

COAL MINING IN VIRGINIA

REPORT OF THE

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



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COMMONWEALTH OF VIRGINIA
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Report
on
COAL MINING IN VIRGINIA
of the
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
to the
GOVERNOR AND GENERAL ASSEMBLY

Richmond, Virginia

January 4, 1974

TO: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

INTRODUCTION

The subject of coal mining, particularly surface mining, has been a matter of controversy for some years. While new laws have been enacted and old ones amended, the General Assembly, at its 1972 regular session, feeling that the subject should be dealt with in depth, adopted House Joint Resolution No. 86. The text of the Resolution follows:

HOUSE JOINT RESOLUTION NO. 86

Directing the Virginia Advisory Legislative Council to make
a study and report upon certain mining and related mat-
ters.

Whereas, the mining of coal has been a major source of income to many individuals and businesses in Virginia; and

Whereas, coal is mined both at strip mines and in deep mines, each of which tend to have an effect upon the ecology of the area in which the activity is conducted and upon the terrain therein; and

Whereas, legislation adopted in nineteen hundred sixty-six had led to a major reduction of the damage to the environment in which strip mining is being carried on, but in the case of the lands which were so mined prior to the adoption of the regulatory law (the so-called "orphaned lands") problems are presented which require mature consideration in order that the General Assembly may know the proper course to follow; and

Whereas, the Virginia Advisory Legislative Council made a landmark study and report to the General Assembly of nineteen hundred sixty-six recommending legislation dealing with strip mining which legislation has had many beneficial results, and the time has come for an examination of this legislation and further consideration of the problems with which it was intended to deal; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study and report upon the damage which may be caused to the ecology and the environment by strip mining and deep mining. The Council shall consider

the legislation which is now in force providing for the reclamation of the stripped lands; it shall also consider and seek out solutions to the problems of the "orphaned lands". In its consideration of the matters upon which it is to report, the Council shall keep in mind the ecological aspects of the mining herein referred to and the effect on the environment and the people in adjacent areas. All agencies of the State shall assist the Council in its work. The Council shall conclude its study and make its report to the Governor and General Assembly no later than September one, nineteen hundred seventy-three.

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Pursuant to the directive, the Council appointed a Committee to conduct an initial study and report to it.

John N. Dalton, of Radford, a former member of the House of Delegates, and of the Senate, now Lieutenant Governor elect of the State of Virginia and then a member of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were chosen to serve as members of the Committee with Senator Dalton: Donald A. McGlothlin, Sr., attorney-at-law, a member of the House of Delegates and Vice-Chairman of the Committee, Grundy; George F. Barnes, a former mine operator and a member of the Senate of Virginia, Tazewell; John C. Buchanan, a medical doctor and a member of the Senate of Virginia, Wise; Orby L. Cantrell, a merchant and a member of the House of Delegates, Pound; E. K. (Monk) Geisler, a coal sales agent, Pennington Gap; J. Richard Lucas, Head of the Division of Minerals Engineering and Professor of Mineral Engineering, Virginia Polytechnic Institute and State University, Blacksburg; Harry W. Meador, Vice President of a coal company principally involved in deep mining, Big Stone Gap; Philip C. Shelton, Assistant Professor of Biology, Clinch Valley College, Wise; and Donald Reid Womack, a former strip mine operator and past President of the Virginia Mining and Reclamation Association, Big Stone Gap. Ray R. Thornsburry, a member of the United Mine Workers was also appointed to the Committee but resigned at the first meeting.

Valuable help to the Committee was given by the Department of Conservation and Economic Development, represented by Charles C. Christophersen, William O. Roller, and others of the staff of that Department; the Division of Mines and Quarries of the Department of Labor and Industry, represented by W. Foster Mullins; the Division of Forestry, represented by Eugene E. Ohlson and Ralph Bartholomew; the State Water Control Board, represented by Larry Owens; and John Frank Clevinger, a Soil and Water Conservation District Supervisor. The Division of Statutory Research and Drafting, represented by G. William White, Jr., served as counsel and secretariat to the Committee.

The Committee held public hearings at Wise and Richmond, and made a three day tour through the areas affected by mining, particularly surface mining. Many points of view from concerned individuals, some representing themselves, some representing the ecology interests and others representing the mining interests were heard at length.

The Committee submitted its report to the Council and we have reviewed and studied it with care. We now submit the following recommendations and report.

PRELIMINARY STATEMENT

While deep mining presents some problems, most of which are in the area of refuse disposal, it is the problem of surface mining and orphan lands which has given the Committee major concern.

Arguments by persons interested in the environment have been compelling. Some advocate outright abolition of surface mining; others favor such stringent laws with respect to the taking of coal and reclamation of the land, that mine operators could either not afford to stay in business, or the price of coal, already high, would be prohibitive.

The Council feels that surface mining of coal must continue. Some operators working with the Division of Mined Land Reclamation have adopted reclamation techniques which were demonstrated during the hearings, and which have been highly successful, even in some instances improving the land to the point where it has greater value to the ecology and to the country than it had before being mined. Existing laws can be strengthened to give the State agencies involved more powers to enforce and increase the use of these and possible new techniques, and to discourage attempts by the unscrupulous or marginal operator to do business in the Commonwealth.

Moreover, the Council cannot overlook the fact that mining is essential to the economy of the Appalachian south-west and that the nation is faced with an "energy crisis". Men, now productive in mines, would be bound to either move, and take up work to which they are unfamiliar and untrained, or go on the relief rolls.

It is with these thoughts, and in an effort to balance the equities inherent on both sides of the question, that the Council makes the following recommendations.

RECOMMENDATIONS

1. The Division of Mined Land Reclamation should be directed to promulgate regulations requiring the preservation of topsoil in the overburden.
2. The general fund appropriation of the Division of Mined Land Reclamation should be increased in order to allow for the employment of ten additional coal surface mining inspectors and one additional clerk stenographer B in the Division's coal program during the biennium. Five inspectors and the stenographer would be employed the first year, and five additional inspectors the second year. It is estimated that \$68,000 for the first year of the biennium and \$122,000 the second year of the biennium in addition to the current level of activity would be needed to allow for this expansion.
3. A sum should be added to the general fund appropriation to the Division of Mineral Resources of the Department of Conservation and Economic Development in order to allow for accelerating the geologic mapping program. An amount up to \$275,000 for the biennium will be matched by federal funds which are now available.
4. The permit fee of \$6.00 per acre should be deleted and the fee structure should be increased so as to provide for the reclamation of orphaned lands within a reasonable period of time. Accordingly, it is recommended that the prospecting permit fee be increased to \$30.00 per acre with this fee credited toward the other surface mining fees;

that a disturbance fee of \$60.00 per acre, registration fee of \$10.00, and a renewal fee of \$5.00 per acre be imposed.

5. The general fund appropriation to the Division of Mined Land Reclamation should be increased in order to allow for research. It is estimated that \$31,000 should be added to the appropriation to the Division of Mined Land Reclamation and specifically earmarked for this purpose.
6. It should be provided that if, in the discretion of the Director, it is deemed necessary, he may extend the time for approval or disapproval of a permit for an additional 10 days, in order to gather such further information as he may require.
7. At the discretion of the Director of Conservation and Economic Development a mining permit may be limited to 250 acres.
8. Spoil will be retained on the bench to the maximum extent possible in accordance with an approved spoil retention plan. The lowest point on the original bench to the top of the highwall will be subsequently used for back filling to further reduce the ultimate highwall to the maximum extent practicable.
9. It should be provided that all auger holes be entirely covered after the augering operation is completed.
10. Grading equipment should be required to avoid compaction insofar as possible at the time of grading the benches. Such grading should be chiefly for water retention and erosion control and not for aesthetic beauty or smooth surface.
11. The Chief of the Division of Mines, Department of Labor and Industry, should be authorized to appoint advisory committees on mine, health and safety to assist him in the promulgation of enforceable rules and regulations.

REASONS FOR RECOMMENDATIONS

1. This soil should be returned as surface coverage in later reclamation where it will favorably affect the growth of planted trees. Almost all previous tree plantings have been done without the advantage of this added step.
2. As of May 1, 1973, the Division of Mined Land Reclamation has ten field men handling 539 bonded permit operations of which 363 are active producers. The type of work on each active operation depends on the status of the operation. Before a permit is issued, the field men, along with the operator or his designee, must walk the entire area to be permitted in order to prepare an adequate plan and delete certain anticipated problem areas. Then the bond has to be established and fees determined. Once a permit is issued, the requirements under the law and regulations must be enforced.

At the termination of active operations, the seeding and grading must be checked to determine if the growth is successful and drainage properly controlled. It is clear, therefore, that the field man has considerably more to do than inspect active operations.

At the present rate of over 50 operations per man, it is virtually impossible to handle each operation adequately. The addition of ten inspectors will result in each inspector being responsible for twenty to

twenty-five operations which will allow more adequate attention to be given to each operation.

The following table summarizes Virginia's position relative to other states in the workload borne by inspectors of active strip mining operations.

***TABLE 2-7—ACTIVE SURFACE MINING OPERATIONS
(ALL MINERALS) PER FIELD EMPLOYEE IN
REGULATORY AGENCIES FOR SELECTED STATES ¹**

State	Fiscal Year			
	1969	1970	1971	1972
Illinois ²	13.7	14.3	13.7	5.1
Indiana	16.4	14.4	15.2	18.4
Kentucky	27.6	35.7	27.0	14.9
Ohio ²	19.6	20.4	27.1	14.9
Oklahoma	15.3	15.2	15.0	36.3
Pennsylvania ²	(³)	22.0	22.5	22.7
Tennessee	75.3	66.0	56.8	25.5
Virginia ²	45.7	54.5	50.0	56.0
Washington	(³)	(³)	146.8	70.1
West Virginia ²	45.0	72.6	34.3	17.3
Wyoming	29.0	83.0	117.0	139.0

¹ This table covers surface mining for all minerals except where otherwise indicated. It is useful in indicating the attention that field employees can give to any individual mining operation, whether for coal or other minerals.

² Coal mining only.

³ Not available.

- As funds become available to reclaim the orphaned lands, the issue of remining becomes a significant factor in determining the priorities for orphaned land reclamation. Without adequate geologic mapping, it is exceedingly difficult to determine where certain orphaned land will be remined. If the mapping program can be accelerated, the Division of Mineral Resources will give a high priority toward geologically mapping the coal quadrangles.
- The Reclamation Inspectors have located and plotted on U.S.G.S. topographic maps the orphaned lands in their areas. Since last September, 18,472 acres have been located and plotted, and the survey is approximately 99% complete.

The recommended permit fee structure will generate approximately \$480,000 per year in special revenue funds. Out of this amount, it is estimated that approximately \$400,000 would be available annually to reclaim the orphaned lands. The additional \$80,000 would be used for administration, field surveys and preparing plans for the reclamation work.

At the rate of \$400,000 per annum, it is estimated that the orphaned lands could be reclaimed in approximately 10-12 years. This is based upon the estimation of 15,000 acres of orphaned lands which need some type of reclamation work at an average cost of \$300 per acre.

* From *Coal Surface Mining and Reclamation, An Environmental and Economic Assessment of Alternatives*, Committee on Interior and Insular Affairs, U. S. Senate, GPO, March 1973, p. 48.

Though the sum of \$480,000 per year seems high, it is estimated that this amount can be generated each year at a cost to the industry of about 4.7 cents per ton. This figure is arrived at as follows:

- (1) For each acre of coal mined, three acres of land must be disturbed.
 - (2) Assuming the operator pays all fees, registration, disturbance and renewal, he would pay to the special fund \$75 per acre or \$225.00 to disturb three acres of land.
 - (3) Thus, in order to mine one acre of coal he pays \$225.00.
 - (4) Assuming a 36 inch seam thickness, each acre of coal will produce 4800 tons of coal.
 - (5) Thus, for permit fees of \$225.00, 4800 tons of coal are produced.
 - (6) By dividing number of tons into total cost we determine the 4.7 cents per ton to reclaim the orphaned lands.
5. Currently, no research is being conducted by the Division of Mined Land Reclamation even though the need is great. Basically, it is recommended that four areas of research be undertaken: spoil bank stabilization, alternate surface mining methods, uses of different materials and vegetations on spoil banks, and lastly, sediment control.
 6. Although the Department of Conservation and Economic Development has thus far been able to complete the necessary investigations for issuing permits within the 30 day period, it is anticipated that because of the increasing work load situations may arise where the 30 day period may have to be extended in order to provide for an adequate and thorough assessment of the permit request. A 10 day extension would not cause an undue and costly delay to the applicant, but would provide the Director with sufficient time for assessment as needed.
 7. Because of variations in topographical, geological or other characteristic, certain areas of considerable acreage may not easily lend themselves to overall, comprehensive reclamation plans. In others, similar characteristics may exist. It is therefore felt that the Director should be empowered, where necessary, to limit to 250 acres the area to be permitted, in order that reclamation plans may be developed and the investigation undertaken on a more individualized basis when such variations do exist. The applicant would have the option of applying for additional permits where the area to be mined exceeds 250 acres.
 8. It should be insured that any highwalls, terraces, and spoil remaining at the conclusion of reclamation are stable, taking into consideration all of the physical, climatological and other characteristics of the site.
 11. Despite opinions of the Attorney General to the contrary, the courts have taken the position that rules and regulations promulgated by the Chief of the Division of Mines are unenforceable unless the subject of such regulations is specifically authorized in the Code. It is therefore necessary to enact legislation to provide that, when promulgated, these rules and regulations will have the effect of law. To assist in this task, it is also felt that advisory committees, one for the mining of coal and a second for the mining of other minerals, on mine, health and safety should be established.
 12. Legislation should be enacted to specify requirements for the transportation or tramming of mining equipment.

13. Legislation should be enacted to require the reporting of mine refuse piles and water, silt or mine refuse retaining dams. Such legislation should also specify the design and construction requirements for such dams and provide for their inspection.

Respectfully,

Lewis A. McMurrin, Jr., *Chairman*

Willard J. Moody, *Vice Chairman*

Russell M. Carneal

Joseph V. Gartlan, Jr.

Jerry H. Geisler

Arthur R. Giesen, Jr.

Edward E. Lane

C. Hardaway Marks

Stanley A. Owens

William V. Rawlings

D. French Slaughter, Jr.

James M. Thomson

Lawrence Douglas Wilder

Edward E. Willey

A B I L L

To amend and reenact §§ 45.1-89 and 45.1-104 as amended, of the Code of Virginia and to amend the Code of Virginia by adding in Title 45.1 a chapter numbered 18, containing sections numbered 45.1-221 through 45.1-225, the amended and new sections relating generally to deep mining, safety in deep mines; responsibility of owners and operators; rules and regulations of the Chief of the Division of Mines; refuse piles, mine water and silt retainage dams; reports therefor; designs, inspections and records.

Be it enacted by the General Assembly of Virginia :

1. That §§ 45.1-89 and 45.1-104 as amended, of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding in Title 45.1 a chapter numbered 18, containing sections numbered 45.1-221 through 45.1-225, as follows :

§ 45.1-89. Fire-fighting equipment; duties in case of fire; fire prevention generally.—(a) Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine, such as supplies of rock dust at doors and at other strategic places, waterlines and hose, or water or chemical trucks, and fire extinguishers.

(b) Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station, such as substations, transformer stations and permanent pump stations, so as to be out of the smoke in case of a fire in the station, and suitable fire extinguishers shall be provided on all self-propelled mobile equipment, at belt heads, and at the inby end of belts.

(c) An examination for fire shall be made after every blasting operation underground.

(d) Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it.

(e) When a fire that may endanger the men underground cannot be extinguished immediately, the men shall be withdrawn promptly from the mine.

(f) Immediately upon knowledge of serious fire in or about a mine, the operator shall report by the quickest available means to the Chief, giving all information known to him. Based on the information, the Chief shall take prompt action to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but must be given to the operator in writing to have the force of an order.

(g) Underground storage places for oil, grease and flammable hydraulic fluid shall be of fireproof construction.

(h) Oil, grease and flammable hydraulic fluid kept underground for current use shall be in closed metal containers.

(i) Provisions shall be made to prevent accumulation of spilled oil or grease at the storage places or at the locations where such materials are

(j) Belt conveyors shall be equipped with control switches to automatically stop the driving motor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

(k) Movement of Equipment:

Except regular transportation equipment, no mining equipment shall be transported or trammed, other than daily sectional movement, unless by qualified personnel under the direction of a certified foreman.

(1) When equipment is being transported or trammed, no person shall be permitted to be in by the equipment in the ventilating split that is passing over such equipment.

(2) To avoid accidental contact with power line, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance is six inches or less.

(3) Sufficient prior notice shall be given the Virginia Division of Mines so that a state inspector may travel the route of the move before the actual move is made, if he deems it necessary.

(4) The following minimum equipment must be immediately available:

(1) Water car (filled with water) provided with hose and pump.

(2) At least three 20 lb. dry chemical fire extinguishers.

(3) Ten 50 lb. bags of rock dust.

(4) Bolt cutters which may be used to cut trolley wire in an emergency.

(5) One pair of rubber gloves to be used with bolt cutters when cutting trolley wire.

(6) Two 20 lb. sledge hammers.

(7) Five hundred square feet of brattice cloth, nails and hammer.

(8) Three Type N (Universal) gas masks, or equivalent protective device.

(5) In case of a fire, the next in by permanent stopping into the return air course is to be opened, as soon as possible. This will short-circuit the air and permit close access to the fire for extinguishment.

§ 45.1-104. Responsibilities of owners and operators; rules and regulations of Chief.—(a) Nothing in chapters 1 to 14 (§§ 45.1-1 to 45.1-161) of this title shall be so construed as to relieve the mine owner or operator from seeing that all of the provisions of chapters 1 to 14 of this title are strictly complied with, nor from the duty imposed at common law to secure the reasonable safety of their employees and, in the performance of those duties that are nonassignable at common law, as well as those duties required by chapters 1 to 14 of this title, the mine foreman, assistants, or fire boss, shall be considered as acting for the mine owner or operator as a vice-principal.

(b) The Chief shall have the authority to promulgate rules and regulations in accordance with the provisions of Chapter 1.1 (9-6.1 et seq. of Title 9 of the Code of Virginia.) The Chief shall appoint two mine safety advisory committees. These committees shall consult with, make recommendations to the Chief on matters involving or relating to mine health and safety. One committee shall be composed of the following: One member shall be a coal mine operator or a coal mine operator's representative,

who is actually engaged in or the representative of a coal mine operation in this State. One member shall be a miner or a representative of a mine worker's organization who has a Mine Foreman's First Class Certificate and who is in a nonsupervisory capacity. The other committee shall have one member representing the noncoal mining industry who is an operator or an operator's representative. One member shall represent labor or a labor representative of persons who work in noncoal mines, who is in a nonsupervisory capacity. Thereafter, as vacancies occur, the Chief shall appoint persons who have the qualifications described herein to fill such vacancies.

The committee representing coal mining shall consider rules and regulations dealing with coal mine health and safety; the committee representing noncoal mining shall consider health and safety rules and regulations dealing with noncoal mining industry and make recommendations for adoption by the Chief.

The Chief is authorized to adopt, after consultation with the appropriate advisory committee, health and safety rules and regulations relating to:

(1) The maintenance, operation, storage or transportation of any mechanical or electrical equipment, device or machinery which is used for any purpose in the mining of coal or other minerals, or substances extracted from beneath the surface of the earth or sea.

(2) Safety and health standards for the protection of the life and health of, and the prevention of injuries to persons involved in or likely to be affected by any mining operations which shall include but not be limited to the control of dust concentration levels, use of respiratory equipment and ventilating systems; development and maintenance of roof control systems; handling of combustible materials and rock dusting; installation, maintenance and use of electrical devices, equipment, cables and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, communication facilities; and the establishment and maintenance of barriers around oil and gas wells.

(3) The storage or disposal of any matter or materials extracted or disturbed as the result of a mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the mining operation so that such matter or material does not threaten the health or safety of the miners or the general public.

In promulgating such standards the Chief shall consider:

(1) Standards utilized and generally recognized by the industry; or

(2) Standards established by recognized professional organizations and groups, including federal laws or regulations; or

(3) Research, demonstrations, experiments and such other information that is available regarding the maintenance of the highest degree of safety protection, and shall include the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under this and other safety statutes; or

(4) Such other criteria as shall be necessary for the protection of safety and health of miners and persons or property likely to be affected by mines or mine-related operations.

(5) Recommendations of the appropriate mine safety advisory committee.

(c) *The Chief shall be authorized to apply to any court of equity in the place where any violation of this Title or of the Rules and Regulations promulgated hereunder occurs or is threatened, for an injunction, (and he shall not be required to allege or prove that an adequate remedy at law does not exist.)** ~~make rules and regulations, in writing, not inconsistent with the provisions of Chapters 1 to 14 of this title, to take care of hazardous conditions. if and when the need arises.~~

CHAPTER 18

REFUSE PILES, WATER AND SILT RETAINING DAMS

§ 45.1-221. *Within sixty days following the effective date of this chapter, the operator of a coal mine on which refuse piles are located shall report the location, height, other dimensions including the original ground line as shown on an applicable United States Geological Survey topographical map, the average elevation over which the refuse material is piled, and the average ground elevation and direction of pitch of the area within two hundred feet of the refuse pile to the Chief Mine Inspector, Division of Mines and Quarries, State of Virginia. The report shall also show:*

- (1) *whether or not the refuse pile is burning;*
- (2) *whether or not water or silt is impounded behind the refuse pile, and;*
- (3) *the measures, if any, being taken by the operator to extinguish any fire or drain any impounded water or silt.*

§ 45.1-222. (a) *On and after July one, nineteen hundred seventy-four, new water or silt retaining dams, or a mine refuse pile, or the modification of existing mine water or silt or mine refuse retaining dams shall be designed and constructed by, or under the direction of, a qualified engineer, if such retaining dam;*

- (1) *is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and,*
- (2) *has a storage volume of fifty acre-feet or more; or,*
- (3) *is designed to impound water or silt to a height of twenty feet or more, regardless of storage volume.*

(b) *Water or silt retaining dams or a mine refuse pile in existence prior to the effective date of this chapter which impound the volume of water or silt specified in paragraph (a) of this section, shall, within one hundred twenty days from the effective date of this amendment, be approved as structurally safe for the volume of water or silt impounded therein by a qualified engineer. The operator shall, in accordance with the requirements of paragraph (a) of this section, make any construction modifications necessary to obtain such approval.*

(c) *Water and silt retaining dam or mine refuse piles, designs, construction specifications, and other related data, including final abandonment plans, shall be approved and certified by the qualified engineer specified in paragraph (a) of this section, and by the operator or his agent.*

(d) *The designs, construction specifications, and other related data*

*The Committee recommends against the bracketed language. Reasons given therefore are to be presented to the full Council.

approved and certified in accordance with paragraph (c) of this section shall be submitted for approval to the Chief Mine Inspector, Division of Mines and Quarries. If the submittal is approved by the Chief, he shall notify the operator in writing. If he disapproves, he shall notify the operator with his written objections thereto and his required amendments. But in no event shall the Chief fail to approve or disapprove the submittal within thirty days following the receipt thereof.

§ 45.1-223. On or before one hundred twenty days from the effective date of this amendment, the operator of a coal mine on which a water or silt retaining dam or a mine refuse pile, is located shall report to the Chief Mine Inspector, Division of Mines and Quarries, the location, width, height above the lowest natural ground level within the impounded area; the average depth of the impounded volume of silt and water; the storage capacity of the dam; the volume of silt or water currently impounded.

§ 45.1-224. (a) All water and silt retaining dams or mine refuse piles shall be examined daily for visible structural weakness, volume overload and other hazards by a qualified person designated by the operator. Such examination shall be made at least once every eight hours, or more often as required by the Chief Mine Inspector when rising water and silt approaches within eighty percent by volume of the safe design capacity of the dam. Frequent examinations must be made during periods of rainfall that could create flooding conditions.

(b) When a potentially hazardous condition exists, the operator shall initiate procedures to:

(1) remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;

(2) eliminate the potentially hazardous condition; and

(3) notify the Chief Mine Inspector or the District Mine Inspector in whose area the retaining dam is located.

(c) Records of the inspections required by paragraph (a) of this section shall be kept and certified by the operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.

(d) The operator of each coal mine on which a water and silt retaining dam is located shall adopt a plan for carrying out the requirements of paragraphs (a) and (b) of this section. The plan shall be submitted for approval to the Chief Mine Inspector on or before October thirty-one, nineteen hundred seventy-four. The plan shall include:

(1) a schedule and procedures for inspection of the retaining dam by a qualified person;

(2) procedures for evaluating potentially hazardous conditions;

(3) procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;

(4) procedures for eliminating the potentially hazardous conditions;

(5) procedures for notifying the Chief Mine Inspector and,

(6) any additional information which may be required by the Chief Mine Inspector.

(e) Before making any changes or modifications in the plan approved

in accordance with paragraph (d) of this section, the operator shall obtain approval of such changes or modifications from the Chief Mine Inspector, State of Virginia.

§ 45.1-225. For the purpose of this chapter the term (a) "Impound Water" means to impound water for use in carrying out any part of the process necessary in the production or preparation of coal or other minerals.

(b) "Silt" means fine particles resulting from a mining operation, suspended in or deposited by water.

(c) "Refuse" means waste material resulting from a mining operation of coal or other minerals.

A B I L L

To amend and reenact §§ 45.1-201, 45.1-202, 45.1-203, 45.1-204 and 45.1-205, as severally amended, of the Code of Virginia relating generally to surface mining, prospecting and surface mining permits, fees therefor; operations plans to accompany application for permit for registration; reclamation plans and review and approval or disapproval of application.

Be it enacted by the General Assembly of Virginia :

1. That §§ 45.1-201, 45.1-202, 45.1-203, 45.1-204 and 45.1-205, as severally amended, of the Code of Virginia be amended and reenacted, as follows:

§ 45.1-201. (Effective July 1, 1974.) **Prospecting permit.** — (a) It shall be unlawful for any person to use excavating equipment in an area for which no valid coal surface mine permit is in effect for the purpose of removing overburden to determine the location, or quantity or quality of a coal deposit, or to determine the feasibility of removing coal by surface mining methods without having first obtained from the Department a permit therefor as provided in this section; provided, however, that no such permit shall be issued for more than ten acres. Application for a prospecting permit shall be made in writing on forms prescribed by the Commissioner and shall be signed and verified by the applicant. The application shall be accompanied by: (1) a fee of ~~six~~ *thirty* dollars per acre based on the acreage estimated to be disturbed during prospecting as shown by a plat supplied by the applicant, provided this amount shall be credited towards the land disturbance fee required under subsection (f) of § 45.1-202 if such fee is paid for disturbance of land for which a prospecting fee was paid; (2) a United States geological survey topographic map showing by proper markings the crop line and the name, where known, of the seam or seams to be prospected; (3) a reclamation plan meeting the requirements of § 45.1-204 for the area proposed to be disturbed by prospecting; and (4) a bond meeting the requirements of § 45.1-206 in the amount of three hundred dollars per acre or fraction thereof for the total estimated disturbed acreage. The bond shall be payable to the State of Virginia and conditioned upon the applicant faithfully performing all the requirements of the reclamation plan. The bond shall be released by the Commissioner in accordance with the provisions of § 45.1-206 (b). Any excavation carried out under a prospecting permit and not incorporated into the complete reclamation plan as provided in paragraph (b) of this section shall be reclaimed as set forth in the rules and regulations.

(b) In the event the holder of a prospecting permit desires to surface mine the area covered by the prospecting permit, the Commissioner may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into a complete reclamation plan submitted with application for a coal surface mining permit within a period of three months following completion of each separate excavation under the prospecting permit. *Provided, that if such permit be granted, then the prospecting permit fee shall be a credit toward the fee to be paid by the operator as provided in § 45.1-202(f).*

§ 45.1-202. (Effective July 1, 1974.) **Surface mining permit.**—(a) It shall be unlawful for any person to engage in surface mining of coal in this State without having first obtained a permit to engage in such; *shall be limited for no more than two hundred fifty acres, in the discretion of the Director*; operation. Such permits shall be valid for one year, shall not be

transferable, shall cover such acreage as contained in the application for a permit and shall be renewable annually on the anniversary date of issuance.

(b) Application for a surface mining permit shall be made to the Commissioner on a form furnished by the Commissioner and shall be signed and sworn to by the person, or his legal representative, intending to engage in surface mining of coal.

(c) The application shall contain such information as is required by regulation, including, but not limited to, a description of the land to be disturbed and the coal to be extracted, the surrounding land use that may be affected; identification of the person intending to engage in surface mining of coal, the owners of the land to be disturbed and the owners of the coal and mineral rights; the source of the applicant's legal right to enter and conduct operations on the land to be covered by the permit. Appended to the application shall be such maps and drainage plans as may be required by the Commissioner.

(d) The application for a permit shall include a statement of any mining permits issued by the State and held, at the time of or prior to application, by the applicant or by any individual, corporation, partnership, association or any other legal entity of which or with which the applicant has or has had control or common control. If the Commissioner finds that such permits have been revoked or bond or security thereunder forfeited, no permit shall be issued.

~~(e) The application for a permit shall be accompanied by a fee of six dollars per acre of the area of land to be affected by the total operation for which plans have been submitted.~~

~~(f) A renewal fee of two dollars per acre shall be payable each year on the anniversary date of the permit for the amount of the undisturbed land remaining on the original permit. The application for a permit shall be accompanied by (1) a registration fee of ten dollars per acre of the area of land to be affected by the total operation for which plans have been submitted, and (2) a land disturbance fee of sixty dollars for each acre of land expected to be disturbed and mined within the ensuing twelve months. The additional land disturbance fee shall be payable each year for the amount of land to be disturbed in that year for which a land disturbance fee has not been paid. A fee of five dollars per acre affected by the total operation shall be payable on renewal of a permit hereunder.~~

§ 45.1-203. (Effective July 1, 1974.) Operations plan to accompany application for permit for registration.—(a) The application for a permit for registration shall be accompanied by an operations plan in such form and with such accompanying material as the Commissioner shall require, describing: (1) the proposed method of operation, including the manner, time, and distance for backfilling and grading work where appropriate, and stating the nature and extent of anticipated adverse disruptions and injurious effects, reasonably foreseeable, as a result of the proposed coal surface mining operation, upon the land proposed to be disturbed and upon surrounding land use, both during the coal surface mining operations and after the conclusion of such operations, and (2) proposed control techniques to minimize or prevent such disruptions or effects.

(b) There shall be a drainage plan appended to the operations plan, which shall provide for the proposed scheme of drainage control in accordance with the regulations of the Board.

(c) In order to meet the purposes of this chapter, spoils shall be re-

tained on the bench to the extent feasible in accordance with an approved operation plan and retained spoils are to be subsequently used for back-filling to further reduce the ultimate high wall to the maximum extent practicable.

(d) The operations and drainage plans shall be an integral part of the terms and conditions of issuance of the coal surface mining permit. The provisions of these plans shall be carried out simultaneously with mining operations insofar as practicable. The plans may be amended to meet the exigencies of any unanticipated circumstance or event.

(e) There shall be a plan which shall provide a method whereby top-soil shall be preserved in the overburden. The Board is directed to formulate regulations to carry out the provisions of this subsection.

§ 45.1-204. (Effective July 1, 1974.) Reclamation plan to accompany application for permit for registration.—The application for a permit for registration shall be accompanied by a plan for reclamation of all disturbed land estimated to result from the coal surface mining for which the permit is sought. The plan shall be in such form and with such accompanying material as the Commissioner shall require and shall the planned land use to which the disturbed land is to be reclamation; and (2) proposed actions to assure suitable the disturbed land for the planned use to be carried out by as an integral part of the proposed coal surface mining operation and conducted simultaneously insofar as possible; *and (3) all auger be entirely covered after the augering operation is completed entire area shall be completely reclaimed with no highway remainin where only*

Notwithstanding the provisions of subsection (c) of § 45.1-203 it shall be the policy of the Commissioner to encourage adoption of more productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, industrial and building sites.

The reclamation plan shall meet the requirements of this chapter and rules and regulations adopted pursuant thereto and shall be a part of the terms and conditions of the coal surface mining permit. The plan may be amended if required to meet the exigencies of any unanticipated circumstance or event.

§ 45.1-205. (Effective July 1, 1974.) Review and approval or disapproval of application.—(a) The Commissioner shall review the application along with all accompanying material, shall consider all other relevant factors relating to the issuance of the permit and recommend whether or not the permit should be issued. The Commissioner shall approve the application only after he is satisfied that all the requirements of this chapter and rules and regulations adopted pursuant thereto are fully observed and that there is probable cause to believe that the operations and reclamation plans will be carried out consistent with the purposes of this chapter, ~~but in no event shall the Commissioner fail to~~ *shall approve or disapprove the application within thirty days following the receipt thereof; provided, in the discretion of the Director, for the purpose of obtaining such other necessary information as may be required, the time for approval or disapproval may be extended not to exceed ten additional days.*

(b) In reviewing operations and reclamation plans, the Commissioner shall have such advice and assistance of the local soil and water conservation districts, consulting agencies, and any agencies of the State charged with environmental responsibilities as he may request.

(c) The Commissioner shall cause such inspections to be made of the land proposed to be coal surface mined and disturbed as he deems necessary to assure adequate review of the application, and refusal by the applicant or his representative to allow such inspection of the proposed coal surface mining site shall be grounds for refusal to approve the application.

(d) If in reviewing such plans, the Commissioner finds that the operation will constitute a hazard to public safety; or that reclamation or proper drainage control is not feasible; or that any spoil would adversely affect an established watercourse; or that the operation would adversely affect a public park, certified historic landmark or recreational area, then he shall disapprove the application or, if feasible, approve the application after deleting such areas from the permit application as will remove the grounds of refusal hereinabove stated.

