



STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES
CHARLESTON 25305

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 11.21-78

DAVID C. CALLAGHAN
Director

August 14, 1978

The Honorable A. James Manchin
Secretary of State
Capitol Complex
Charleston, West Virginia 25305

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 8-14-78

Dear Secretary Manchin:

The following is submitted to you pursuant to the requirements of Chapter 29A, Article 3, Section 1, et. seq., of the Code of West Virginia, as amended.

Notice of Final Agency Action

The Reclamation Commission of the Department of Natural Resources hereby declares its intention to adopt and does hereby adopt these rules and regulations as final rules and regulations within the meaning and purview of the Code of West Virginia Chapter 29A, Article 3, Section 10, as amended 1977. These rules and regulations were open to public comment for more than thirty (30) days and the comment period terminated on July 27, 1978, at a public hearing held in Charleston, West Virginia, in the Capitol Complex Conference Center. Any amendments necessitated by public comment have not changed the main purpose of any of these regulations as they were initially proposed on June 15, 1978.

Certificate of Presentation

The attached rules and regulations proposed for promulgation by the Reclamation Commission of the Department of Natural Resources were presented to the West Virginia Legislative Rule-Making Committee at approximately 10:30 a.m., August 14, 1978. At that time Chairman Robert Steptoe informed Mr. David C. Callaghan, Chairman of the Reclamation Commission that these rules and regulations would be deemed to have been presented to the Committee by the Commission for its consideration.

Declaration of Emergency

Pursuant to Chapter 29A, Article 3, Section 14, of the Code of West Virginia 1977, as amended, the Department hereby makes the following "statement of facts and circumstances constituting the emergency". The passage of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87) placed coal mining operations both surface and deep mining under its jurisdiction. On August 3, 1977, the Federal Act required that all mining operations starting on or after February 3, 1978, must conform to the requirements of the Act and be subject to a permit issued by a state regulatory authority having the capability of requiring compliance with Public Law 95-87. Chapter 20, Article 6, of the Code of West Virginia in its present form does not comply with the requirements of the Federal Act. More specifically, present West Virginia law and regulations do not give the Department of Natural Resources legal authority to enforce the requirements of the Federal Act or, to issue permits as required thereby.

If the Department's proposed regulations, attached hereto, are not promulgated on an emergency basis, imminent legal action could well result in a court decision preventing the Department of Natural Resources from being able to continue issuing and approving permits for mining operations. The Federal Office of Surface Mining does not presently have the staff or organizational structure let alone the legal authority to issue permits during the interim program provided under the Federal Act. The end result would bring all new mining operations to a halt in the State of West Virginia.

The Department of Natural Resources has issued permits for mining with the approval of the Federal Office of Surface Mining since February 3, 1977, under the authority of our existing state law containing a general disclaimer that the permits issued were subject to all the requirements of Public Law 95-87. The Office of Surface Mining has informed the Department that all permits and operations will have to be modified immediately upon promulgation of these regulations or they will take administrative and legal action to enforce the requirements of the Federal Act with regard to all those state permits issued or approved since February 3, 1978.

The West Virginia Legislature during the regular session January, 1978 recognized the dilemma that the coal industry and the Department of Natural Resources faced in West Virginia. Accordingly, Senate Bill 448 was passed on March 11, 1978, effective from passage, along with an increased appropriation in the budget bill giving the Department a mandate to move immediately toward compliance with the Federal Act. Senate Bill 448 expanded the rule-making authority of the Department to accomplish this goal. This was a unique expression of the emergency by the Legislature in that it departed from its normal procedure of passing new law to accomplish the above result. It was expressed that expanded rule-making authority would be the most expedient means of compliance under the circumstances. It is also important to note that Senate Bill 448 specifically provided for regulation of surface effects of deep mines as well as the regulation of the surface mining industry.

The Honorable A. James Manchin
August 14, 1978
Page Three

The Federal Act provides for an interim program ending June 3, 1980, with a permanent program of regulation to follow after this date. The federal permanent regulations have not been available to the states. These regulations, when available, in the next three months will require the complete revision of the reclamation law (Chapter 20, Article 6, et. seq.) and accordingly a complete revision of these proposed regulations. Work on revisions of our state law and regulations for the permanent program must therefore begin in the next few months under the circumstances as they exist at this time.

Moreover, the interim federal program provides for monetary grants to the states to help develop and expand the regulatory program to enforce not only the interim program requirements, but to finance and rewrite the necessary legislation and regulations for the permanent program. Of great significance is the fact that an expanded enforcement staff can be provided by grants to West Virginia to allow for comprehensive regulation of deep mines presently numbering more than 1,300 active operations. This is an added responsibility that the Department has not heretofore had under present reclamation law. The Department is not eligible for, nor, can it receive these federal grants for program expansion until and unless these regulations are promulgated giving the Department legal authority to enforce the interim program required by the Federal Act. The program expansion, staff, equipment, training programs, etc. must begin now to realistically meet the future target date of the federal permanent program.

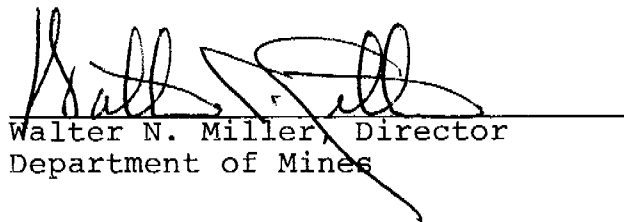
In short, we have a critical choice. We can comply with the mandate of the Federal Act which is to maintain state regulatory supremacy of the industry and receive funding to finance this effort to protect our environment or, we can surrender this authority to the Federal Office of Surface Mining and cause major disruptions of the industry during the interim program.

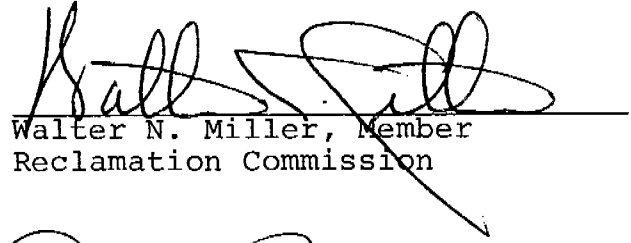
FINDINGS AND DETERMINATIONS


See nine pages attached hereto.

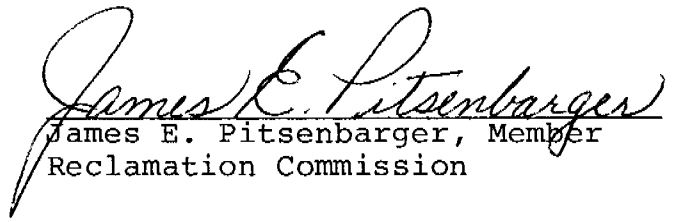

David C. Callaghan, Director
Department of Natural Resources


David C. Callaghan, Chairman
Reclamation Commission


Walter N. Miller, Director
Department of Mines


Walter N. Miller, Member
Reclamation Commission


David Robinson, Member
Reclamation Commission


James E. Pitsenbarger, Member
Reclamation Commission