sport. Think about it, ladies and gentlemen, we are talking about a very necessary product and a very important industry.

Appendix B of the notice of public hearing on the proposed rule is a fiscal note for the said rule. It states that there will be no economic impact on state government, political subdivisions, specific industries, specific groups of citizens, or citizens slash public at large. This statement is simply not accurate. The economic impact would be tremendous in all the areas mentioned.

When I was employed by Acme Limestone Company 37 years ago last Friday, the plant price of crushed limestone ranged from one dollar and fifty cents to two dollars and thirty-five cents per net ton FOB the quarry. Today the price ranges from three dollars and fifty cents to four dollars and ninety-five cents per net ton FOB the quarry. Now name for me, if you can, another product or bulk commodity so important to us all that has maintained such a reasonable price structure over that span of time. Should

the regulations proposed be implemented, you could rest assured that the price of crushed stone within our state will increase dramatically. Many family-owned small quarries will go out of business and jobs will be lost. Quarry production within our state will diminish, and this crushed stone product so important to us all, will be imported from Indiana, Ohio, Kentucky, Pennsylvania, and Virginia in greater quantities than it is now.

Quarry production within our state is only approximately 14 million tons per year. Now that includes sandstone, limestone, clay, whatever. The environmental impact of this production is minimal. Present regulation by the state and federal government is sufficient to protect the environment and the citizens of our state. Therefore, I respectfully request withdrawal of the proposed rule CSR38-2B.

**FARKAS:** Thank you. Our next speaker is Tony Dureko, is that right?

**DUREKO:** Good morning. My name is Tony Dureko with Acme Limestone Company, Inc. President and CEO of this company. Acme Limestone Company recently purchased the old lime ... the old Acme Limestone Company on May the second 1994. In doing this acquisition analysis, we certainly went through a lot of due diligence and so we came down to pennies and nickels in making our decision. It's fair to say that if these regs were, were imposed as they are written today prior to that time, this acquisition would not have been made. However, I will state that we did look upon the environmental part of this acquisition as an important part of what we were setting out to do, and that was to improve things once we

did buy the property. Had a very large part of our discussions going in. Economic impact, as my fellow employee Mr. Rodney Pack, spoke of would be significant. In going back to our original comment, the impact [inaudible] would raise the acquisition analysis probably two to three dollars a ton at a minimum and maybe more.

Coal mining applications versus specific quarry regs. And being from both the coal mining atmosphere for most of my career and a very short period of time in the quarry in trying to learn everything I can as fast as I can, certainly in the operations I was involved in, moving 16 million yard a year, versus 500,000 yards a year is a significant difference, and the environmental impact is strongly different. The Acme Limestone Company has been there since 1916 and as Mr. Pack mentioned, prior to that there was a quarry there and in comparison to the mining operations, coal mining operations I was involved in, it covered an area of 70 acres over 78 years. And coal mining and surface mining I think cover 70 acres in one year. So the amount of area disturbed and (environmental ??) impact is kept at a minimum at all times.

Justification for the environmental impact in certain areas such as blasting, water quality, and erosion from [inaudible] cleaning waste rock areas. As in most regulations, you should deal with site-specific problems where they lie. To require everyone to pay the price of maybe someone who is not following the proper environmental procedures is totally ridiculous. Also, the act exclusively exempts such operations. Concerns

involves provisions of the proposed rules which attempt reclamation standards to the mining and limestone and sandstone sand. The act explicitly exempts such operations from reclamation bonding requirements. The extent that the DEP imposes such requirements through the proposed rule, it would be clearly exceeding its statutory authority.

Reading throughout the proposed rules, there is much ambiguous language. The clarity of definitions has a lot to be improved. Stonewater definition, haul road definitions are just a couple of examples. Trying to understand exactly how they're to be applied or how we're to deal with them is yet to be seen. And it caused a great deal of concern. The original contour references should be considered inapplicable to limestone, sandstone, and sand mining operations. And temporary reclamation the same. It has no relevance. As mentioned earlier, in 78 years, we have covered 70 acres. And those 70 acres are located in one square area, where there is very little movement. 500,000 yards a year does not allow you to take on some of these requirements as in the proposed reg. This rule will be more stringent [end of side 1]

**UNIDENTIFIED:** [beginning of side 2, in progress] ... approval of persons who prepare reclamation mining plans just places additional burdens, and I've gone from a company where I had a 15 person engineering staff and a, and a 20 person accounting department to I am the engineer and I am the safety director and everything else in between. Uh, placing additional burdens such as this on a smaller company where we don't have the resources or ability

to do all the necessary items that the regulatory agencies want, particularly when you don't want to compromise your integrity and you want to meet the law and regulations. Normally I prepare a much more formal analysis of such things; however, in dealing with recent regulatory requirements under other parts of the DEP department, I've not had time to do so. Many comments made since I've been in the quarry industry, and particularly comments from my fellow employees at the operation. And you mentioned, uh, regulations, and so on and so forth, and they say, well, you know, they don't understand the problem. People can actually come to our operation to buy the product to put on their fields and to make their fields more ... to produce more as well as for water treatment. However, we do not want to be exempt from regulatory control. We want to be, uh, environmentally compl ... in environmental compliance. We do want to set an example for the entire mining industry, not only the quarry industry, and we are open to reasonable and realistic regulations.

Commenting on skills. Certainly the skills of operators that we have at Acme are very good. However, also under these regulatory requirements, we would be acquired ... required to, to add additional people with new skills because the people we have not been involved as much in the type of work that these proposed regs want to have them. We do support the written comments of the West Virginia Manufacturers Association presented here to day ... or will be presented here today. And I want to thank you, Mr. Chairman, for the opportunity to speak. Thanks.

**FARKAS:** Michael Farrell.

**FARRELL:** I'm Michael Farrell with Farrell Excavating Company Incorporated from Logan County. We operate a small, family-owned quarry, sandstone quarry, produce about 150,000 tons of sandstone per year. There are two other quarries in Logan County of equal size. We produce stone for the coal mining industry, for AML projects, which require sandstone instead of limestone, and for residential use. Our quarry is approximately, or has a 15-acre permit. That 15 acre permit for the last 15 years has the, the disturbance has not changed any. We have been environmentally sound in all of our practices. Our, our water discharge. Everything is replanted. But under the proposed regulations, we are in, we are on a steep hillside, which is greater than 20%, which would require us to do 100% reclamation ... uh, highwall elimination. As all of you know, or most of you should know, and I hope DEP knows, that when you mine coal, you take a relatively thin seam and you end up with lots and lots of rock and dirt left over, which you can put back against your high wall. When you quarry stone, you take all the rock and you have a relatively small amount of overburden. And it is, in most cases, there is physically not enough material left over to eliminate the highwall. This fact alone would require that the next time that we would go back in for permit renewal would cause us to shut down because we could not meet the new regulations.

We totally agree with the comments of the West Virginia Manufacturers Association and would request that the proposed regulations

not be put into effect. Thank you, sir.

**FARKAS:** Thank you. Andy Teeter.

**TEETER:** I'm Andy Teeter with Acordia of West Virginia, formerly known as McDonough Caperton. I've been in the bonding business for 18 years in West Virginia, five years in Virginia. My personal background comes from my grandfather was in the stone quarry business in the 1915 era. My father was in it his whole life. The quarries, they own three of them that started ... are still in the same locations. Uh, they, they are continuing to operate in the same basically confined area with the hole and the ring ... the hole getting deeper and the ring getting wider. In the course of my bonding, I have been involved in bonding a lot of coal operations, and from my stone quarry background, and we insure a lot of stone quarries, there's just a significant difference between the stone quarrying business and the coal mining business. And I don't believe that distinction has been appropriately taken care of in this proposed regulation. I believe that the unreasonable requirements, uh, will be difficult for a bonding company to guarantee that they will assure, not difficult ... I think the bonding industry will just withdraw from trying to bond something that cannot be achieved. The long-term nature of a surety bond obligation is unacceptable. Uh, as I mentioned, my grandfather's quarries are there 70, 80 years ago. They're gonna ... you know, be there probably 70, 80 years from now. A bonding company is not willing to undertake an obligation, typically, that's over two years in length. If a, if a construction building, there's a project being bid in Alderson right

now that has 42 months to do the job. We have had numerous clients that want to bid on it. Nobody is allowed ... nobody can get a bond for it because of 42 months, uh, in duration. You take a stone quarry that's going to be there for a long time, the surety industry's just going to walk away. That doesn't mean there aren't qualified contractors to bid on that project in Alderson. They just ... the surety industry walks away from that long-term obligation. The surety industry will not support, in my opinion, 99% of the operations that, that uh, will operate in West Virginia, except for with cash collateral. With the economic impact of having to put up cash collateral, people's lines of credit. They only have so much credit that they can, that they can put up. Only the largest of companies, and I would say starting probably at the \$100 million net worth level will be able to get a bond that won't be collateralized. There may be a few \$100 million companies in West Virginia. The economic impact would be severe, driving the business, in my opinion, to the other states, and I respectfully request that these ridiculous regulations be withdrawn.

**FARKAS:** John Thompson.

**THOMPSON:** My name is John Thompson. I'm the President of Letark

Corporation. We're a supplier of sand and gravel, which is a little different than some of these fellows in the Mason County area. We produce about 600,000 tons a year of material. We sell it for somewhere in the average between \$3 and \$4 ... er, \$3 and \$3.40 a ton. I did a little mathematics. I, I don't know all of the demographic information that some of you gentlemen

do, but that makes me produce 5% of the gravel that's in this, uh, that's in this state, or the construction aggregate that are produced in this state. However, my location and proximity to the river watches ... allows me to observe, literally, millions of tons going by me, going by me every day, both of my product and of you gentlemen's product. I wasn't going to speak today because, as some of you guys know, Mike Deveese knows, I tend to get a little emotional sometimes on the, on certain types of topics ... and this one isn't, isn't one of them. But we as quarrymen ... whatever you want to call us ... we're in a cat fight everyday out here just, just to stay in business. I mean, it's that serious of a situation. At least it is for us. We compete against much larger companies, uh, uh, shipping problems, et cetera, et cetera. I don't even know the details, to tell you the truth, of this proposed set of regulations. I've scanned them because I picked them up at the flexible payments meeting. However, I do know that the fact that I'm here today dealing with this kind of a situation means that I'm not back at Mason County making sand and gravel and doing what I do to affect the economy of this state that we're in.

We're already regulated in the air quality, the water quality, the DEP, the OSM, M-SHAW, MHST. These guys come into our office, into my office and say, "Mr. Thompson, here's what you're going to do today." And I say, "Well, you know, the M-SHAW guy was just here yesterday, and he says here's what I'm going to do today." "Well, I don't care, here's what you're going to do now." And each one supersedes the last one until the burden

becomes overwhelming. Now, we're not a group of high-powered lobbyists. We have a fairly concerted effort here today, but we're men who produce materials, pay taxes, employ workers, maintain ourselves in a highly competitive industry. Those of us along the river are already forced to deal with some of the things these gentlemen have talked about today. We're forced to compete with out-of-state companies whose home states are more comfortable with our type of an industry than ours obviously has become. We, we see our shores, our river shores becoming sources of importing materials that will ultimately reach these areas where you gentlemen are because this, this proposed regulation will become ... will have such an impact that your prices will rise beyond what they can get it to you for. To say that there's no economic impact by, uh, would be felt ... that would be felt by this regulations, that, that's, that's no insult intended, but that's ludicrous. It, it, it uh, we've earlier heard these insurance guys talking about canceling these fellows' insurance that we've got to have to stay in business. Here's a gentlemen telling us that if we're not worth \$100 million dollars, he won't even write us a bond, period. I don't know about you gentlemen, but I'm not worth \$100 million. If I were, I wouldn't be in the quarrying business, I'd be in the insurance business, maybe, or something. I don't know. But, uh, once again, we're planning to displace workers in our state and replace them with workers from out of state. And believe me, fellows, that will happen. That river stretches a long way into your state. And that's just all there is to it. In fact, I myself own properties in Ohio that

have minerals in them. And I ... I'm considering shutting down West Virginia and opening them. And just ... you know, firing shells across the creek, I guess, is what you would do. You, you know, you would bring the materials in. The bonding difficulties are horrendous.

In summary, we're in a very simple situation here. Our industry is very basic. I try to tell people how basic our industry is. Our industry is like coal, steel, corn. Everything you see here has had our material used in it somewhere. Either in its manufacture, the building it was manufactured in, the transportation of, or something thereabouts. They've all had it. Everything uses it. Your homes, your food, carpeting, everything. We hold no monopoly on the product about which we are talking about in this state. All of our border states are full of it. They're full of this stuff. Their regulatory agencies are not putting them in a position that would compromise their ability to compete. I would ask respectfully that ours would not do the same. Thank you.

**FARKAS:** Thank you. David Yowsey.

**YOWSEY:** Thank you. My name is David Yowsey. I'm with the law firm of Robinson and McElwee and here on behalf of Inwood Quarry today. Inwood Quarry has more than 40 employees between itself and its associated ... businesses involving stone crushing and blasting. It has operated in the Eastern Panhandle for approximately 100 years. And it and its employees are very concerned about the rules being proposed here. Mary Combs, the operator of Inwood Quarry, would have liked to have been here with you

today but couldn't and asked me to make a few brief comments on her behalf.

Inwood urges withdrawal of 38 CSR 2B. The rule ultimately makes quarrying economically inviable. Given the price of stone, a quarry such as Inwood can't support reclamation. It would cost millions of dollars to reclaim Inwood Quarry, even if sufficient barrow material could be found, which would be problematic. The result would be that the quarry couldn't operate, and it couldn't be sold if the reclamation of past disturbance... disturbed areas were, was required. Presently the disturbed area is approximately a mile long, a thousand feet wide and 200 to 300 feet deep. The amount of barrow material required to even approximate the reclamation requirements of the rule would be astronomical.

The same would also be true if limits were put on the depth to which quarrying could be done. It would in essence make the ... uh, make the quarry unsalable because the value of the stone on the property would be sufficiently reduced. Despite this, the rule says that there will be no economic effect if the rule goes into place. That is completely wrong. There will be a great and bad effect on quarrying if the rule goes into effect. It could put quarries such as Inwood out of business.

I would note that the rule is contrary to the statutes, which provides that reclamation requirements do not apply to limestone quarries. However, even if the reclamation requirements did apply to limestone quarries, this rule is not the way to go about it. For example, there is no clear discussion

about the effect of grandfathering. There is no definition of minerals or mining. And there are other provisions that need to be changed in the rule to make it acceptable. Overall, there is a confusion in the rules which stems from the fact that it is modified from a coal rule, and the two types of mining operations, as you've been told here today, are completely different. Quarries operate in the same place for many years. The pits that are left often serve as reservoirs and sources of drinking water, especially in the Eastern Panhandle. And therefore you can't draw a close correlation between coal mining and quarry mine ... quarrying.

In sum, there is a need to withdraw this rule and move on to something else. If rules are done in the future, to address quarrying and reclamation, we urge that they be done with operator assistance and after consultation with operators. Inwood is committed to operating in an environmentally safe fashion but believes that it has a number of good ideas and good suggestions that could help that to occur without involving the economic disruption and devastation that these rules would, would cause. Thank you.

**FARKAS:** Thank you. Cindy Rank.

**RANK:** My name is Cindy Rank, and I'm President of the West Virginia Highlands Conservancy. I live in southern Upshur County and with meetings with the Conservancy have traveled through different areas of the state. I don't agree with a lot of the sentiment that might be here that there are no problems with quarrying out there. And I do think that the comments we

make here today are with the intention of improving what we already have on the ground and hopefully not to put everybody out of business but to improve the long-lasting cost, or lessen the cost to the future of West Virginia. While it has been a disappointment that recent attempts to improve the statute governing surface mining and reclamation of minerals other than coal, West Virginia Code 22-4 have failed to garner substantial support from this administration or this legislature, it is encouraging to me anyway, and to us, that the Office of Mining and Reclamation is at least proposing an upgrade to the current regulations for quarry operation. However, as with the proposed statutory changes that have been discussed the past couple of years, the proposed regulations fall short of resolving many of the problems that are created by the lack of adequate regulation in this industry to date. West Virginia Highlands Conservancy continues to believe that statutory changes must be made to the antiquated quarry law, but for the purpose of review of these regs, in light of the restrictions of current law, I offer the following comments.

- 1) Although there is provision in the law for public comment on a permit application, there is no provision for the public to request a public hearing, nor is there any reference to how or when a protest letter would be acknowledged and/or answered, or if any member of the public who has expressed an interest in this application is to be notified of the director's decision on the permit, et cetera, et cetera. The whole public participation portion of this act and regulations must be expanded and clarified.

2) Blasting. Section 4. (A) Although written notification is required to be given to residents, owners, et cetera adjacent to the proposed operation, there should be a time limit that would require advance notice; that is, the certified mail that is required right now, could be received, theoretically, five minutes ahead of the scheduled blasting and still meet the requirements of this section. (B) Furthermore, there are no guarantees that blasting formulas relied on in these regs are adequate to protect nearby landowners. Nor is there way ... is there any significant way to verify blasting damage if and when it might be reported. The regulations should include a requirement that the company offer and conduct upon request pre-blast surveys to owners of property within a certain distance of the permit area or within a certain distance of the more specific areas of blasting and disturbance as mining proceeds.

Water Quality on Section 5. (A) Although water tests reflecting seasonal variations are required to be shown on the drainage map plan ... drainage plan map, there should also be a prescribed number of samples that need to be taken, prescribed constituents to be tested for, and some minimum requirements for monitoring during the operation. (B) Groundwater is not specifically mentioned in Section 5.5. The plan must contain some indications of how the operator intends to comply with the requirements of the Groundwater Protection Act, West Virginia Code 22-12. (C) Water replacement rights. This section is inadequate and inappropriate under the Groundwater Protection Act, which protects not only current use

but existing quality and future beneficial uses as well. Furthermore, waivers from these requirements cannot be granted to the said owners. (D) For the director to have sufficient information prior to acting on an application, the operator must be required to submit information on the probable impacts the proposed permit will have on the hydrology of the area. The director must also determine accumulative impact all plan mining in the area will have on the hydrology of the area. These provisions are particularly important for the [inaudible] areas of West Virginia, where limestone quarries are likely to be found.

4) Although current code exempts limestone, sandstone, and sand mining from requirements to backfill to the approximate original contour, West Virginia Highlands Conservancy believes that this blanket exemption is not appropriate and is pleased to see at least some attempt to improve reclamation standards by requiring not approximate original contour but minimum safety, stability, and restoration standards for these operations.

5) Furthermore, the contemporaneous reclamation requirements for minerals other than limestone, sandstone, and sand are a welcome, although not fully adequate in our opinion, addition.

6) Special land use purposes. As proposed, these regs allow that alternative plans for restoration of the disturbed areas are subject to review and approval of the director only. Such alternative plans should also be subject to review and comment by the general public, and in particular adjacent land owners and local and county authorities in the area of the

mining operation. West Virginia Highlands Conservancy continues to believe the current quarry law itself is antiquated and inadequate to protect the people, land, and water resources of West Virginia. But we appreciate this current attempt to take a few baby steps forward and implementing even that law. But we do look forward to the change in the statute in the future, which many of you all have been involved in the past three years. Thank you.

**FARKAS:** The next speaker is Ben Green.

**GREEN:** Mr. Chairman, for the record my name is Ben Green. I am in my capacity here representing the West Virginia Mining and Reclamation Association and several quarry operators which are members of the association and several of our mining operations which have in-house quarries located on their property. I join with a large group of speakers here today in opposing the regulations, and I will try to summarize about three points that are failed in, uh, this exercise in my judgment.

From Article 4, Section 2, Little E, the word minerals is defined. It says, "minerals means clay, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metal or metallurgical ore, provided that the term minerals does not include coal." If you come on down to K in that same section 2, you find surface mining means "all activity for the recovery of minerals and all plants and equipment used in processing said minerals." But here is the big one, it says, "provided that the bonding and reclamation provisions of this article do not apply to the surface mining of

limestone, sandstone, and sand. Providing, (I'm sorry) provided, however, that the surface mining of limestone, sandstone, and sand is subject to separate rules to be promulgated by the director. In this promulgation or in this proposed promulgation, I fail to find any separation of those commodities that are defined under minerals, including coal and, er I'm sorry, including clay and flagstone and shale and several of the others that are mentioned. It would in ... seem that the intent here is that you have separate rules and that you take into consideration the more than 100 years of mining history that has taken place, complete with, uh, the requirements for uh, any, anything having to do with the reclamation process, and anything having to do with the bonding process being completely exempt for limestone, sandstone, and sand. Yet, when you review these regulations, uh, there are many things that impact upon, one the bonding and two, certainly the reclamation process, that are uh, proposed in this package of regulations. It would seem that, uh, the department has been very accelerated in this effort, and I say that, having participated in the last several years with the Tygart River when it goes at low flow, there is always a great rush of uh, the DEP people to come over and say, "Please pump your pits, please drain the water, please put all the alkalinity you can into the river." But when it comes time for regulations, it seems to have forgotten how to cooperate and they come around and talk to your neighbor and see what you might do to improve upon what is proposed here in this package, which, uh, certainly does not have that kinds of input.

There are three major, uh, faults that, uh, that are included here, uh. One, the exemption has been totally ignored. Two, the separation of the regulations for the various mineral commodities have been totally ignored. And three, uh, the backfilling and uh, approximate original contour test, uh, termed complete backfilling, uh, which does not apply again to limestone, sandstone, or sand, uh, in terms of the long history of this industry has, has been completely overlooked when you talk about eliminating highwalls and returning areas to some proximity of stable uh ... you've got a hole that's had 70 years of mineral taken out of it. It's pretty ridiculous to think that you've got enough material, even in close proximity. It reminds me of digging a hole to fill a hole. And it's just not gonna work that way. I would suggest that the department withdraw these regulations, that you, uh, if you find that there is a need, and I'm reminded that 4065 just passed, the most comprehensive review and the most comprehensive environmental bill that's every passed the West Virginia Legislature, uh, March the twelfth 1994. That if there'd really been a need for any of the attention to the various and sundry activities that are proposed here today that would have been included first of all in that bill. I might note that I don't believe surface mining, other than minerals, has changed for about 20 years. That would indicate to me that there's not an overwhelming public outcry for any attention to quarries. With that, Mr. Chairman, I conclude our oral remarks. Thank you.

I'm unclear on written comments. Is today the deadline for written

comments into the record? Four o'clock this evening?

**FARKAS:** Correct. Yes, sir.

**GREEN:** Okay.

**FARKAS:** Mike Clowser.

**CLOWSER:** Thank you, Mr. Chairman. My name is Mike Clowser. I'm the Executive Director of the Contractors Association of West Virginia. Our organization represents over 450 member firms employing nearly 25,000 West Virginians in the highway, building, utility, and industrial construction industry. Our association, as those who have spoke before us, opposes this regulation due to (1) the undocumented and unsubstantiated need for the regulations; secondly, the regulations attempt to circumvent the legislative process by imposing regulations instead of allowing the West Virginia legislature to determine if amendments to the West Virginia statute are vital and necessary; (3) the impact the regulations would impose on the state's aggregate producers; and (4) the impact to consumers of aggregates.

The Contractors Association, for the last three years, has asked for justification on why the proposed regulations are needed. Our industry has been unable to substantiate any particular instances that would require regulations of this magnitude, and we have not received any confirmation from any regulatory agency which would indicate problems throughout an entire industry. Without this basis in fact, we believe the implementation of these regulations are unwarranted and unjustifiable and therefore should be withdrawn. If there is a particular problem with an existing quarry operation,

specific action should be taken to address these problems instead of generating additional bureaucracy and burdensome regulations on an entire industry.

The Division of Environmental Protection cites justification for the proposed regulations as "proposed legislation has been under consideration for the past three years, but bills which have been introduced have yet been passed." The CAWV does not believe that imposing regulations just to circumvent the legislative process is in the best interest of the West Virginia Division of Environmental Protection, the industry, or the public at large. Perhaps the West Virginia legislature specifically refused to debate quarry standards due to the fact that justifiable reasons for the regulations have not yet been established. Perhaps even the legislature finds that the vast majority of quarry operators perform their duties in a responsible way and to promulgate cumbersome and expensive regulations just to address a few problem quarries is not in anyone's best interests.

Also, it is our belief, as it has been stated before, the requirements imposed in the proposed regulations are not authorized under the Act, in fact, as it has been mentioned before, the Act explicitly exempts quarry operations from reclamation requirements. You have heard a lot of comments today, and justifiably so on the economic impact that this will have. I think those impacts can be documented very, very eloquently. I will make one note that I don't believe has been brought up and that is in November, West Virginians are going to be asked to vote for the

infrastructure improvement amendment, which is designed to create an aggressive program of infrastructure development to realize new levels of economic growth, employment, and general prosperity within West Virginia. These proposed regulations as presented today will only lead to increased construction costs that will impair the [inaudible] ability to bring about future community improvements and industrial development opper, opportunities. Therefore, it is clear in our minds that these proposed regulations will indeed have a tremendous economic impact that will affect all segments of West Virginia's economy. Mr. Chairman, for these reasons, the Contractors Association of West Virginia opposes these regulations and we appreciate the opportunity to present our views today. Thank you.

**FARKAS:** Ed Treadway.

**ED TREADWAY:** Thank you for giving us the opportunity speak here today. My name is Ed Treadway. I'm Vice President and General Manager of Beckley Stone Company. Again, to reiterate the facts that we've disclosed here today among our industry. I would also like to reiterate the economical impact of it, the fact that we are regulated by government indus ... government agencies to the point that it takes most of the quarry operators that, that's out there every day at least three to four days a week in a month to cooperate with these agencies and looking at their inspections, looking at your waterways, your permitting, your bonding for these areas. And if it continues to do so in operations like ours, it's going to be a drastic economical impact on it. Thank you.

**FARKAS:** I believe I've ... did I miss anybody on the list? I believe I have everybody on the list. Is there ... were you on the list, sir?

[INAUDIBLE]

**FARKAS:** Mike Hunter, oh, okay. I didn't have you listed as somebody who wanted to speak, but I'd be more than happy to ...

**HUNTER:** Thank you. Sorry. My name is Mike Hunter. I'm Vice President of [inaudible] Quarry and Mercer Crushed Stone. We're a family-owned business, and like Mr. Snyder's business, I'm the third generation. We are opposed to these regulations for all the above reasons, without going through them again. But I would like to confirm what will happen, what Mr. Snyder said, and what Mr. Thompson suggested will happen. When, when it becomes prohibitive for us to operate in West Virginia, we'll stop, and we have a quarry four miles across the border. We'll lead back to Virginia, and this will result in lost tax revenue and lost jobs. And this will happen in other cases.

**FARKAS:** Thank you. I believe that concludes the list of people who signed up to speak. Does anybody else want to make a comment on the record? No? Okay. This will then conclude the formal, uh, part of today's hearing. Again, as a reminder, the ... anybody who'd like to submit written statements in relation to this ruling, this regulation or any other regulation that you heard today at the other two hearings that we held, that will be submitted by four o'clock this afternoon here at the DEP's office, 10 McJunkin Road, Nitro. Um, this will conclude the formal hearing.

[END OF TAPE]



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COMMENTS RE: Legislative Rule on Quarry Mining (38CSR2B)

SUBMITTED BY: Cindy Rank, WVHC President,  
HC 78 Box 227, Rock Cave W.V. 26234

DATE: August 15, 1994

While it has been a disappointment that recent attempts to improve the statute governing Surface Mining and Reclamation of Minerals Other than Coal (WV Code 22-4) have failed to garner substantial support from this Administration or this Legislature, it is encouraging that the Office of Mining and Reclamation (OMR) is at least proposing an upgrade to the current regulations for Quarry operations.

However, as with the proposed statutory changes that have been discussed the past couple of years, the proposed regulations fall short of resolving many of the problems that are created by the lack of adequate regulation of this industry to date. WVHC continues to believe that statutory changes must be made to the antiquated Quarry Law, but for purposes of review of these regs in light of the restrictions of current law I offer the following comments.

1) Although there is provision in the law for public comment on a permit application, there is no provision for the public to request a public hearing, nor is there any reference to how or when a protest letter would be acknowledged and or answered, or, if any member of the public who has expressed an interest in the application is to be notified of the Director's decision on the permit, etc., etc. The whole public participation portion of the act and regulations must be expanded and clarified.

2) Blasting (CSR38.2B.4).

a. Although written notification is required to be given to residents, owners, etc. adjacent to the proposed operation, there <sup>should be</sup> ~~is~~ a time limit that would require advance notice, i.e. the certified mail could be received 5 minutes ahead of the scheduled blasting and still meet the requirements of this section.

b. Furthermore, there are no guarantees that blasting formulas relied upon in these regs are adequate to protect nearby landowners, nor is there way to verify blasting damage if and when it might be reported. The regulations should include a requirement that the company offer, and conduct upon request, pre-blast surveys to owners of property within a certain distance of the permit area, or within a certain distance of the more specific areas of blasting and disturbance as mining proceeds.

3) Water Quality (CSR38.2B.5).

a. Although water tests "reflecting seasonal variation" are required to be shown on the drainage plan map there should also be a prescribed number of samples that need to be taken, and prescribed constituents to be tested for, and some minimum requirements for monitoring during the operation.

b. Ground water is not specifically mentioned (5.5). The plan must contain some indications of how the operator intends to comply with the requirements of the Ground Water Protection Act (WV Code 22-12)

c. Section 5.5.6 (Water Replacement Rights) is inadequate and inappropriate under the Ground Water Protection Act which protects not only current use, but existing quality and future beneficial uses as well. Furthermore, waivers from these requirements cannot be granted by the "said owners".

d. For the Director to have sufficient information prior to acting on an application, the operator must be required to submit information on the probable impacts the proposed permit will have on the hydrology of the area. The Director must also determine the cumulative impact all planned mining in the area will have on the hydrology of the area.

These provisions are particularly important for the KARST areas of W.V. where limestone quarries are likely to be found.

4) Although current code exempts limestone, sandstone and sand mining from requirements to backfill to the approximate original contour (WV CODE 22-4-13(5)), WVHC believes that blanket exemption to be inappropriate and is pleased to see at least some attempt to improve reclamation standards by requiring minimum safety, stability and restoration standards for these operations (CSR38.2B.8).

5) Furthermore, the contemporaneous reclamation requirements for minerals other than limestone sandstone and sand (CSR38.2B.7) are a welcome, although not fully adequate, addition.

6) Special Land Use Purposes (CSR38.2B.9). As proposed, these regs allow that alternative plans for restoration of disturbed areas are subject to review and approval of the director only. Such alternative plans should also be subject to review and comment by the general public, and in particular, adjacent landowners and local and county authorities in the area of the mining operation.

7) Variences (CSR38.2B.6.7). Variences in fill construction should also be subject to review and comment by local planning commissions/boards/etc. in the area of the mining operations.

WVHC continues to believe the current Quarry Law itself is antiquated and inadequate to protect the people, land and water resources of W.V., but we appreciate this current attempt to take a few baby steps forward in implementing even that law.



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## COMMENTS OF THE CONTRACTORS ASSOCIATION OF WEST VIRGINIA

## REGARDING W.VA. CSR 38-2B QUARRY MINING AND RECLAMATION STANDARDS

presented by

**Michael L. Clowser**  
**Executive Director**  
**August 15, 1994**



**COMMENTS OF THE  
CONTRACTORS ASSOCIATION OF WEST VIRGINIA  
REGARDING W.VA. CSR 38-2B  
QUARRY MINING AND RECLAMATION STANDARDS**

The West Virginia Division of Environmental Protection, Office of Mining Reclamation, proposes to repeal and replace the existing Title 38, Series 2B, "Regulations for Mining and Reclamation of Minerals Other Than Coal."

The Contractors Association of West Virginia, representing 450 member firms in the highway, building, utility and industrial construction industry, opposes the proposed regulations due to: 1/ the undocumented and unsubstantiated need for the regulations; 2/ the regulations' attempt to circumvent the legislative process by imposing regulations instead of allowing the West Virginia Legislature to determine if amendments to the West Virginia statute are vital and necessary; 3/ the impact the regulations would impose on the state's aggregate producers; and 4/ the impact to consumers of aggregates.

**UNDOCUMENTED NEEDS**

The CAWV has asked for the past three years for justification on why the proposed regulations are needed. Our industry has been unable to substantiate any particular instances which would require regulations of this

magnitude, and we have not received any confirmation from any regulatory agency which would indicate problems.

Without this basis in fact, we believe the implementation of these regulations are unwarranted and unjustifiable and, therefore, should be withdrawn.

If there a particular problem with an existing quarry operation, specific action should be taken to address the problem instead of generating additional bureaucracy and burdensome regulations on the entire industry.

#### **CIRCUMVENTION OF LEGISLATIVE PROCESS**

The WVDEP cites justification for the proposed regulations as "proposed legislation has been under consideration for the past three years, but bills which have been introduced have not yet been passed."

The CAWV does not believe that imposing regulations just to circumvent the legislative process is in the best interest of the WVDEP or the industry. Perhaps the West Virginia Legislature specifically refused to debate quarry standards due to the fact that justifiable reasons for the regulations have not been established. Perhaps, even, the Legislature finds that the vast majority of quarry operators perform their duties in a responsible way and to promulgate cumbersome and expensive regulations just to address a few problem quarries is not in anyone's best interest.

Also, it is our belief the requirements imposed in the proposed regulations are not authorized by the Federal Surface Mining Control and Reclamation Act. In fact, the act explicitly exempts quarry operations from reclamation and bonding requirements.

### ECONOMIC IMPACT OF PROPOSED STANDARDS

In the explanation of overall economic impact of proposed rule, the WVDEP indicates the economic impact on state government: **NONE**; economic impact on political subdivisions; specific industries; specific groups of citizens: **NONE**; and, economic impact of citizens/public at large: **NONE**.

These regulations, as presented, will **have a tremendous negative economic impact** on each of the groups mentioned above.

The proposed regulations would require significant costs to the aggregate producing industry if all existing quarries were made to go back and comply with regulations for slopes, backfilling, elimination of highwalls and reclamation. These costs would either: 1/ make a West Virginia quarry non-competitive with out-of-state quarries, thereby resulting in loss of jobs and the loss of tax revenue to the state; or 2/ provide a substantial increase in the cost of the product, which is consumed in some form or fashion by every segment of the population of West Virginia.

By far, the biggest user of aggregates is the West Virginia Division of Highways. These regulations would result in increased costs for new

interstate and Appalachian corridor construction, increased costs of secondary road resurfacing and increased costs for primary and secondary road maintenance.

Every home built in West Virginia will feel the impact from these regulations, as well as every coal company, business and industrial facility that uses aggregates.

Also, West Virginians are being asked in November to vote for the "Infrastructure Improvement Amendment," which is designed to create an aggressive program of infrastructure development to realize new levels of economic growth, employment and general prosperity in West Virginia.

These proposed regulations will only lead to increased construction costs that will impair the amendment's ability to bring about future community improvements and industrial development opportunities.

Therefore, it is clear in our minds that these proposed regulations will indeed have a tremendous economic impact that will affect all segments of West Virginia's economy.

### **SUMMARY**

For these reasons, and the reasons which will be articulated by individual quarry operations making presentations at the August 15, 1994 public hearing, the Contractors Association of West Virginia opposes the proposed rule for Quarry Mining and Reclamation Standards.

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presented by

**Michael L. Clowser**  
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**August 15, 1994**



**ABWA**

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Also, it is our belief the requirements imposed in the proposed regulations are not authorized by the Federal Surface Mining Control and Reclamation Act. In fact, the act explicitly exempts quarry operations from reclamation and bonding requirements.

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Therefore, it is clear in our minds that these proposed regulations will indeed have a tremendous economic impact that will affect all segments of West Virginia's economy.

### **SUMMARY**

For these reasons, and the reasons which will be articulated by individual quarry operations making presentations at the August 15, 1994 public hearing, the Contractors Association of West Virginia opposes the proposed rule for Quarry Mining and Reclamation Standards.

The proposed regulations in effect apply coal mining regulations to quarries. This approach is both not practical, but <sup>is</sup> consistent with quarry operations and has a very significant economic impact on the industry. The briefing document gives no real justification for the need for these new regulations. There is no specific data to back up the impacts cited in the general justification statement. By indicating there is no economic impact to the quarry industry (4B, page 2), it is apparent that no economic impact analysis was conducted.

In general quarry operations remove overburden (soil & waste rock) to expose the mineral to be mined. The overburden <sup>is</sup> developed using multiple benches or levels. This is over a very long time period (years).

There is no way during this development of the quarry to haul back overburden and place it in the active quarry without covering up minable reserves. This would not lessen the environmental impact but moving overburden again which had been stabilized in a waste pile would increase environmental impact along with a large economic impact on the industry.

The proposed regulations have no real grandfather clause relative to sites which have been operated for years under different regulations. The potential to go back and regrade and rework spoil piles, haulageways eliminate old highwalls, etc., is a very large economic impact on the industry. Section 5.6 (Water Replacement Rights) is an open end - large liability with no clear limits or procedures for justification. There is nothing in the justification statement to indicate that this is a problem area.

The proposed regulations require performance bonds or equivalent due to the length of quarry operations (some quarries have been operating for 70 to 80 years at the same site). These bonds are impossible to obtain regardless of the operators financial standing.

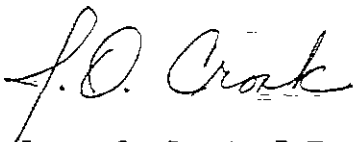
The proposed regulations were written with no contact or input from the industry. There are numerous items which are not consistent with the industry. For example, Section 2.10 Completion of Mining definition is not consistent with the industry. It would eliminate a winter shutdown. The regulations discuss sediment control and water quality control at great lengths. Currently the industry has NPDES permits to both control and monitor these subjects.

Section 6.3 Toxic Materials does not apply to most of the quarry industry as the rock mined is limestone which is used for treatment of acid forming minerals and acid water. Section 6.7 Final Graded Sloped (highwall elimination) has no benefits to the environmental impact of the industry but is a form of beautification (very expensive). The highwalls left after mining are stable, similar to road cuts in good stable rock. The backfilling and <sup>st</sup>regarding requirements would also have an adverse effect of the final products produced. Most of the quarries provide material for the WVA Department of Highways. The overburden (soil, waste rock) is removed to enable the stone that is quarried to meet Department of Highway specifications and other specification such as concrete and asphalt. Putting the overburden back in an active operation (pit) would cause contamination of the rock or product by the overburden which had been previously removed.

Quarries which are not backfilled with overburden help water quality by acting as sediment basins. Storm water or ground water is pumped and acts as effective filters if the storm water filters through the rock into the ground naturally. The proposed regulation counter acts this current beneficial action. Current regulations require detail submittals, construction standards and certification for fills (spoilpiles) and sediment control. The proposed rules and regulations expand the current regulations with much more detail. However, no where is any indication given that the current rules are not protecting the environment. The new standards will raise the costs to the industry to comply both in submittal costs (engineering) and construction costs. The need for this is not indicated.

The stone industry provides basic construction materials. These regulations, through increase costs adversely effects the availability of the basic building material which will effect many other industries in the state and raise construction costs. The state will be also effected by increase stone being imported into the state effecting the amount of severance tax collected from the industry.

Respectfully Submitted,



James O. Crook, P.E.  
Vice President-Engineering  
W. W. Boxley Co.

**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED REPEAL AND REPLACEMENT OF  
W. VA. C.S.R. TITLE 38, SERIES 2B  
QUARRY MINING AND RECLAMATION STANDARDS**

**August 15, 1994**

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**COMMENTS OF THE  
WEST VIRGINIA MANUFACTURERS ASSOCIATION  
REGARDING PROPOSED REPEAL AND REPLACEMENT OF  
W. VA. C.S.R. TITLE 38, SERIES 2B  
QUARRY MINING AND RECLAMATION STANDARDS**

**I. Introduction.**

On July 14, 1994, the West Virginia Division of Environmental Protection, Office of Mining & Reclamation ("DEP" or "OMR") filed with the Secretary of State a proposed rule to repeal and replace the existing Title 38, Series 2B, "Regulations For Mining and Reclamation of Minerals Other Than Coal." The proposed rule would be renamed "Quarry Mining and Reclamation Standards." Accompanying the proposed rule was a notice inviting written comments for a public hearing to be held on August 15, 1994. Pursuant to this notice, the West Virginia Manufacturers Association ("WVMA") files these comments.

The WVMA represents a broad cross-section of large and small industrial concerns throughout West Virginia, and takes an active interest in the regulatory impact of the rules of the DEP on its members, which include quarry operators. With respect to this particular proposed rule, the WVMA believes that it has so many defects that it should be withdrawn from consideration. It is not based on any specific regulatory need; it is so broad and ambiguous that it fails to provide any guidance to industry and vests the DEP with unbridled discretion in the enforcement of the rule; and it omits key definitions and provisions which are required to enable

one to begin to rationally interpret it. The WVMA offers the comments that follow, describing general concerns with respect to the scope of the proposed new Regulation 2B, as well as specific concerns on proposed changes to individual sections of the rule, in order to assist the DEP in understanding these fundamental objections to the proposal and the WVMA's position.

## II. General Comments.

The WVMA has several general concerns with respect to the overall scope of the proposed rule and the manner in which it has been drafted. As an initial matter, the existing rule (which will be repealed by the proposed regulation) includes concepts which are specifically applicable to and directed to coal mining operations, rather than quarry operations. The proposed rule not only fails to correct this error; it magnifies it by including additional provisions which can only be applied to coal mining operations and have no possible meaning in the context of quarry operations. Such provisions include, among others, § 2.11 (Contour surface mining definition); §6.4 (reference to "approximate original contour"); § 10 (Steep Slope Mining, with highwall elimination); § 11 (Mountaintop Removal Operations); § 12 (Excess Spoil Disposal); § 13 (Valley fills, reference to "approximate original contour"); and § 14 (Durable rock fills).<sup>1</sup>

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<sup>1</sup> By way of further example, § 12 discusses spoil not required to achieve "approximate original contour." This is a term taken from the Federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201, et. seq., and incorporated into the West Virginia Surface Coal Mining and Reclamation Act, W. Va. Code § 22-

A second general concern arises from the statement of "justification" found in the Briefing Document accompanying the proposed rule. According to this statement, the proposed rule is being issued because proposed legislation to amend the statute governing Mining and Reclamation of Minerals Other Than Coal (W. Va. Code § 22-4-1, et. seq., "the Act") has been introduced during the last three Legislative Sessions and failed to gain passage. These attempts to amend the Act, according to the statement, were prompted by "concerns" which "have been raised" regarding (a) "the environmental impact of quarrying operations in certain areas of the State"; (b) the "use and detonation of explosives within the proximity of residential dwellings and other commercial, agricultural and industrial sites"; and (c) "water quality and erosion from unreclaimed waste rock areas." (Underscoring supplied.)

The WVMA is unaware of any specific instances of violations, damage, or harms resulting from the general concerns expressed in these statements. If there are certain areas of the State in which quarry operations have caused greater concern (or, perhaps, even real problems), the DEP should specifically identify these and directly address them. Likewise, if the DEP is aware of actual episodes of harm to the public or the environment from blasting near the identified sites, or water quality or erosion from "rock areas," these should be more fully described so that the scope and significance of any such problems which are apparently

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1-1, et. seq.) It has no relevance to quarry operations.

the focus of the proposed rule can be fairly evaluated and appropriate regulatory responses formulated.

Unless and until such significant, recurring problems have been identified and evaluated, the WVMA does not believe that a new regulation should be promulgated. To take any other position would lend credence to the notion that the DEP should attempt to "fix" through rulemaking "problems" that do not in fact exist. Existing enforcement authority appears to be perfectly adequate to address any past, current, or future noncompliance. Moreover, rather than supporting the issuance of the proposed rule, we believe the fact that attempted legislative amendments to the Act have failed during each of the last three years is a strong indication that the current regulatory program is working well. Indeed, it is ironic that the DEP would justify the filing of this proposed legislative rule on the ground that these types of changes have been rejected by the Legislature over the last three years.

A third general concern involves those provisions of the proposed rule which attempt to apply reclamation standards to the mining of limestone, sandstone, and sand. The Act explicitly exempts such operations from reclamation and bonding requirements. To the extent that the DEP imposes such requirements through the proposed rule it will be clearly exceeding its statutory authority.

In this regard, the DEP's statement in the Fiscal Note to this proposed rule, indicating that it would have no financial effect on industry, is simply untenable. Any number of the proposed changes found in the rule would have a significant effect

on the quarry industry, other businesses which are supported by the quarry industry, and the State economy as a whole.

The WVMA also notes that the cited authority for the proposed rule includes W. Va. Code § 22-4-18. This statutory provision, however, only authorizes the promulgation of rules "...to protect the safety of those employed in and around surface mines." Id. We do not believe the proposed rule falls within this category. In this regard, under the recent reorganization of regulatory duties it appears that this statutory provision would now authorize only the West Virginia Office of Miners' Health, Safety, and Training, and not the DEP, to promulgate safety rules. The cite to this provision should accordingly be removed, as well as any proposed rule provisions addressing miner safety.

The WVMA also asserts that it is inappropriate to incorporate § 1.6 into the actual proposed rule. Pursuant to W. Va. Code § 22-1-3a, where rules promulgated by the Director will be more stringent or less stringent than their federal counterpart, the Director is required to provide a written statement, setting forth specific reasons which demonstrate that each particular, substantive provision that varies from the federal counterpart regulation is (in the case of a more stringent rule) or is not (in the case of a less stringent rule) "reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment or human health or safety."<sup>2</sup> The statement required of

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<sup>2</sup> This requirement is subject to certain limited exceptions - none of which are applicable to the immediate circumstances.

the Director must take into consideration the scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or stated legislative findings, policies or purposes relied upon by the Director in making the preceding determination. Accordingly, to comply with the legislative mandate, the Director's statement would need to be detailed and address specific provisions.

The WVMA submits that the statement required from the Director should not be included as a section in the rule, but, instead, should be attached to each proposed rule as an addendum with the documents supporting the rule filed with the Secretary of State. The legislature did not contemplate that the Director's statement regarding stringency of specific provisions in a proposed rule would be literally incorporated into the rule and thereby be adopted as law. This proposed Section should, therefore, be deleted from the final rule, and, after examining the proposed rule, the Director should publish an appropriate statement with the agency final rule when filed with the Secretary of State.<sup>3</sup>

Finally, the WVMA believes that it is inappropriate to include section 1.7 in the proposed rule. A "constitutional takings determination" or assessment is required in limited circumstances, and repeal and replacement of this rule does not appear to be one of them. Under W. Va. Code § 22-1A-3(a), such an

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<sup>3</sup> Moreover, such a statement should acknowledge that this regulation will be more stringent than existing federal law, which does not provide for such comprehensive regulation of these types of non-coal mining activities.

assessment is not required, unless the action being contemplated by the Division is:

*reasonably likely to deprive a private real property owner of his or her property in fee simple or to deprive an owner of all productive use of his or her property \* \* \* .*

Promulgation of a new rule or amendment of an existing rule does not automatically meet the above test for when an assessment is required. W. Va. Code § 22-1A-3(c) exempts rulemaking which seeks to simply limit certain land uses from the assessment requirement. In pertinent part, that Code section provides that the following actions do not require an assessment:

*(1) Licensing or permitting conditions, requirements or limitations to the use of private real property pursuant to any applicable state or federal statutes, rules or regulations;*

*(2) Rules and emergency rules of the division that are reasonably likely to limit the use of private real property pursuant to any applicable state or federal statutes, rules or regulations; \* \* \* .*

See W. Va. Code § 22-1A-3(c)(1) and (2). Accordingly, the WVMA recommends that this proposed Section be deleted from the final rule, and that the Director's "takings" analysis be included as a part of the supporting documents filed with the Secretary of State.

### III. Specific Comments.

The WVMA offers the following specific comments on various parts of the proposed rule:

**Section 2.3.** The definition of "acid-producing overburden" is confusing in that it speaks of "...material which may cause spoil" which, upon chemical analysis, shows a pH of 5.5

or less. We believe this should be replaced with the following language: "...overburden which upon appropriate analysis shows a propensity for producing acid mine drainage."

**Section 2.4.** The definition of "active surface mine operation" as currently drafted does not tie land disturbance which may fall within its scope to any particular mining operation. We recommend it be re-written as follows:

"Active surface mine operation" means an operation where mineral is being removed or land is being disturbed as a part of a mineral removal project.

**Section 2.15.** The definition of "deep mining or underground mining" is ambiguous in its description of what types of mining activities are covered. In addition, the following language should be removed from the definition: "...and the equipment connected therewith which contributes directly or indirectly to the mining, preparation, or handling of materials." Equipment on the surface of an underground mining operation may be considered a "part" of that operation, but it is not properly defined as an underground mining operation.

**Section 2.19.** The definition of "operation," if needed at all, should be revised to make reference to "those activities conducted by an operator who is subject to the jurisdiction of [the Act]." An operation consists of certain activities, not a particular area.

**Section 2.23.** The definition of "reclamation," described as converting land to a stable form "for productive use," is unworkably ambiguous. Reclamation should be defined as the process

of restoring land disturbed during mining operations so that it supports an acceptable post-mining land use.

**Section 2.33.** The reference in the definition of "storm water" to "water flowing...through the surface of the ground" is ambiguous. We question the need for a definition of this term. However, if a definition is needed, we suggest the DEP adopt the definition of "storm water" found in EPA regulations, which is: "...storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. §122.26(b)(13).

**Section 2.34.** The definition of "surface mining" should be revised to make it clear that it applies only to activities regulated by the Act. As written, it purports to include "all" processing or storage of minerals, and all facilities used in processing, regardless of their location or relationship to a mining operation. This would include end-users of these minerals and others who are not subject to the Act. In addition, the inclusion of "the surface effects of underground mining" is duplicative of the definition of "underground mining."

**Section 4.8.** The prohibition against flyrock being cast "more than half-way to the nearest protected structure" unnecessarily creates a standard which would be difficult to measure and apply, and restricts the types of operations conducted on a permit area even where there is no effect on the surrounding area. The existing provisions of the Act dealing with blasting plans and restrictions are sufficient to protect the public interest with respect to potential off-site impacts from blasting.

**Section 6.4.** The reference in this section to "the requirement to achieve approximate original contour," as well as at all other places in the proposed regulations where this concept is referenced, should be deleted as inapplicable to limestone, sandstone, and sand mining operations.

**Section 8.** This proposed new provision should be deleted. It attempts to impose reclamation requirements on operations which are statutorily exempt from such standards. It creates a requirement that a 'stabilization and restoration' plan be submitted with all new permit applications, which will show how "peaks and depressions" are to be eliminated, describe the "blending of the disturbed areas into the surrounding lands," and commit to the elimination of highwalls using all available spoil material. None of these requirements are authorized by statute, and none of them are sufficiently detailed to provide any meaningful indication as to how they would be applied by the Division. Yet, if such a plan is approved by the Director and the operator is found to be in noncompliance with it, the operator's permit may be revoked (apparently without prior notice or opportunity for hearing).

The notion of contemporaneous reclamation has no relevance in dealing with non-coal mining operations. Moreover, it is contrary to the Act to impose these new planning requirements on applicants for permit renewal -- who are otherwise statutorily

entitled to renewal if the operations have been conducted in compliance with the Act.<sup>4</sup>

**Section 15.1.** The requirement that the Director approve of private revegetation contractors should be removed, as there are no published standards for evaluating such contractors and there is no need to create such an additional regulatory burden.

**Section 17.** The requirement that the Director approve of persons who prepare reclamation and mining plans should be removed, as there are no published standards for evaluating such persons and there is no need to create such an additional regulatory burden.

**Section 20.3.** The provision should be re-written to delete the requirement that "the applicant" hold a public hearing. Although the Division may require that an applicant cooperate in certain aspects of notifying the public of such a hearing, the Division, and not the applicant, is responsible for conducting such a hearing.

**Section 21.** The proposed section imposing requirements on those extracting coal incidental to other operations should be deleted, as it is not within the scope of the Act and is already subject to regulation under the West Virginia Surface Coal Mining and Reclamation Act, W. Va. Code Chapter 22, Article 3.

**Section 22.1.** The words "Mining and..." should be inserted at the beginning of the first sentence in this provision.

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<sup>4</sup> The WVMA also notes that the next to the last line in this proposed section is not a complete sentence.

**Section 23.** The portion of this section found in the 4th and 5th lines, "...in Section eight (8) and nine (9) of the regulations of the Reclamation Commission" should be deleted and replaced with the phrase "...as set forth herein." The Reclamation Commission no longer exists.

In addition, the WVMA believes that the following provisions should be added to the proposed rule:

A. A definition of "mineral," consistent with that found in the Act.

B. A statement of applicability, or a statement included in the "scope" section, explicitly indicating that neither the reclamation provisions (e.g., backfilling, highwall elimination, approximate original contour, excess spoil disposal) nor the bonding provisions of the rule shall apply to limestone, sandstone, or sand mining.

Respectfully submitted this 15th day of August, 1994.

Karen S. Price, President  
West Virginia Manufacturers Association  
2001 Quarrier Street  
Charleston, West Virginia 25311  
(304) 342-2123

Prepared by:  
Robinson & McElwee  
P. O. Box 1791  
Charleston, WV 25326  
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August 11, 1994 Environmental Protection

WV Division of

AUG 15 94

Director's Office

RECEIVED

Mr. Roger T. Hall  
W.V.D.E.P.  
10 McJunkin Road  
Nitro, WV 25143

SUBJECT: PROPOSED RULE TITLE 38 SERIES 2-B

Dear Mr. Hall:

The Briefing Document itself covers in a round-about way why these rules should not be adopted at the present time. There has been proposed legislation for the past three years covering these areas. Discussions have been held between those to be regulated, D.E.P., Citizen Groups, etc. These regulations are an attempt to circumvent the Legislative process and place burdensome, costly, and some impossible to comply with regulations in place without passage by the Legislature of enabling legislation.

"The Explanation of Overall Economic Impact of Proposed Rule" is incorrect to say the least. How can new more restrictive regulations have no cost to government, regulated industries, or the public at large?

The "Determination of Stringency" statement in Section 1 is very puzzling to a logical person. Since there are no federal regulations, any regulation has to be more stringent and a reasonable explanation of why it is necessary should be provided.

Present regulations became effective in January 1983. What has occurred since then that requires "expanded" regulations to be put into effect at this time? There should be more definitive explanations than "Recent attention has been brought to bear on the environmental impacts of quarrying operations in certain areas of the State" and "the intent of the rule is to provide a higher level of environmental protection from the impacts of quarry mining operations."

If there are specific problems with specific operations, address them under current regulations - throw out the bad apples - not the whole crate.

Section 2.10 Definition of "Completion of Mining" should be changed. Some operations require blending of minerals which leaves areas inactive for well over two months. Business cycles also contribute to inactivity for longer periods of time. Weather conditions can also dictate inactivity in excess of two months. This demonstrates a lack of

understanding of non-coal mining activities by the group "crafting" these rules; therefore, please restrict this type of activity to the legal legislative arena so interested parties may present their positions.

Section 2.34 - Definition of "Surface Mining" should exclude manufacturing facilities using a mineral to make a saleable product other than the mineral itself.

Section 4.8 - This section is confusing and the intent and affect is not clear. Most permits contain a setback area from property boundaries. It seems that simply saying that flyrock will not be cast beyond the permit area would be sufficient. As it read if there were a covered structure one (1) mile from the blast site, flyrock would not be allowed past one-half (1/2) mile from the site even though the permit boundary might be almost a mile away.

Section 5.5 - The first sentence of this section sounds good but how it will be determined in actual practice is very questionable. It could require existing operation to conduct exhaustive and expensive hydrologic studies to prove that they are not violating this section. This could even be true for operations in existence for over one hundred (100) years or more with no known problems. This section is poorly "crafted" and will cause much unnecessary legal expenses for the companies affected.

Section 7 - "Contemporaneous" requirements are not workable or cost effective for some operations in the non-coal surface mining industry. Any variation, however, is left up to the director which could or could not be granted.

Current statute and regulations exempt limestone, sandstone, and sand mining operations from bonding and reclamation requirements. There is no mention or reference to this exemption in these proposed regulations. Section 8 clearly attempts to bypass the law by calling Reclamation "Stability, Restoration and Safety Requirements..." Even Section 7 retains the word "Reclamation". Section 8 would require a plan be submitted with permit renewal applications which covers all existing permits within one year. The contents of the plan are vague like "ensure the protection of the health and safety of the public and the enhancement of the environmental quality of the mined site and surrounding areas (emphasis added), etc. It must be assumed that the plan must be acceptable to somebody and their criteria for the interpretation of the different elements of the plan are unknown. However, failure to comply with the plan will result in revocation of the permit. As stated earlier, Section 8 is a clear attempt by the agency to impose reclamation requirements (now called stability, restoration and safety) on companies exempted by legislative statute. It is a violation of law and leaves the continued operation of existing companies completely up to the discretion of someone in the agency.

Section 12.1 - The last sentence for long term quarry operations is impossible to work with. It prohibits spoil piles that are seeded and permanently placed. What are operations that are in business for 50

years or even longer supposed to do with their spoil material? What are operations that do not have room on site supposed to do with the spoil material? Section 6.2 - Requirements for stockpiling top soil can also create the same type problems.

Section 12.6, 13.6.5 and 14.4 require that the outer slopes of fills be no steeper than (2) horizontal to one (1) vertical. Due to this reduced slope, excessive amounts of land are required for fill areas. This is only 26 degrees, or about three (3) times the pitch allowed on haul roads. These slopes should be the natural angle of repose of the material being placed in the fill. In most cases this would be about 60 degrees or less. This would conform to the description of a "final graded slope" discussed in section 6.7. It would also not be any steeper than some mountain sides in West Virginia.

Section 12.3.b - should the 5th word in the first sentence be "designed" or "checked"?

Section 14.11.2 - Some small percentage of the fill make up should be allowed to contain material from sediment control structures. If not, where is the material to be placed after it is collected?

Sections 5.6, 14, 19, 20, 21, 24 - Changes made to or the addition of these sections may be beneficial but it is not known if statutory authority exists to do this or not.

These regulations, if adopted, will add more cost to existing quarry operations and manufacturing operations which use quarried material. This will place these companies at a further disadvantage when competing with firms in neighboring states. Several of the requirements contained in these regulations will be difficult or impossible to apply to existing operations that have been in existence for many years. Some type of "grandfather" provision should be included for these operations. Since there will be "financial impact" on the regulated community and since these are more stringent or less stringent than federal counterparts how can there be "o" in report of impact and where are the statements required by our West Virginia laws?

In conclusion, we do not believe these "Rule Changes" are necessary - are possibly not legal - and certainly should not be done outside the legislative process. Our feeling is this attempt to modify the existing act should only be done through the legislative process.

We hope that the comments made in this letter are seriously considered. If August 15, 1994 is the last day for submitting proposed rule making changes, one has to wonder how serious the Department is in considering any comments when verbal and written comments on the proposed regulation are held on the same day.

The Department also shows little consideration for people in the Northern and Eastern parts of the state when meetings or hearings are scheduled early on Monday mornings or late on Fridays. We hope more consideration to travel requirements to such meetings is given in the future.

Mr. Roger T. Hall  
August 11, 1994  
Page 4

Sincerely,



Calvin L. Duncan  
V. P. Operations

CLD-GHG/djs (title38.doc)

cc: G. H. Gess  
C. L. Greening

# PETERSBURG BLOCKS, Inc.

# BLOCKS & READY MIX

Phone 304-257-4848  
or  
257-4664

P.O. Box 756

PETERSBURG, WEST VIRGINIA 26847

**RECEIVED**  
Director's Office  
AUG 15  
WV Division of  
Environmental Protection

Director's Conference Room  
Division of Environmental Protection  
Attn: Roger T. Hall  
10 McJunkin Road  
Nitro, WV 25143

August 11, 1994

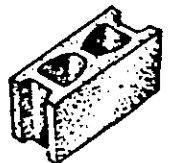
Dear Mr. Hall:

Please let it be known that we are apposed to the up coming amendments to series number 2B on Quarry Mining and Reclamation Standards.

Sincerely,

*H. Tim Park*

H. Tim Park



KEPLINGER LIME COMPANY, INC.  
HC 30, BOX 45  
MAYSVILLE, WV 26833

Director's Conference Room  
Division of Environmental Protection  
Attn: Roger T. Hall  
10 McJunkin Road  
Nitro, WV 25143

August 11, 1994

Dear Mr. Hall:

Please let it be known that we are apposed to the up coming amendments to series number 2B on Quarry Mining and Reclamation Standards.

Sincerely,

*O. Vernon Keplinger*

O. Vernon Keplinger

**RECEIVED**  
Director's Office  
AUG 15 94  
WV Division of  
Environmental Protection

**Comments on  
Proposed Rule CSR38-2B  
Quarry Mining and Reclamation Standards**

**August 15, 1994**

**By**

**Pat Parsons  
Flexible Pavements Council of West Virginia**

**GOOD MORNING**

My name is Pat Parsons and I am Executive Director of the Flexible Pavements Council of West Virginia. The Council, a Division of the Contractors Association of West Virginia, is a non-profit trade association representing the producers of hot mix asphalt and aggregates.

A number of aggregate producers/quarry operators are here today to share with you their comments on these proposed regulations. We want you to know more about these companies and the products they produce. Aggregates are a product often taken for granted, yet every road, building, street, parking lot and house contains aggregate. They are an essential element in concrete, asphalt, building blocks and other common construction materials. Aggregates, however, remain a low-grade commodity with an average price of \$3 to \$6 per ton. West Virginia quarries annually produce 10 to 12 million tons of limestone, sandstone, gravel and sand. Again, these are used in many products for construction and manufacturing. The majority of these quarries are small businesses, many family owned, that have been in business for over 70 years in the same location.

These companies are also active in their community and are doing their part to help build a better West Virginia. They attempt to work safely and protect the thousands of employees that work in the mining, manufacturing and transportation process. The vast majority also attempt to utilize environmentally sound mining and production processes. We are often called upon to provide crushed limestone to treat acidic streams and rivers. Our biggest customer, the West Virginia Division of Highways, depends upon us for the maintenance and construction of over 35,000 miles of paved and stabilized road surfaces. Power plants depend upon us to treat their emissions and every citizen in the state needs us to keep them out of the mud and to support the roof over their head.

We have asked ourselves and we ask you, based on this brief background, what justification is there for such a proposal to further regulate the quarry industry. We are very different from the coal industry, yet the majority of these provisions would appear to have been derived from coal mining regulations. Their implementation would certainly force producers out of business and would drive up the cost of aggregate for thousands of end users. We find these proposed regulations to be unwarranted, impractical or impossible to comply with and economically devastating.

I noticed a bumper sticker recently on a vehicle that read "*Aggregates are the Foundation of America*". The more I thought about that statement, the more truth I found in it.

The day we allow quarries to be placed on the endangered species list or to become extinct, is the day we stop the wheels of progress. We urge you to reconsider this proposal.

THANK YOU FOR YOUR TIME AND CONSIDERATION.

AUGUST 15, 1994

COMMENTS OF RBS, INC. REGARDING PROPOSED REPEAL AND REPLACEMENT  
OF WV C.S.R. TITLE 38, SERIES 2B, QUARRY MINING AND RECLAMATION  
STANDARDS.

R  
B  
S

INCORPORATED

Greenbrier Ready-Mix

Greystone Quarry

Greystone Block

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West Virginia 24986

(304) 645-2277

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**CRUSHED STONE IS THE FOUNDATION OF OUR NATION**

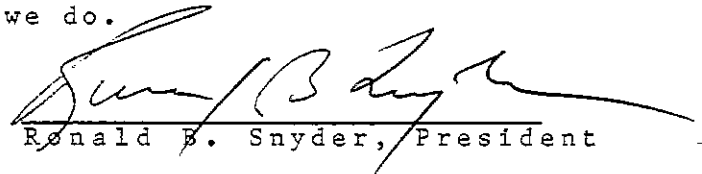
I am Ronald Snyder, President of RBS, Inc., a family owned business with three generations actively participating. We own two quarries in Greenbrier County, one currently operating and the other not active at this time. The inactivity of the second quarry is primarily due to the overwhelming regulation by various state and federal agencies. We are a vertically integrated business using crushed limestone in other activities.

We have operated Greystone Quarry for 37 years providing a reasonably priced quality product to the state, the public, and the private market. We employ an average of 43 people with an annual payroll of almost 1.2 million, all of which is paid to West Virginia residents.

If the proposed rules and regulations are adopted to become law, we will be forced to close both quarries, and because of the synergy of the integration of our company, may not be able to continue our other business.... We will join the ranks of the small coal operators who have been forced out of business.

As taxpayers, we will have to pay the high costs of transporting limestone from other states to build our roads, homes, school, shopping centers and all other projects using crushed stone which we have an abundance but can no longer afford to produce.

We have current rules and regulations which protect our environment and the public; We do not need these new rules and it has not been demonstrated that we do.

  
Ronald B. Snyder, President

Established in 1916



ENLARGED AND IMPROVED PLANTS



ORIGINAL PLANT IN 1916

ACME LIMESTONE

Company

PHONES: 445-2861  
647-4443

FORT SPRING, WEST VIRGINIA 24936

COMMENTS ON  
PROPOSED RULE CSR38-2B  
QUARRY MINING AND RECLAMATION STANDARDS

AUGUST 15, 1994

BY

RODNEY H. PACK  
ACME LIMESTONE CO., INC.  
POST OFFICE DRAWER 90  
FORT SPRING, W. VA. 24936  
PHONE 647-4443

My name is Rodney H. Pack and I am Vice President, Sales and Administration for ACME LIMESTONE CO., INC., located at Fort Spring (Snowflake), Greenbrier County, W. Va. I have worked for this Company thirty seven (37) years.

Acme Limestone Co., Inc., has been operating in the same location for seventy eight years. ACME presently employs fifty three (53) people and has employed as many as 200 people. We have supplied the crushed limestone used in the construction of such significant structures and roads as the Bluestone Dam, Hinton, W. Va., the Summersville Dam, Summersville, W. Va., Big Ben Tunnel (CSX Transportation) Talcott, W. Va., the New River Gorge Bridge, Fayetteville, W. Va., Interstate 64, Interstate 77 (W. Va. Turnpike), VEPCO's Pumped Water Storage Project, Bath County, Va., and the list could go on but time and space will not permit. The point made here in citing this history is that crushed stone is an integral part of the construction of almost anything that your eyes may see. Examples being your home, driveway, the roadways you drive, the building in which we now reside, and the stadium in which you watch your favorite sport. Think about it ladies and gentlemen we are talking about a very necessary product and a very important industry.

Appendix B of the Notice of Public Hearing on the proposed rule is a fiscal note for the said rule. It states that there will be no economic impact on State government, political subdivisions, specific industries, specific groups of citizens or citizens/public at large. This statement is simply not accurate. The economic impact would be tremendous in all the areas mentioned.

When I was employed by Acme Limestone Co., Inc., thirty seven years, ago, last Friday, the plant price of crushed limestone ranged from \$1.50 to \$2.35 per net ton F.O.B. the Quarry. Today the price ranges from \$3.50 to \$4.95 per net ton F.O.B. the Quarry. Name for me, if you can, another product or bulk commodity, so important to us all, that has maintained such a reasonable price structure over that span of time.



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C  
O

Should the regulations proposed be implemented you can rest assured that the price of crushed stone within our State will increase dramatically. Many family owned small quarries will go out of business and jobs will be lost. Quarry production within our State will diminish and this crushed stone product so important to us all will be imported from Indiana, Ohio, Kentucky, Pennsylvania, and Virginia, in greater quantities.

Quarry production within our State is only approximately fourteen million tons. <sup>PER YEAR</sup> The environmental impact of this production is minimal. Present regulation by the State and Federal Government is sufficient to protect the environment and the citizens of our State. Therefore, I respectfully request withdrawal of the proposed Rule CSR38-2B.

## *RESPONSE TO PUBLIC COMMENTARY*

### DIVISION OF ENVIRONMENTAL PROTECTION - MINES AND MINERALS

#### QUARRY MINING AND RECLAMATION STANDARDS

#### CSR 38 - 2B

Pursuant to West Virginia Code §29A-3-1 et seq., and §22-1-3, the Division of Environmental Protection (DEP) provided for a thirty (30) day public comment period and a public hearing for the above-captioned rule. The public comment period extended from July 15, 1994 through August 15, 1994. The public hearing was held on August 15, 1994, in the DEP training center at Nitro, W.Va. The following is a summary of the comments received, and the DEP's response to comments.

#### General

1. Most commentators took the position that: the proposed rule is not justified; the rule is designed to circumvent the legislative process; the rule will result in a significant negative economic impact on government, the regulated community and the public at large; the proposed rule attempts to apply coal mining standards to quarry operations; and the rule should be withdrawn.

The DEP maintains that the proposed rule is wholly justified. Many quarries exist within the State which are unregulated or are not required to meet even minimal reclamation standards. These operations, in many cases, exhibit no regard for public safety, environmental

integrity, and constitute a public nuisance, and are a blight on the landscape. Although a number of quarry operators have cooperated with the DEP in modifying their operations to improve aesthetics and water quality control, others do not. Without some statutory or regulatory standards, the DEP cannot act effectively to control environmental impacts and public safety concerns.

The proposed rule does not attempt to circumvent the legislative process. DEP acknowledges that draft legislation has been pending for the past three years, and will continue to support the proposed statutory amendments; however, rule making can hardly be construed as circumventing pending legislation. As each commentor knows, the proposed rule must undergo a very rigorous review and approval process in the Legislature.

The DEP foresees no significant economic impact resulting from implementation of the proposed rule. The agency certainly has adequate existing staff, equipment, and facilities to effectively implement the rule. The rule will require the quarry operators to expand capital improvements nominally, but this activity can be amortized over an extended period of time, keeping annual reclamation costs low. Conscientious operators should have long since incorporated sound reclamation practices

and environmental control as a routine part of doing business. Meeting minimal environmental standards as proposed in the rule will certainly not be economically devastating.

The economic impact on the public at large will be negligible. Although the quarry industry provides basic construction materials for a multitude of industrial development activities which benefits the public, the pass-through costs to meet minimal reclamation and environmental standards could not be significant.

It is true that the existing rule is based on counterpart coal mining standards. In the proposed rule, the DEP attempts to make the provisions specific to quarry mining.

The DEP will continue the process for rule promulgation.

2. Some commentors believe that applying spoil disposal criteria on quarry operations would result in spoil and overburden in active pits instead of placing overburden in inactive areas. The result would be loss of mineral reserves with negligible environmental protection.

The intent of the rule is not to interfere with mineral

recovery, but to require that excess overburden material be placed in a configuration which lends itself to regrading and surface stabilization to minimize erosion and be aesthetically pleasing.

3. Some commentators suggest a "grandfather clause" which exempts existing operations from the standards of the proposed rule

It is true that no such clause exists; however, there is legal precedent that new standards of law are applied pro-actively unless otherwise provided.

4. Some commentators object to the requirements for performance bonds.

The rule as proposed imposes no requirements for bonding which do not already exist in current law.

5. Some commentators object to the reclamation requirements for quarrying of limestone, sandstone, and sand, saying that such operations are exempt from reclamation requirements by law.

The DEP does not characterize the proposed standards as being reclamation standards. Rather, they relate to

safety considerations, soil stabilization, and restoration of disturbed land to reflect responsible land use considerations.

6. Some commentors felt that the rule did not provide for adequate public input in the permitting process.

The DEP has administered a program for processing permit application proposals for over 20 years with the same level or less of public input as provided for in this rule. In view of the very small number of permits issued annually, the public participation process seems to be working quite well.

#### Specific Comments

1. 1,6 & 7 Some commentors object to the fact the the determinations of stringency and constitutional takings is addressed in the rule instead of a separate addendum to the rule.

The DEP agrees that the requirements of the statute would be met by an addendum. Incorporating the determinations in the body of the rule will also satisfy the statutory requirement. The DEP prefers the latter method since it puts the issues of

stringency and takings up front in each rule and provides for early public disclosure and discussion on these two topics of high public sensitivity.

2. 2.3 Some commentors suggested alternative language for the definition of "acid producing overburden".

The DEP has stricken this definition along with a number of others because the defined terms do not appear anywhere else in the rule.

3. 2.4 Some commentors suggested alternative language of the definition of "active surface mining operation".

The DEP will strike the definition since the term does not appear in the body of the rule.

4. 2.10 Some commentor objects to the definition of "completion of mining".

This definition has been existing law for ten (10) years.

5. 2.15 Some commentors found the definition of "deep mine..." to be ambiguous.

The DEP will strike the definition since the term is not

used in the body of the rule.

6. 2.19 Some commentors suggest that the definition of "operations" is more appropriately defined as an activity instead of an area.

The DEP defined the term as a geographic area of activity (land disturbance) because that is how it is applied in the statute.

7. 2.23 Some commentors find the definition of the term "reclamation" to be ambiguous, and suggest alternative language.

The DEP will redefine the term so that it is more specific.

8. 2.33 Some commentors suggest alternative language to define the term "storm water".

The DEP will strike the definition since the term is not used in the body of the rule.

9. 2.34 Some commentors object to the definition of the term "surface.mine" .

The DEP will strike this definition since it is not found in the body of the rule.

10. 4.0 Some commentators suggested that a new sub-section be added which would require pre-blast surveys, because the scaled distance formula is inadequate to prevent damage to protected structures.

The DEP considered such an amendment; however, the statute relies entirely on the scaled distance formula to limit blasting so that protected structures are not damaged. Adding a provision of this type in the rule would exceed statutory authority.

11. 4.3 Some commentators indicated that there are not sufficient provisions in the rule to provide adequate notice to adjacent landowners and residents of pending blasting operations at the quarry site.

The requirements for written notice in the proposed rule (subsection 4.3) is identical to that in the existing rule. In the twenty (20) years over which the DEP has administered the quarry mining program, there have been no cases of inadequate service of blasting notification.

12. 4.8 Some commentors object to the restrictions of "fly rock", saying that the existing restrictions on blasting are sufficient to protect the public from fly rock.

DEP does not agree. The blasting restrictions relate to structural damage from blasting vibrations. Damage and injury from fly rock is a common occurrence, and is not adequately addressed by the scaled distance formula.

13. 5.5 Some commentors suggested that the rule contain provisions for pre-mining water quality sampling and analysis for a specified period of time in advance of application for a permit. The commentors felt that groundwater should also be addressed.

Based on its 20 year history of regulating quarry operations, the DEP has not generally found water quality violation to be significant on quarry operations except for sedimentation. Therefore, pre-mining water quality sampling and analysis are not significantly important. The groundwater aspects of water quality is currently address under the State Groundwater Act.

14. 5.5 Some commentors look with favor on the requirements for making a Probable Hydrological Consequences statement a part of the permit application. They state that this

should be accompanied by a Cumulative Hydrologic Impact Assessment (CHIA) due to the KARST hydrology of many areas.

Other commentors object to the new standards as being unnecessary.

The DEP intends that a Probable Hydrologic Consequences statement will include the impacts on KARST hydrology. Because of the small number of quarry operations in the state, and the fact that quarrying disturbances progress very slowly, the DEP believes that a "Probable Hydrologic Consequences statement" is a demonstration that the applicant for a new quarry permit has considered the far reaching impacts of the operation on the hydrology of the area, making a CHIA unnecessary. This concept is not new since it is addressed in the State Groundwater Protection Act and the State Clean Water Act.

15. 5.6 Some commentors raised concerns regarding the provisions for water replacement rights and waiver thereof. Also, it was felt that this subsection failed to take into account the Groundwater Quality Act.

Other commentors believe this provision to be unjustified, open ended, and imposing a large liability with no clear procedures.

The waiver applies only to the owners right to have the water supply replaced. It does not waive any of the operators responsibility for groundwater protection.

The DEP believes the water replacement rights provision is solidly based in existing law and is clearly justified.

16. 6.3 One commentor objected to the requirement for treatment of toxic material on the basis that such an occurrence is rare in the quarrying industry.

The DEP agrees that toxic-forming material is not a frequent occurrence on quarries, but where it does occur, it should be addressed. This provision has been law for ten (10) years.

17. 6.4 Some commentors object to the use of the term "approximate original contour" in this subsection and other provisions of the rule as they relate to quarrying of limestone, sandstone, and sand.

The term is derived from section 13 of the statute where it specifically exempts its application to limestone, sandstone, or sand.

18. 8.0 Some commentors favored the addition of this section

which imposes some level of responsibility on operators of limestone, sandstone, or sand quarries for site restoration. Many others felt it was an extension of authority beyond that provided for in the statute.

The DEP believes that short of highwall elimination, and restoring the post mining land surface to the approximate original contour, each quarry operator has a responsibility to practice good land-use management strategies which leaves that land after quarrying operations in safe and usable condition. Although the DEP acknowledges the statutory exemption for limestone, sandstone, and sand, the exemption applies to complete backfilling. The provisions of this section fall far short of requiring complete backfilling.

19. 9.1 Some commentators believe that the provisions of this subsection do not provide for public review.

Public review of permit modifications is provided for in subsection 22.2.

20. 12.1 Some commentators object to the addition of the last sentence in this subsection, saying it is impossible for long-term operations to comply with.

The new language does not prohibit off-site disposal of spoil. The intent is to require the operator, to the extent possible, to utilize spoil material as backfill.

21. 12.6 Some commentors object to the requirement of this and other provisions of the rule which require that slopes not exceed an angle of 50%.

The DEP recognizes that the lengthened slope, if not properly planned, could result in additional land disturbance. However, the overriding interest here is slope stability, safety, and slope erodability. These factors have major impacts on human safety and the environment.

22. 13.6.7 : Some commentors stated that variances for fill construction based on alternative land-use plans, should be reviewed and approved in cooperation with land-use planning agencies.

The majority of such fills occur in remote areas where no land use planning has been done. Where such operations have land use sensitivity, the DEP coordinates with local land use planners.

23. 14.11.2 One commentor suggested that this provision be deleted, because there was nowhere else to dispose of silt from pond cleanings etc.

Most fill construction engineers would find that disposal of silt material in a fill leads to instability. Therefore, the provision remains in the rule.

24. 15.1 Some commentors object to this provision which requires approval of private revegetation contractors.

This provision has been existing law for the past ten (10) years.

25. 17 Some commentors object to this provision which requires the Director's approval of persons preparing mining and reclamation plans.

This provision has been existing law for ten (10) years.

26. 20.3 Some commentors object to the requirement that the permit applicant hold a public hearing when requesting approval to mine within 100 feet of a public road.

For these kinds of requests which involve public roads,

the Department of Transportation requires such hearings. Since DEP is not applying for the variance, it is the applicant who is responsible for satisfying Department of Transportation requirements.

27. 21 Some commentors object to this section, saying that it is a requirement of the Surface Mining Act.

The DEP inserted this provision in the rule for clarity. Experience dictates that many quarry mining operators are not familiar with this limitation.

28. 22 Some commentors offered various proposed revisions to this section.

The DEP has found this section to be unnecessary. Therefore, it has been stricken from the rule.