



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, David C. Callaghan, Chairman,
Title or Position

Reclamation Commission, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- proposed rules and regulations superseding rules and regulations already on file;
- notice of hearing;
- findings and determinations;
- rules and regulations; or
- other - specify (Declaration of Emergency)).

This filing pertains to

Chapter 20
Article 6
Series VII
Section 1-9 and 11-16 and Ch. 1-21
Page No. 1-238; 277-298 and 1-302

- proposed rules and regulations are required to go to Legislative Rule Making Committee;
- proposed rules and regulations are excluded from Legislative Rule Making Committee;

April 21, 1981
Date Submitted

Signature of Person Authorizing
this Filing

FILED IN THE OFFICE OF
SECRETARY OF STATE
THIS DATE 4/21/81



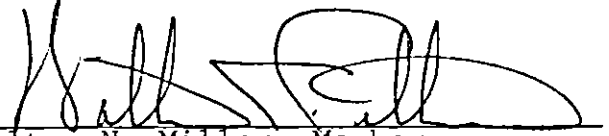
David C. Callaghan, Director
Department of Natural Resources



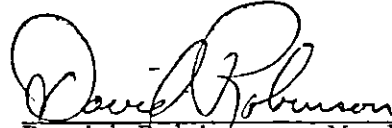
David C. Callaghan, Chairman
Reclamation Commission



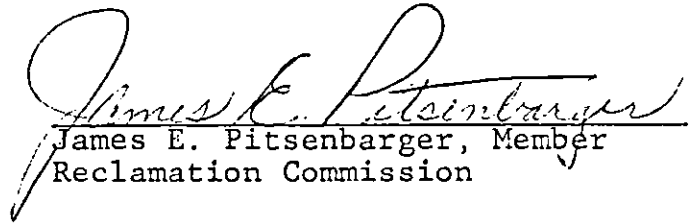
Walter N. Miller, Director
Department of Mines



Walter N. Miller, Member
Reclamation Commission



David Robinson, Member
Reclamation Commission



James E. Pitsenbarger, Member
Reclamation Commission

DECLARATION OF EMERGENCY

Pursuant to Chapter 29A, Article 3, Section 14 of the Code of West Virginia, 1977, as amended, the Reclamation Commission hereby promulgates the attached regulations on an emergency basis and makes the following "Statement of Facts and Circumstances Constituting the Emergency".

The United States Congress, in passing the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), mandated that all coal producing states, with the approval of the Secretary of the United States Department of the Interior, adopt and implement a state program regulating the environmental effects of all coal mining operations in conformity with the mandates of P.L. 95-87 and regulations promulgated by the Secretary of the Interior or, in the alternative, if a state was unable to adopt such a program, Congress mandated the Secretary of the Interior to preempt state regulation of coal mining operations through the establishment of a federal program in such state. The 1980 session of the West Virginia Legislature recognized the necessity from both an economic and environmental standpoint that regulation of West Virginia's coal mine industry was best left to the West Virginia Department of Natural Resources. On March 8, 1980, the Legislature passed Committee Substitute for H.B. 1529 (the state counterpart of P.L. 95-87) and made H.B. 1529 effective after approval of the Secretary of the Interior upon proclamation of the Governor.

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The Secretary of the Interior, on January 15, 1981, approved the program submitted by the West Virginia Department of Natural Resources to comply with the mandates of P.L. 95-87. On January 19, 1981, Governor John D. Rockefeller IV declared H.B. 1529 effective. The regulations which accompany this emergency declaration were enacted into law on an emergency basis on January 19, 1981, thereby insuring the State of West Virginia primacy over its surface and underground coal mining industry as desired by the West Virginia Legislature.

In accordance with P.L. 95-87, the West Virginia Department of Natural Resources could not legally continue to issue any new permits or continue to regulate coal mining under H.B. 1529 unless rules and regulations were promulgated pursuant thereto were also fully enacted as law. P.L. 95-87 requires that states with primacy have the necessary legal authority at all times to issue permits and require compliance with federal law and regulations. This can only be done in West Virginia if both H.B. 1529 and these rules and regulations remain effective. The inability of the State of West Virginia to issue new permits after April 20, 1981, seriously jeopardizes the economic stability of this State and that of the Nation as a whole. The inability of this State to issue permits after April 20, 1981, would result in further future economic losses.

On the other hand, the inability of the State of West Virginia to regulate the environmental effects of its coal industry after April 20, 1981, could have serious consequences upon public health and the safety and general welfare of the citizens and environment of the State of West Virginia as found by the State Legislature in West Virginia Code 20-6-1.

In the event that the State of West Virginia would not have adequate legal authority to regulate its mining industry in compliance with P.L. 95-87, federal law mandates that the federal government preempt and assume present Department of Natural Resources' functions. The federal Office of Surface Mining is not equipped to regulate West Virginia's coal industry or to protect West Virginia's environment in the manner heretofore accomplished by the West Virginia Department of Natural Resources.

Without an emergency declaration which immediately promulgates these rules and regulations, the State of West Virginia will be disqualified from receiving approximately 30 million dollars in funds which are earmarked to reclaim areas of land in this State that were affected by past coal mining operations and left in an abandoned or unreclaimed state on or before August 3, 1977. The Department of Natural Resources has already targeted 40 priority projects which will be eligible for funding and have already begun preparatory work on some of these projects. Were the State unable to promulgate these regulations today, given the present rate of inflation, the 30 million dollars available to it would accomplish less in the future than it could now. The inability of the State to remain eligible for these funds serves no one's purpose.

Furthermore, the inability of the State of West Virginia to retain primacy under P.L. 95-87 would serve to defeat the declared intentions of both the Congress of the United States and the Legislature of the State of West Virginia. Both recognized that regulation of the coal mining industry was best left to the individual states. As Section 101(f) of P.L. 95-87 and West Virginia Code 20-6-2(a) clearly demonstrate,

state governments should be and are best able to tailor regulatory programs to satisfy the needs of industry within their borders. Thus, this emergency promulgation is in total accord with the express intent of both federal and state governments.

Finally, the Legislative Rule Making Committee, the Committee vested by law with the responsibility of approving these regulations has only met once since these regulations were originally promulgated on January 19, 1981. At that one meeting, an organizational meeting, the Committee did not review any regulations. Since the first formal meeting of the Committee will not take place until mid-May 1981, the Reclamation Commission has no alternative but to repromulgate these regulations on an emergency basis.

WEST VIRGINIA SURFACE MINING RECLAMATION REGULATIONS

Department of Natural Resources

Chapter 20-6
Series VIII
(1981)

Subject: Rules and regulations pertaining to definitions, general permit requirements, transportation facilities, drainage systems, blasting, post mining land use, fish and wildlife considerations, revegetation, prime farmlands, bonding, prospecting, additional permit requirements and performance standards for surface mining operations, additional permit requirements and performance standards for surface effects of underground mining operations, subsidence control, additional permit requirements and performance standards for facilities incidental to coal mining, additional permit requirements and performance standards for coal removal incidental to development, exemptions, small operators assistance program, notice of citizens' suits, citizens' inspections, designation of areas unsuitable for coal mining, inspections, enforcement, open meetings and Reclamation Board of Review appeals.

SECTION 1. GENERAL

1.01. Scope - These regulations establish general and specific rules for general permit requirements, transportation facilities, drainage systems, blasting, post mining land use, fish and wildlife considerations, revegetation, prime farmlands, bonding, prospecting, additional permit requirements and performance standards for surface mining operations, additional permit requirements and performance standards for surface effects of underground mining operations, subsidence control, additional permit requirements and performance standards for facilities incidental to coal mining, additional permit requirements and performance standards for coal removal incidental to development, exemptions, small operators assistance program, notice of citizens' suits, citizens' inspections, designation of areas unsuitable for coal mining, inspections, enforcement, open meetings and Reclamation Board of Review appeals.

1.02. Applicability - These rules and regulations:

(a) Apply to any prospecting which is required by the Act to submit a notice of intent to prospect or obtain approval to prospect over two hundred and fifty (250) tons of coal after March 20, 1981;

(b) Apply to any surface mining permit, incidental permit or special permit obtained pursuant to this Act after January 18, 1981;

(c) With the exception of Sections 2, 3A.02, 11, 12, 14, 15, and 16, do not apply to any existing incidental mining, surface mining, or existing underground mining operation until after the appropriate date specified in Section 42 of the Act; and

(d) Do not repeal any rules or regulations promulgated pursuant to the provisions of Chapter Sixty-three, acts of the Legislature, regular session, one thousand nine hundred seventy-nine which continue to govern those operations listed in Subsection (c) above until after the applicable date specified in Section 42 of the Act.

1.03. Authority - These regulations are issued under the authority of Article 6, Chapter 20, Code of West Virginia, as amended.

1.04. Effective Date - These regulations were promulgated on the 21st day of April, 1981.

1.05. Filing Date - These regulations were filed in the Office of the Secretary of State on the 21st day of April, 1981.