

SUBJECT: Exemptions

DATE: November 1, 2001 – Revised 09-01-06

Legal Authority: 22-4-3(13), 22-4-3(20), and 22-4-29

Breaking of the ground surface in order to facilitate the extraction of regulated minerals and any activity constituting all or part of a process for mineral extraction or removal from their original location requires a quarry permit from the DEP unless the activity meets the qualifications for an exemption under 22-4-29. The quarry permit must include adjacent areas ancillary to the operation, including preparation and processing activities, storage areas and haulage ways, roads and trails. The term “quarrying” does not apply to manufacturing operations, including those operations adjacent to the permitted area where manufacturing is conducted [22-4-3(20)].

Exemptions include:

- Highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair and maintenance of the public roads system or other public facilities by West Virginia Department of Transportation or other legally constituted public governing entity (or their contractors) that have adopted reclamation standards applying to the activities.
- Quarrying on Federal lands when performed under a valid permit from the appropriate Federal agency.
- Operations engaged ONLY in the crushing, sizing, screening or washing of minerals.
- Excavation or grading conducted SOLELY in aid of ON-SITE farming or ON-SITE construction for purposes other than quarrying.
- Prospecting of a natural deposit if no minerals are sold, processed for sale or consumed in the regular operation of business.
- Handling, processing or storage of minerals on the premises of a manufacturer as a part of any manufacturing process that requires minerals as raw materials..
- Removal or deposit of backfill material associated with construction, farming and non-commercial activities.
- NONCOMMERCIAL quarry operations by a LANDOWNER if the disturbed area is less than one acre and the owner gives notice to the director of his or her intent to establish the quarry.



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
 DIVISION OF ENVIRONMENTAL PROTECTION

10 McJunkin Road
 Nitro, WV 25143-2596

MEMORANDUM

Gaston Caperton
 Governor
 John M. Ranson
 Cabinet Secretary

RECEIVED
 Oak Hill OMR

OCT 11 1994

Inspection & Enforcement

David C. Callaghan
 Director
 Laidley Eli McCoy
 Deputy Director

To: Rocky Parsons
 Ed Griffith

From: Rick Clark *r.a.c.*

Date: October 6, 1994

Re: DEP/DOH Agreement

Attached you will find a copy of an agreement between the Division of Environmental Protection and the Division of Highways relating to borrow areas for highway projects located outside of the DOH right-of-way. This agreement outlines the conditions which must be met in order to exempt these operations from the requirement to obtain a quarry permit from this agency.

As part of this agreement, the DEP will be notified of all borrow areas located outside of the DOH right-of-way and included under the DOH project contract by receiving a copy of the attached notification form (Attachment A). For each project this form will be submitted twice: first, with the top portion completed, and once again with the entire form filled out after the project has been completed. The Nitro office will receive these completed forms and then forward a copy to either one of you so that you can notify the appropriate regional office of this activity. The purpose of this notification is to advise the DEP of the location of these exempted borrow areas so as to eliminate any confusion surrounding possible citizen's complaints or questions regarding possible illegal mining operations.

Please ensure that your staff is made aware of this agreement and call me if you should have any questions regarding this matter.

RAC/srw

cc: John Ailes
 Jeff McCormick
 Charlie Sturey

AGREEMENT

THIS AGREEMENT, executed in triplicate, made and entered into this 29th day of September, 1994, at Charleston, West Virginia, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter referred to as "DOH," party of the first part, and the Department of Commerce, Labor and Environmental Resources, Division of Environmental Protection, a state agency, hereinafter referred to as "DEP," party of the second part.

WHEREAS, DOH, as an agency of the state of West Virginia duly established and empowered under the provisions of Chapter 17 of the Official Code of West Virginia, 1931, as amended, among other things, to construct operate and maintain state roads; and

WHEREAS, DEP, as an agency of the state of West Virginia duly established and empowered under the provisions of Chapter 22 of the Official Code of West Virginia, 1931, as amended, among other things, to regulate surface mining in this state and, more specifically, surface mining and the reclamation of minerals other than coal

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: that for and in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

I. The DEP agrees that the creation of borrow areas outside of the DOH right of way is necessary for construction of certain projects. DEP further agrees that the quarry permits as required under Section 22A-4 of the aforementioned Code need not apply so long as the conditions hereinafter set forth are adhered to:

A. The borrow site(s) must be in accordance with sections 106.2.2 and 211.3 of the DOH Standard Specifications for Roads and Bridges, Adopted 1993 and the current supplemental specifications.

B. It is understood that the DOH contract bond is a suitable bond to assure reclamation of the site(s).

C. Material from the site(s) cannot be furnished for any other public or private use.

D. Blasting, if necessary, will be done with the utmost care not to endanger life or property. The contractor shall be responsible for any and all damage resulting from the use of explosives.

E. The DOH will notify (utilizing the form in Attachment A) DEP of all borrow sites outside their right of way.

F. DEP agrees that sites upon which notification has been received shall be controlled by DOH to assure that the terms of this agreement are met.

G. This agreement may be cancelled at any time by either of the parties hereto upon written notice of the other party.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

ATTEST:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS

Patricia Crookshanks
Title: *Executive Secretary*

Paul Van Der
Commissioner
State Highway Engineer

ATTEST:

DIVISION OF ENVIRONMENTAL PROTECTION

[Signature]
Title: *[Illegible]*

[Signature]
Title: *Director*

(To be executed in triplicate)

Distribution: Master File
Roadway Design Division
Town

APPROVED AS TO FORM THIS
12th DAY OF *September* 19 *94*
Frank S. Curcio
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MINING AND RECLAMATION

***QUARTERLY PRODUCTION REPORT OF QUARRY
WITH INCIDENTAL COAL REMOVAL***

COMPANY NAME: _____
PERMIT NUMBER: _____

QUARTER REPORT FOR: _____, 20__
(Quarter ending)

TONNAGE

Coal Produced and Sold: _____

Coal Stockpiled on Site: _____

Total Tons of Coal Produced/Sold during quarter: _____

Minerals Quarried, and
Sold (Stone, etc...) _____

Minerals (Quarried)
Stockpiled on Site _____

Total Tons of Minerals Quarried/Sold during quarter: _____

PERCENT OF REVENUE DERIVED THIS QUARTER:

Coal: _____ Minerals Quarried: _____

Does the total coal removal exceed 16 2/3 percent of the total mineral production for the
quarter: yes no

Signature **Date**
(Principal Officer)

* **This report is to be submitted to the inspector within 10 days of the end of each
calendar quarter ending in March, June, September, and December of each year.**