

**SURFACE MINING OTHER THAN COAL**

**REPORT OF THE**

**VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

**to**

**THE GOVERNOR**

**and**

**THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH OF VIRGINIA  
*Department of Purchases and Supply*  
Richmond  
1967



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## SURFACE MINING OTHER THAN COAL

### REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, November 27, 1967

To:

HONORABLE MILLS E. GODWIN, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

The 1964 General Assembly in House Joint Resolution No. 52 directed the Virginia Advisory Legislative Council to make a study of the problems associated with surface mining with a view to determining the need for laws requiring restoration of surface mined areas and to control surface mining operations in such a way as to minimize their harmful effects on the future use of mined areas. At the conclusion of its study, the VALC in its report recommended legislation requiring strip mining operators of coal to obtain a permit to engage in such operations and as a condition precedent to the issuance of such a permit, the operator was required to file a plan of reclamation for the strip mined areas to be approved by the Director of the Department of Conservation and Economic Development. A bond to guarantee the reclamation as proposed and approved was required. The 1966 General Assembly enacted this recommended legislation for coal strip mining operations in Chapter 15 of Title 45.1.

At the conclusion of its report to the 1966 General Assembly the Virginia Advisory Legislative Council stated as follows: "Because the study of surface coal mining operations was so extensive and necessitated considerable time, sufficient information could not be gathered on problems arising from stone quarries, gravel pits and surface mining operations other than coal. These forms of surface mining create separate problems which merit the undivided attention of the Council. A thorough examination of the mining practices and techniques of these industries will be necessary before intelligent conclusions can be reached on what legislation, if any, is needed to solve soil erosion and siltation problems arising therefrom. Also included is the unnecessary destruction of the State's scenic beauty. Such a study will be quite an extensive one and we believe should be undertaken immediately."

Following this recommendation, the 1966 General Assembly adopted H.J.R. No. 31 as follows:

#### HOUSE JOINT RESOLUTION NO. 31

*Directing the Virginia Advisory Legislative Council to continue its study of surface mining operations.*

Whereas, the Virginia Advisory Legislative Council made a study of surface mining in Virginia and in its report pointed out that because of the limitation of time its study was restricted to surface mining of coal operations and it did not consider other types of surface mining which require further study and consideration; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of all forms of surface mining other than strip coal mining, with a view to determining the need for laws requiring restoration of mined areas and control of mining operations in such a way as to minimize their harmful effects on the future use of such areas. The Council shall conclude its study and report its findings to the Governor and the General Assembly not later than October one, nineteen hundred sixty-seven.

The Council selected Samuel E. Pope, Drewryville, member of the House of Delegates and of the Council, to be Chairman of the Committee to make the initial study and report to the Council. The following were selected by Mr. Pope to serve as members of the Committee for this purpose: D. Woodrow Bird, member of the Senate of Virginia, Bland; Samuel D. Broadhurst, Industrial Development, Norfolk and Western Railway Company, Roanoke; Russell M. Carneal, member of the House of Delegates, Williamsburg; J. V. Clarke, Director of Operations, State Department of Highways, Richmond; George W. Dean, State Forester, Charlottesville; Lyman C. Harrell, Jr., member of the House of Delegates, Emporia; Thomas C. Johnstone, executive, Krauser Company, Arlington; Lawrence D. Langley, Chesapeake and Potomac Telephone Company, Arlington; C. S. Luck, III, President, Luck Quarries, Richmond; and W. A. Pennington, member of the House of Delegates, Buckingham.

At the organizational meeting of the Committee, Senator D. Woodrow Bird was elected Vice-Chairman. G. M. Lapsley and Frank R. Dunham served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee made a thorough study of all surface mining activities other than coal strip mining throughout the State including on-site inspections of mines located in the Richmond area and from Roanoke to Pulaski. These inspections were held at the time of and in conjunction with public hearings in Richmond and Pulaski. Several surface mining operators, including a representative of the Virginia Association of Crushed Stone, Gravel and Sand Producers, Inc. and a representative of the Virginia Brick Association, Inc. appeared and gave the Committee an insight into the status of operation of surface mines in the Commonwealth.

During the course of this study, Governor Godwin, by a letter dated December 21, 1966 requested this Committee to consider the advisability of the adoption of the Interstate Mining Compact and make a report to the Council. Governor Godwin's letter is as follows:

To: The Honorable G. M. Lapsley  
Director  
Division of Statutory Research  
and Drafting

Dear Mac:

It is my understanding a VALC Committee is now studying the desirability of revising our strip mining statutes.

I feel it appropriate that the committee give some consideration to the Interstate Mining Compact developed by a committee of the Council of State Governments.

Enclosed is a copy of a resolution adopted at the Southern Governors' Conference, along with copies of the Compact. Will you please see that these are made available to members of the VALC Committee.

Sincerely,

/s/ Mills E. Godwin, Jr.

The Interstate Mining Compact was developed by the Committee of State Officials on suggested State Legislation of the Council of State Governments and recommended for consideration and adoption by the several states in a resolution of the Southern Governors' Conference, September, 1966.

The Committee considered this Compact and invited Dr. Mitchell Wendell, Attorney for the Council of State Governments, Washington, D. C. to appear before it and discuss the background and purposes of the Compact. Also, Marvin M. Sutherland, Director, Department of Conservation and Economic Development, discussed the Compact with the Committee.

The Committee thoroughly considered the matters referred to it and made its report to the Council. The Council, after a careful study of the Committee's report makes the following recommendations :

#### *Recommendations*

1. That legislation be enacted requiring all surface mining operators other than coal strip mining operators to obtain a permit from the Division of Mines before engaging in such operations. Before such permit is issued a plan of operation must be approved by the Director of the Department of Conservation and Economic Development and bond of \$50 must be posted for each acre of land to be disturbed by any operation.
2. That the Chief may waive the provisions in the event a city, town or county in which such operation is being conducted has a local zoning ordinance as strict or stricter than the State law.
3. That an appropriation of \$100,000 a year be made to the Department of Conservation and Economic Development for carrying out the purposes of this proposed legislation.
4. That for the present, Virginia take no action regarding the Interstate Mining Compact, awaiting the results of the legislation proposed herein and the action of other neighboring states in joining the Compact.

#### *Surface Mining Operations, Other than Coal*

An insight into surface mining operations is obtained from an article by R. F. Pharr, former staff member of the Virginia Division of Mineral Resources. The article is entitled "Reclamation of Depleted Sand and Gravel Sites in Eastern Virginia" and appeared in the *Virginia Mineral*, August, 1967. This article in part, states as follows:

"Sand and gravel are basic construction materials necessary to build the homes, offices, factories, highways, and other facilities required by our society. The production of sand and gravel in the United States constitutes the largest volume of any raw mineral commodity produced. In 1965, as reported by the United States Bureau of Mines, 908.1 million tons of sand and gravel were produced at a value of \$957.4 million. In volume the production of crushed stone, of which 777.7 million tons were produced in 1965, was the closest competing commodity. In value sand and gravel were exceeded only by cement, crushed stone, and fuels. Thus, it becomes apparent that as a building material sand and gravel rank among our most important mineral commodities, and that reserves are an asset to the resources of a community.

Sand and gravel are usually produced by surface-mining methods that employ power shovels, draglines, and dredges. The raw materials are

excavated on or near the surface, resulting in a lowering of the land contours or in the creation of pits that may become water filled. The materials produced are usually washed and classified in a plant at or near the extraction site, and are used directly or stockpiled for use as needed.

Because sand and gravel are low-value and bulky commodities, they are costly to transport; and it is important for producers to seek deposits close to a market. Producers, however, are being forced, by the very construction that makes their existence possible, to move operations increasingly farther from the primary market, the metropolitan area. The increased transportation costs, while borne initially by the sand and gravel producers, are inevitably reflected in higher construction costs in the community. This condition illustrates the necessity for the sand and gravel producers and community leaders to thoroughly understand one another's problems. The time is past when producers can afford to remain apart from local planning. Likewise, planning officials must understand the importance of recognizing and making available the sand and gravel resources in or near the cities. They should understand the benefits that can be received by a locality when fair and proper guidelines have been established for producers to follow. Professional planners take many variables into consideration in order to establish a working plan for the sand and gravel producers and community development. A plan that may work well for one area may not be applicable to another; the economic, legal, geologic, and social factors vary from one locality to another.

The idea expressed that localities should preserve their natural resources is very important and we believe that the localities should coordinate their programs of zoning with the preservation of the resources under the ground. Buildings are fine but once they cover a natural resource the latter cannot become available.

In the production of brick, no deep indentations are made in the earth but wide areas of land are involved to extract the clay deposits approximately 20 to 30 feet deep. Brick operations usually last a long time and the problems from abandonment do not arise as often as in quarrying.

Old abandoned quarry sites, as well as abandoned gravel and borrow pits create a problem. In these instances the landowner has been compensated for the extracted stone and the producer has moved on. Often ugly holes are left in the earth and the dirt extracted for the excavation is left on the hillside to create erosion and siltation. It is where wet operations have been conducted that attractive nuisances arise for children. Dry operations initially become a source of dust and may become overgrown with weeds which contribute to respiratory ailments and general discomfort in the neighborhood. All too often worked-out pits are converted into dumping grounds which provide excellent breeding places for varmints. From studies that have been done, it has been shown that in many cases, land can be reclaimed and can become a valuable asset to the community. But in order to accomplish this, plans must be developed and approved before excavation begins. Assurance must be given the government that the plans will be executed and restoration will be completed.

In California, some abandoned quarries have been filled and become subdivisions for homes. So far, no similar operation has been undertaken in Virginia. However, abandoned operations are frequently developed as recreational sites with swimming and other similar facilities.

#### *Reasons for Recommendations*

1. During the study it was generally agreed that the coal strip mining statute enacted in 1966 as Chapter 15 of Title 45.1 was working well. Representatives of the Department of Conservation and Economic Development stated that the operators seemed pleased with the workings of the



statute and that the Department itself had had little or no difficulty in administering it. Thus, the proposed legislation closely follows that of the coal strip mining industry and actually is a mere adaptation of Chapter 15 of Title 45.1 to other forms of surface mining. Because coal strip mining is unique, it was decided to insert this proposed legislation in a new chapter and keep its provisions, although similar, separate from those of the coal mining industry.

The proposed legislation requires the issuance of a permit from the Division of Mines of the Department of Labor and Industry before any surface mining operation can be undertaken after July 1, 1969. The legislation applies both to new operations and to operations already underway. The Division of Mines was selected as the issuing agency because it is conversant with mining operations and can best deal with mining interests and their problems. The Division also issues permits for the coal mining industry. In addition to the issuance of these permits the Division will, of course, continue to enforce safety regulations and generally oversee extraction of minerals.

The Department of Conservation and Economic Development is the State agency charged with, among other things, conservation of the State's natural resources. Also, it supervises the reclamation of the strip coal mining areas. To add the duty of overseeing other surface mining operations, will necessitate only the addition of personnel.

When a mining permit is applied for the operator must submit a plan of operation covering the land to be disturbed by such mining. His plan must be approved by the Director of the Department of Conservation and Economic Development before the issuance of a permit. If such plans are disapproved, the Department will issue directions for amendment to the plan of operation so as to make it acceptable to the Department. The operator must agree to the plans as amended by the Department to obtain a mining permit. The plan should be approved before mining is begun to insure that the work will be done according to the rules and regulations of the Department. Uniformity will be created and in addition, the operator will be advised of the job he has to perform prior to the time the mining operation is undertaken. Of course, in most cases, reclamation can be performed more expeditiously and economically while the mining operations are in progress.

To guarantee the performance of the required work, a bond of \$50 per acre is to be filed. The bond may be a surety bond or other security acceptable to the Chief. If the operator performs the reclamation work in a manner acceptable to the Department at his own expense his bond will be refunded. If on the other hand, the work is not performed or is performed unsatisfactorily, or the operator neglects or refuses to complete it satisfactorily, the bond covering each acre of land affected would be forfeited and the amount will revert to the State to defray the cost of reclamation by the Department or someone under its direction.

Once a year the operator will be required to file with the Department a complete report of the reclamation work performed. Based on this report the Department will inspect the operation to determine the status and if the operation is going according to the plan, the permit will be renewed. The requirement of an annual report is to enable the Department to keep a current check on reclamation and to remedy any defects as they may arise.

If the operator fails to complete satisfactorily the reclamation work his bond will be forfeited and the Department is charged with the responsibility of performing the reclamation. The Department was vested with

the discretion to either perform the work itself or contract with other State agencies or private enterprises to conduct such. In every case the Department will supervise the work.

Because of the immediate and pressing need to halt soil erosion and siltation coming from un revegetated and unreforested land, it was thought advisable to bring all existing mine licenses under which surface mining operations are being conducted under the present statute. The date July 1, 1969 was suggested by the Director of the Department of Conservation and Economic Development. He stated that it would take approximately a year to assemble a staff, inventory the mining operations in the State and survey the condition of the land. Presently he estimates some 500 additional mining operations will come under the supervision of his Department. However, this is only an estimate and there is no available federal or State inventory of mining operations to which he can refer for a more accurate estimate. He stated the Department would have to make a complete on-site investigation of the mining operations to determine not only the number of operations but the status of the land involved.

The appeal provisions from the rulings of the Director or the Chief are similar to those of the coal strip mining bill. A separate board of review has been created from which an appeal or appeals from orders of the Director or Chief must first be taken before resorting to the courts. We suggest the creation of a Board of Review separate from that of the Coal Strip Mining Act because the industries involved under our proposed bill are different from the coal strip mining operation. The Board of Reclamation Review created under proposed § 45.1-195 will be composed of the Director of the Department of Conservation and Economic Development and of two other members to be appointed by the Governor, one of whom shall be a surface mining operator engaged in such operation for five years and the other a property owner or an executive corporate officer whose company owns land upon which surface mining operations have been or are being conducted. We believe this Board will have the interest of all parties concerned and will be well suited to handle any problems that will arise. From this Board appeals will then lie to the circuit court of the county in which the land involved is located.

We would like to explain the reason for the exemption from the provisions of the proposed bill in § 45.1-180(a) of any operation conducted solely and exclusively for a State project and which is subject by contract to the control and supervision of a State agency. The major industry exempted will be borrow pit operations conducted for State Highway projects because such projects are under the supervision of the State Highway Department and the federal government. We were reluctant to require an additional permit and regulation of such operators. We have been assured by the State Highway Department that the specifications governing borrow pit operations in highway contracts will equal if not surpass those in the proposed bill. We also believe that other State agencies conducting surface mining operations will adhere to the provisions of this act and thus prevent any duplication of State supervision and control. Thus, for these reasons the exemption was inserted in the proposed bill.

A final and perhaps the most important question arising from these proposals is the cost of administering the program.

As stated, the Department of Conservation and Economic Development estimates that approximately 500 separate mining operations will be covered under the proposed bill. The only analogy for cost which can be used is the coal strip mining reclamation program for which \$41,300 will be required during 1968-69 and \$43,565 for 1969-70. This program in-

volves approximately one hundred mining operations. Based on this figure it might be assumed that five hundred mining operations would require five times this amount. However, the Department estimates an annual operating budget of \$100,000 per year as follows:

5 Reclamation Inspectors	@	\$7,032	\$ 35,160
2 Area Supervisors	@	8,040	16,080
2 Clerk-Stenographers C	@	4,320	8,640
Total Salaries			\$ 59,880
Travel for 7 employees	@	4,200	29,400
Office rent			1,800
Communications			3,600
Supplies			2,400
Miscellaneous expenses			2,920
Total Recurring Expenses			\$100,000

Perhaps \$100,000 may seem to be a large sum of money to invest in this program. However, the tremendous growth in the population of the United States and of the State of Virginia makes it imperative that land be conserved and that erosion and siltation be controlled. It is further hoped that because of this legislation the localities will adopt zoning regulations which will enable the State to ease its control over the program. It is definitely the responsibility of the localities, but in surveying the field only three counties seem to have passed stringent zoning ordinances to control surface mining operations. Thus, the expenditure of \$100,000 by the State to conserve perhaps \$100,000,000 or more worth of land would seem to be a good investment.

#### Conclusion

The Council is deeply appreciative of the time and thought given to this matter by the Committee. The detailed and thoughtful report given by them was a major contribution to the recommendations made. In addition, we wish to thank the various individuals and organizations who took the time to express their opinions and supply vital data and information concerning the surface mining industry, which gave a clearer insight into the matter under study.

A bill to carry out the recommendations in this report is attached.

Respectfully submitted,

Tom Frost, *Chairman*

Charles R. Fenwick, *Vice-Chairman*

C. W. Cleaton

John Warren Cooke

John H. Daniel

J. D. Hagood

Charles K. Hutchens

J. C. Hutcheson

Garnett S. Moore

Lewis A. McMurrin, Jr.

Sam E. Pope

Arthur H. Richardson

William F. Stone

Edward E. Willey

*A BILL to amend the Code of Virginia by adding in Title 45.1 a chapter numbered 16 consisting of sections numbered 45.1-180 through 45.1-197, requiring licenses for certain surface mining operations and fixing conditions for issuance thereof; providing that certain reclamation be performed or contracted for by the Department of Conservation and Economic Development under certain circumstances; creating a Board of Surface Mining Review and providing for appeals from rulings of such board; providing penalties for violations; to create a special fund for reclamation purposes and to provide for expenditures therefrom, and to appropriate funds to carry out the provisions hereof.*

Be it enacted by the General Assembly of Virginia :

1. That the Code of Virginia be amended by adding in Title 45.1 a chapter numbered 16 consisting of sections numbered 45.1-180 through 45.1-197, as follows :

§ 45.1-180. The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning :

(a) Mining—means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals, ores, rock or other solid matter; any activity constituting all or part of a process for the extraction or removal of minerals, ores, rock or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Nothing herein shall apply to strip mining of coal or to any mining or borrow pit operation conducted solely and exclusively for a State project and which is subject by contract to the control and supervision of a State agency.

(b) Disturbed land—The areas from which overburden has been removed in any mining operation, plus the area covered by the spoil, plus any areas used in such mining operation which by virtue of their use are susceptible to excess erosion. Access roads constructed as fire breaks whose purpose is primarily for fire fighting are excluded from this definition, but the banks thereof are included.

(c) Overburden—All of the earth and other material which lie above a natural deposit of minerals, ores, rock or other solid matter and also other materials after removal from their natural deposit in the process of mining.

(d) Spoil bank—A deposit of removed overburden.

(e) Operator—Any individual, group of individuals, corporation, partnership, business trust, association or any legal entity which is engaged in mining and which disturbs more than one-quarter acre of land or removes, or intends to remove, more than one hundred tons of minerals, ores or other solid matter in any twelve month period from any such land by such mining operation.

(f) Director—The Director of the Department of Conservation and Economic Development.

(g) Department—The Department of Conservation and Economic Development.

(h) Division—The Division of Mines of the Department of Labor and Industry.

(i) Chief—The Chief of the Division of Mines.

(j) Mining operation—Any area included in an approved plan of operation.

§ 45.1-181. It shall be unlawful for any person or operator to engage in any mining operation in this State, without having first obtained from the Division a permit to engage in such operation and paying a fee therefor of six dollars per acre for every acre proposed to be disturbed, not to exceed the total sum of one hundred fifty dollars, which shall be deposited in the State Treasury in a special fund to be used by the Director in performing reclamations under the provisions of this act. Such permits shall not be transferable. A permit shall be obtained prior to the starting of any mining operation. A permit shall continue to be in effect upon payment of an annual fee of \$5 within 10 days of the anniversary date of the permit and, if, after inspection, the Director is satisfied that the operation is proceeding according to the plan submitted to and approved by him. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the Director in the same manner as an original plan and shall be subject to the provisions of §§ 45.1-182 and 45.1-183 hereof. A separate permit must be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the Chief and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the Chief, shall contain the following information: (1) the common name and geologic title, where applicable, of the mineral, ore or other solid matter to be extracted; (2) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (3) the name and address of the owner or owners of the surface of the land; (4) the name and address of the owner or owners of the mineral, ore or other solid matter; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) the total number of acres of land to be covered by the permit; (7) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (8) whether any mining permits of any type are now held by the applicant and the number thereof; (9) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (10) if known, whether applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a mining permit of any type issued under the laws of this or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited.

The application for a permit shall be accompanied by two copies of an accurate map or plan and meeting the following requirements:

- (a) Be prepared by a licensed engineer or licensed land surveyor;
- (b) Identify the area to correspond with the land described in the application;
- (c) Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within a hundred feet of any part of the affected area;
- (d) Be drawn to a scale of four hundred feet to the inch or better;
- (e) Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within five hundred feet of such area;
- (f) Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected.
- (g) Show the date on which the map was prepared, the North arrow and the quadrangle name;
- (h) Show the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

No permit shall be issued by the Division until it has received approval in writing from the Department of the plan of operation required in § 45.1-182 and the bond from the applicant as required in § 45.1-183.

§ 45.1-182. At the time of filing an application for a permit, each operator shall file with the Division a plan of operation for the mining operations for which a permit is sought. The plan shall then be submitted to the Director on a form to be prescribed by the Director and shall contain such information as the Director may require. The plan shall contain among other things an agreement by the operator to provide for the following in a manner satisfactory to the Director:

- (1) Removal of metal, lumber and other debris resulting from mining operations.
- (2) Regrading of the area in a manner to be established by rules and regulations of the Director.
- (3) Grading the surface in such a manner as to preserve existent access truck roads and truck roads on and along the bench, and grading the surface on areas where truck roads do not exist in such a manner that serviceable truck roads may be constructed with minimum cost by persons other than the operator for the purposes of forest fire control or recreation.
- (4) Grading loose soil, refuse and other debris on the bottom of the last cut so as to reduce the piles of such material in accordance with good conservation practices.
- (5) Planting trees, shrubs, grasses or other plants upon the parts of such area where revegetation is practicable.
- (6) Where the operator elects to impound water to provide lakes or ponds for wildlife, recreational or water supply purposes, such operator shall file a formal request with the Department and obtain approval before such ponds or lakes can be created in impounding such water.

§ 45.1-183. Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the Chief payable to the Depart-

ment and conditioned that the operator shall faithfully perform all of the requirements of this act and of the plan of operation as approved and directed by the Department. The amount of bond shall be fifty dollars per acre, based upon the number of acres of land which the operator estimates will be disturbed by mining operations during the next ensuing year. The minimum amount of bond furnished shall be one thousand dollars. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this State; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the Chief.

§ 45.1-184. Upon receipt of the plan of operation and bond prescribed above, the Director shall review the plan and if it meets his approval certify this fact to the Division. If the Director disapproves the plan, he shall furnish the applicant and the Division with his written objections thereto and his required amendments. Until the applicant shall amend his plan of operation to meet the Director's objections and file a satisfactory amended plan with the Director, no permit shall be issued.

Upon receipt of the Director's approval and the required bond, the Chief shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust or corporation which has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, in which event no permit shall be issued. Except, however, if an operator who has heretofore forfeited a bond within 30 days of notice and demand by the Director pays the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or less than the cost of reclamation, such operator shall then become eligible for another permit.

§ 45.1-185. Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of fifty dollars per acre for each additional acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit for which no bond has been previously posted by him. Bond or other security previously posted shall be released for the areas disturbed in the last twelve months if reclamation work has been completed and the approval of the Director obtained in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(a) Identification of the operation; (b) the county or city in which it is located and its location with reference to the nearest public highway; (c) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (d) an accurate map or plan prepared by a licensed land surveyor or licensed engineer showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area and the methods of access to the area from the nearest public highway.

§ 45.1-186. Upon receipt of the report called for in § 45.1-185, the Director shall cause an inspection to be made of the land described in the report. If he shall approve the reclamation work completed by the operator, he shall notify the Division in writing and the Chief shall order the return of the bond or certified check to the operator.

If the Director does not approve the reclamation work, he shall notify the operator immediately in writing and advise him of what additional

steps he deems necessary to satisfactorily complete the reclamation. In such event, the operator shall have ninety days from the receipt of the Director's order to begin such additional reclamation and present satisfactory evidence to the Director that such work is in progress. The bond or other security posted by the operator for such land shall not be refunded until he has obtained the Director's approval as aforesaid, and the Director has notified the Division in writing to this effect.

If the operator does not undertake to complete the reclamation in accordance with the notification of the Director and submit evidence to the Director that such work is in progress within ninety days of such order or within such additional period of time not to exceed six months which may be granted the Director for cause shown, the Director shall request, and the Chief shall order a forfeiture of the bond or other security posted by the operator at the rate of fifty dollars per acre or part thereof for each acre of land involved; or, upon the written request of the operator, the Director shall survey the land involved and establish the cost of reclaiming such land. He shall immediately notify the operator by registered mail, who shall within 30 days of receipt of such notice deposit cash or a certified check with the Director the sum set by the Director for reclamation. Upon receipt of this sum, the Director shall have the reclamation performed with the money so received and release the operator from further liability.

In the event the operator does not post the cost of reclaiming as set by the Director or does not request him to set such amount the Chief shall certify the fact to the Attorney General who shall proceed to collect the amount thereof, which, when collected, shall be deposited in the State treasury in a special fund to be used by the Director in performing reclamation under the provisions of this act. Furthermore, following the order of forfeiture the Director shall perform such reclamation operations as he deems necessary with the resources and facilities of his Department or as provided by § 45.1-192 hereof, the cost thereof to be paid from the proceeds of the special fund above created.

§ 45.1-187. If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the Chief shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be disturbed by such operation.

§ 45.1-188. It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the State for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire to conduct other mining operations on lands disturbed by the operator furnishing bond hereunder, such owner or other person shall be in all respects subject to the provisions of this act and the Chief shall then release an equivalent amount of bonds of the operator originally furnishing bond on the disturbed area.

§ 45.1-189. Any operator holding a valid commercial mining license under which any mining operations are being conducted shall comply with the provisions hereof on or before July 1, 1969 and obtain a permit under § 45.1-182 hereof or forfeit his right to conduct mining operations under such license.

§ 45.1-190. All provisions of the mining laws of this State intended to safeguard life and property shall extend to all mining operations insofar as such laws are applicable thereto. The Chief shall have the power and



authority to promulgate reasonable rules and regulations to effectuate the purposes of this act and to protect the safety of those employed in and around surface mines. For the administration of mining laws and regulations, all mining operations shall be supervised by the Division.

§ 45.1-191. Any violation of any provision of this act or of any order of the Director or Chief shall be a misdemeanor punishable by a maximum fine of one thousand dollars or a maximum of one year in jail, or both.

§ 45.1-192. In approving plans of operation and in issuing rules and regulations for reclamation, the Director may avail himself and his Department of the advice, assistance and facilities of local soil and water conservation district supervisors or any other federal, State or local agency.

§ 45.1-193. In addition to other legal processes, the Chief or the Division or the Director or the Department may seek injunctive relief to enforce any rule, regulation, order or requirement issued.

§ 45.1-194. An appeal from any order, rule or regulation of the Department or Division shall be taken first to the Board of Surface Mining Review hereinafter created. Such appeal shall be taken within thirty days following the issuance of such order, rule or regulation. Any party desiring to appeal shall file with the Board of Surface Mining Review a notice of appeal designating the order, rule or regulation appealed from, and send a copy thereof by registered mail to the Director or the Chief issuing such.

Upon receipt thereof, the Board shall set the hearing at a place within the county where the major portion of the land involved in the order, rule or regulation appealed from is located and such hearing shall be held by the Board within sixty days from the date notice of appeal is received.

The Board shall have the power to subpoena and bring before it any person in this State or take testimony of any such person by deposition with the same fees and mileage in the same manner as prescribed by law in judicial procedure in courts of this State in civil cases. Any party to any hearing before the Board shall have the right to the attendance of witnesses in his behalf.

§ 45.1-195. There is hereby created the Board of Reclamation Review to be composed of the Director of the Department of Conservation and Economic Development and two members to be appointed by the Governor, one of whom shall be a surface mining operator who has been engaged in such operation continuously for five years preceding his appointment, and one property owner who at the time of his appointment owns land or is an executive officer of a corporation which owns land upon which surface mining operations have been or are being conducted. The appointive members shall serve for terms of four years each, except appointments to fill vacancies which shall be for unexpired terms, all of whom shall hold office at the pleasure of the Governor for their respective terms. The Board shall elect its own chairman. The members of the Board shall receive no compensation for their services but shall be entitled to receive their necessary traveling and other expenses incurred in the performance of their duties. The sole duty of the Board shall be to hear appeals from orders issued by the Department or Division under this chapter, and the procedure for determining such appeals shall be as provided by § 45.1-194.

§ 45.1-196. Any person aggrieved by any opinion issued by the Board shall have the right of appeal to the circuit court of the county in which the land or a major portion thereof which is involved in the opinion appealed from, is located. Such appeal shall be filed within thirty days

after the opinion is rendered. The filing of an appeal hereunder shall not automatically stay the effect of the opinion appealed from, but, if on application to the court, undue hardship is shown to result, the court in its discretion may suspend the execution thereof and fix the terms.

§ 45.1-197. Counties, cities and towns may establish standards and adopt regulations dealing with the same subject, provided, however, such standards and regulations shall not be below those adopted by the Chief and Director.

This chapter shall not be construed to repeal any local ordinance or regulation or charter provision now in effect in any county, city or town where the provisions are not less than the standards adopted by the Chief and Director. The Chief may waive the application of this chapter if, in his opinion, a county, city or town in which surface mining operations are being conducted has enacted zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the Chief waives the provisions hereof, the operator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

2. A sum sufficient not to exceed \$100,000 per year for each year of the biennium 1968-70 is hereby appropriated from the general fund of the State treasury for the purpose of carrying out the provisions of this act.



