



Office of Mining & Reclamation
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West Virginia Division of Environmental Protection

Cecil H. Underwood
Governor

Michael C. Castle
Director

6 December 1999

Mr. Clyde Brill
304 Prospect Drive, SW
Leesburg, VA 20175-3520

CERTIFIED MAIL # Z-373-991-719

Dear Mr. Brill:

The mining of coal and certain other minerals is a regulated activity in West Virginia. Your surface disturbance activity at the intersection of Cacapon River Road and Hooks Mill Road in Hampshire County, West Virginia may fall under the legal definition of surface mining, and therefore could be a regulated activity under the law. In an attempt to expeditiously and correctly determine if your activity will be legally defined as mining, I am requesting your cooperation and immediate written input into the process before initiating further enforcement procedures.

Chapter 22, Article 4 of the Code of West Virginia is titled "Surface Mining and Reclamation of Minerals Other than Coal". This Article along with Title 38, Series 2B of the Legislative Rules titled "Regulations for Mining and Reclamation of Minerals Other than Coal" govern the mining of non-coal minerals in the State of West Virginia. Under the supervision of the Director, the Office of Mining and Reclamation (OMR) of the West Virginia Division of Environmental Protection (WVDEP) is charged by state law to administer and enforce Chapter 22, Article 4 (22-4) and is vested with jurisdiction over all aspects of surface mining and with jurisdiction and control over land, water, and soil aspects pertaining to surface mining operations, and the restoration and reclamation of lands surface mined and affected thereby. Simply stated, the agency mission can be thought of as attempting to provide a level playing field for the competitors in the mining industry while protecting the environment and the safety, welfare, and property of the citizenry.

WHEREAS: 22-4-2(e) " '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."

WHEREAS: 22-4-2(g) " 'Operator' means any individual, partnership, firm, association, trust or corporation who or which is granted or should obtain a permit to engage in any activity covered by this article." emphasis added

WHEREAS: 22-4-2(k) " 'Surface Mining' means all activity for the recovery of minerals, and all plants and equipment used in processing said minerals: Provided that the bonding and reclamation provisions of this Article do not apply to surface mining of limestone, sandstone and sand: Provided, however, that the surface mining of limestone, sandstone and sand is subject to separate rules to be promulgated by the Director." emphasis added

WHEREAS: 22-4-6 "It is unlawful for any person to engage in surface mining without having first obtained from the Division of Environmental Protection a permit therefor as provided in this section. ..." emphasis added

WHEREAS: 22-4-17 " Any provision of this Article to the contrary notwithstanding, a person or operator is not subject to any duty or requirement whatever with respect to reclamation requirements when engaged in the removal of borrow and fill material for grading in Federal and State highway construction projects: Provided , that the provisions of the highway construction contract require the furnishing of a suitable bond which provides for reclamation wherever practicable of the area affected by such recovery activity." emphasis added

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



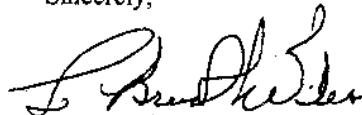
West Virginia
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Your activity in Hampshire County, may fall under the jurisdiction of Chapter 22, Article 4 in that you are surface mining a material defined in law as a mineral other than coal. The legislature has found that unregulated surface mining causes soil erosion; pyritic shales and materials; landslides; noxious materials; stream pollution and accumulation of stagnant water; increases the likelihood of floods and slides; destroys the value of some lands for agricultural purposes and some lands for recreational purposes; destroys aesthetic values; counteracts efforts for the conservation of soil, water, and other natural resources; and destroys or impairs the health, safety, welfare, and property rights of the citizens of West Virginia.

THEREFORE: You are hereby requested to submit in writing a satisfactory demonstration with proper and convincing documentation to the Director that this operation is not subject to the requirements of Chapter 22, Article 4, OR obtain a permit as required by Chapter 22, Article 4, OR cease and desist operations and stabilize and reclaim the disturbance in accordance with Chapter 22, Article 4. Your written response will be expected in this office within two (2) weeks of the date of this letter. Your response will be considered by this agency before initiating further action. In essence, this is your opportunity to provide input into this investigation and to influence further actions by this agency.

If you should have further questions, please feel free to contact Environmental Inspector Charles Combs, Environmental Specialist Scott Brand, or myself through this office at 304-457-3219.

Sincerely,



L. Brent Wiles
Environmental Supervisor

CC: Harold M. Parsons, Jr., Assist. Chief, Northern Operations
Scott Brand, Specialist
Charles Combs, Inspector