

SURFACE MINING OF MINERALS OTHER THAN COAL

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



Senate Document No. 10

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
Richmond
1973

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SURFACE MINING OF MINERALS OTHER THAN COAL

**Report of the
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

Richmond, Virginia
December 21, 1973

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*
and

THE GENERAL ASSEMBLY OF VIRGINIA

INTRODUCTION

In 1966 the General Assembly of Virginia adopted House Joint Resolution Number 31, which directed the Virginia Advisory Legislative Council to "study 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." As a result of the Council's report to the 1968 Session of the General Assembly, comprehensive legislation was enacted dealing with the surface mining of minerals other than coal.

At its 1973 Session, the General Assembly directed the Virginia Advisory Legislative Council to undertake a further study of surface mining of minerals other than coal, because "lands which were mined prior to the adoption of the legislation . . . have not been reclaimed," and "for the benefit of future generations, it is deemed that the time has come for a reexamination of the laws regulating the surface mining of minerals other than coal and an examination of the ways and means of reclaiming the orphaned lands." Senate Joint Resolution Number 78, which directed this study, was introduced by Senators Dalton, Buchanan and Barnes.

The text of the Resolution follows:

SENATE JOINT RESOLUTION NO. 78

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

Whereas, the surface extraction of minerals other than coal has been a major source of income to many individuals and businesses in Virginia; and

Whereas, surface extraction of such minerals has involved considerable land area throughout the State and some methods of surface mining tend to have a harmful effect upon the ecology of the area in which the activity is conducted and upon the surrounding terrain; and

Whereas, the Virginia Advisory Legislative Council made a study and reported to the General Assembly of nineteen hundred sixty-eight recommending legislation dealing with surface mining of minerals other than coal which resulted in comprehensive legislation; and

Whereas, lands which were mined prior to the adoption of the legislation, sometimes called "orphaned lands," have not been reclaimed and have been left in an unsightly, unproductive condition which reduces the residual taxable value; and

Whereas, for the benefit of future generations, it is deemed that the time has come for a reexamination of the laws regulating the surface mining of

minerals other than coal and an examination of the ways and means of reclaiming the orphaned lands; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study and report on the need for strengthening the laws controlling the surface mining of minerals other than coal so as to minimize the harmful effects on the future use of mined areas and to determine solutions to problems with regard to the restoration of surface mined areas disturbed prior to the enactment of the regulatory law. 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 the General Assembly no later than December thirty-one, nineteen hundred seventy-three.

Jerry H. Geisler, a member of the House of Delegates and of the Council, was selected as Chairman of the Committee to make the preliminary study and report to the Council. The following persons were selected to serve as members of the Committee: Claude W. Anderson, a member of the House of Delegates, Buckingham; L. Ray Ashworth, a member of the House of Delegates, Wakefield; George F. Barnes, a member of the Senate, Tazewell; John C. Buchanan, a member of the Senate, Wise; Clive L. DuVal, 2d, a member of the Senate, McLean; Walther B. Fidler, a member of the House of Delegates, Warsaw; Samuel Broadhurst, Roanoke; Mr. or Mrs. Hill Carter, Charles City County; Robert T. Dennis, Fairfax; Monroe W. Williamson, Falls Church; and Allen R. Potts, Norfolk. The Division of Legislative Services, represented by Robert B. Cousins, Jr. and Janet Miri, served as counsel and secretariat to the Committee.

The Committee was organized and elected Mr. Anderson as Vice-Chairman. At a subsequent meeting, the Committee heard testimony from representatives of the Department of Conservation and Economic Development, including William O. Roller of the Division of Mined Land Reclamation, Oliver Lineberg, also of the Division, and Adolf U. Honkala, a member of the Board of Conservation and Economic Development. The Committee also received valuable assistance from other personnel of the Department in the preparation of its report.

As a result of the deliberations and report by this Committee, the Council offers the following recommendations.

RECOMMENDATIONS

1. That the study directed by Senate Joint Resolution Number 78 of 1973 be continued for an additional year.
2. That legislation be enacted to increase the current bonding requirements of \$50 per acre for mining of minerals other than coal to a scale of from \$200 to \$1,000 per acre, in the discretion of the Director of the Department of Conservation and Economic Development.
3. That legislation be enacted to transfer responsibility for the issuance of permits and the collection of fees for mining of minerals other than coal from the Division of Mines and Quarries of the Department of Labor and Industry to the Department of Conservation and Economic Development.

REASONS FOR RECOMMENDATIONS

1. The special Committee appointed to undertake the study of surface mining of minerals other than coal directed by Senate Joint Resolution Number 78 of 1973 has only recently organized. The membership of this Committee has agreed that in the short period of time remaining before the 1974 Session of the General Assembly, it would be impossible to give proper or adequate attention to the many problems which must be addressed in any comprehensive study. For this reason, the Council respectfully requests that the study be continued for an additional year, with a reporting date of November 1, 1974.
2. Under current law, each operator at the time of filing his application for a permit is required to furnish a bond conditioned on the faithful performance of all requirements of the law and the plan of operation, as approved. The exception to this provision is that any person engaged in mining less than one acre per year on land of which he is the owner is not required to post such bond. The amount of bond currently authorized by law for the mining of minerals other than coal is \$50 per acre based upon the number of acres which the operator estimates will be disturbed during the next ensuing year. The minimum amount of bond now required is \$1,000, except in areas of five acres or less where the bond amount is set at \$200.

The Council believes that this bond requirement is inadequate because of the increasing costs of proper land reclamation. According to figures supplied by the Department of Conservation and Economic Development, there have been two bond forfeitures since enactment of the Minerals Other than Coal Law. In these two cases, a total of forty-two acres were involved, however, only \$2,000 was available for the reclamation of this land. The actual cost for proper reclamation, as estimated by the Department, would have been approximately \$12,000.

The Council recommends that the bond rate be increased to a scale of from \$200 to \$1,000 per acre, in the discretion of the Director of the Department of Conservation and Economic Development. Such an increase would bring the bonding requirements for mining of minerals other than coal to the level now required for coal mining operations. The additional cost to the operators would be minimal. Based on an area of twenty acres, under the current law, the minimum bond premium paid by operators is \$12.50, which is required to secure bond for the \$1,000 minimum amount of bond. Under the proposed increase, the minimum required to secure bond on the same twenty acres would be \$50. These amounts are based on current bond premium rates which are computed at approximately one and one-fourth percent of the amount of bond with the minimum amount of premium set at \$12.50.*

3. The law concerning procedures relative to mined land reclamation intertwines functions of the Division of Mined Land Reclamation of the Department of Conservation and Economic Development with those of the Division of Mines and Quarries of the Department of Labor and Industry. The Division of Mined Land Reclamation is responsible for providing advice, reviewing plans, as well as inspecting mining operations for conformance to plans. The Division of Mines and Quarries issues the mining permits and collects the required fees. Once collected, these fees are credited to a special account by the Department of Labor and Industry for the Division of Mined Land Reclamation. As a result of this divided responsibility, there is much confusion as to which agency the operators are to deal with in carrying out their reclamation programs. Additionally, there is unnecessary duplication of paper work between the two agencies.

* Figures supplied by the Department of Conservation and Economic Development.

The Council feels that all operations should be supervised by a single technical agency. For this reason, it recommends the transfer of responsibilities for the issuance of permits and the collection of fees for mining of minerals other than coal from the Division of Mines and Quarries to the Department of Conservation and Economic Development. Again, such a change would be in accordance with the existing law relating to the surface mining of coal, where these functions are now exercised by the Department of Conservation and Economic Development. The Division of Mines will retain its responsibilities in the area of mine health and safety and the Department of Labor and Industry has indicated to the Committee that it does not oppose such a transfer of functions. This transfer would serve to expedite the permit process and assure a coordinated program for the reclamation of lands disturbed by mining operations.

CONCLUSION

The Council believes that the recommendations contained in this report are matters which can be addressed by the 1974 Session of the General Assembly. Although these steps may be taken at this time, it is hoped that if the study is continued for an additional year comprehensive deliberations will be undertaken of the many issues involved in the surface mining of minerals other than coal and the reclamation of orphaned lands. Further recommendations will be deferred until that time.

Bills to carry out the recommendations contained in this report are set out in Appendix A.

Respectfully submitted,

LEWIS A. McMURRAN, JR., *Chairman*

WILLARD J. MOODY, *Vice Chairman*

RUSSELL M. CARNEAL

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APPENDIX A
RECOMMENDED LEGISLATION

HOUSE JOINT RESOLUTION NO. ____

Directing the Virginia Advisory Legislative Council to continue its study and report upon certain mining and related matters.

Whereas, the Virginia Advisory Legislative Council made a study and reported to the General Assembly of nineteen hundred sixty-eight recommending legislation dealing with surface mining of minerals other than coal which resulted in comprehensive legislation; and

Whereas, since enactment of this legislation in nineteen hundred sixty-eight a number of factors have pointed to the necessity for a reexamination of the laws regulating the surface mining of minerals other than coal and an examination of the ways and means of reclaiming "orphaned lands"; and

Whereas, recognizing this need, the General Assembly at its nineteen hundred seventy-three session passed Senate Joint Resolution No. 78, directing the Virginia Advisory Legislative Council to make a study and report upon the need for strengthening the laws controlling the surface mining of minerals other than coal; and

Whereas, although some progress has been made by the Committee appointed to undertake this study, a considerable amount of work remains to be done before a comprehensive report can be submitted to the Governor and General Assembly; 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 and report on the need for strengthening the laws controlling the surface mining of minerals other than coal so as to minimize the harmful effects on the future use of mined areas and to determine solutions to problems with regard to the restoration of surface mined areas disturbed prior to the enactment of the regulatory law. The Council is also directed, as part of its study, to consider the feasibility and desirability of authorizing Virginia to join the Interstate Mining Compact. 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 the General Assembly no later than November one, nineteen hundred seventy-four.

A BILL to amend and reenact §§ 45.1-180 through 45.1-188, 45.1-191, 45.1-193 through 45.1-195 and 45.1-197, as severally amended, of the Code of Virginia; to further amend the Code of Virginia by adding a section numbered 45.1-197.1; and to repeal § 45.1-190 of the Code of Virginia, the amended, added and repealed sections all relating to surface mining of minerals other than coal; penalties for violations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-180 through 45.1-188, 45.1-191, 45.1-193 through 45.1-195 and 45.1-197, as severally amended, of the Code of Virginia are amended and reenacted and that the Code of Virginia is further amended by adding a section numbered 45.1-197.1 as follows:

§ 45.1-180. Definitions. — 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.

(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 acre of land or removes, or intends to remove, more than five 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 *or his authorized agent*.

(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. Permit required; fee; duration; application; approval by Department. — It shall be unlawful for any operator to engage in any mining

operation in this State, without having first obtained from the ~~Division~~ *Department* 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 réclamations under the provisions of this chapter. 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 if, within ten days of the anniversary date of the permit the Director, after inspection, 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~~ *Director* 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~~ *Director* 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~~ *Department* until it ~~has received approval in writing from the Department of the Director~~ *has approved* the plan of operation required in § 45.1-182 and the bond from the applicant as required in § 45.1-183.

§ 45.1-182. Plan of operation. — At the time of filing an application for a permit, each operator shall file with the ~~Division~~ *Department* 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.

(7) In a plan of operation submitted by a dimensional stone quarry operator, the Director shall give due consideration to the peculiar nature of the excavated cavity or cavities to be excavated contained in such plan.

§ 45.1-183. Bond of operator. — Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the ~~Chief~~ *Director* payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the plan of operation as approved and directed by the Department; except that any persons engaged in mining less than one acre per year on land of which he is owner in fee shall not

be required to pay any bond. The amount of bond shall be ~~fifty~~ *no less than two hundred dollars nor more than one thousand* 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, except in areas of five acres or less the bond shall be ~~two~~ *no less than two hundred dollars nor more than one thousand dollars per acre*. 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~~ *Director*.

§ 45.1-184. Review of plan of operation by Director; issuance of permit. — Upon receipt of a reasonable plan of operation and bond prescribed above, the Director shall review the plan *and if it meets with his approval issue a permit 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 reasonable 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~~ *The Director* 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 thirty 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. Additional bond to be posted annually; release of previous bond; report of reclamation work. — Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of ~~fifty~~ *no less than two hundred dollars nor more than one thousand* 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. Inspection and approval or disapproval of reclamation work; forfeiture of bond. — 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 s 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 by 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~~ *a rate of no less than two hundred dollars nor more than one thousand* 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 thirty 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~~ *Chief Director* 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 chapter. 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. Additional bond to cover amended estimate of land to be disturbed. — 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~~ *Chief Director* 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. Interference with reclamation unlawful; other mining operations on land. — 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 chapter and the ~~Chief~~ *Chief Director* shall then release an equivalent amount of bonds to the operator originally furnishing bond on the disturbed area.

§ 45.1-191. Penalty for violation of chapter, etc. — Any violation of any provision of this chapter 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.

§ 45.1-193. Injunctive relief. — 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. Appeals to Board of Surface Mining Review. — 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. Board of Surface Mining Review created; membership; terms; vacancies; chairman; compensation; duty. — There is hereby created the Board of Surface Mining Review to be composed of the Director of the Department of Conservation and Economic Development and three members to be appointed by the Governor, two of whom shall be surface mining operators who have been engaged in such operation continuously for five years preceding their 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.

§ 45.1-197. Local standards and regulations; waiver of application of chapter. — 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~~ Director 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~~ Director waives the provisions hereof, the op-

erator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

The ~~Chief~~ *Director* may also waive the application of this chapter as to any mining or borrow pit operation which is conducted solely and exclusively for a State project and which is subject by contract to the control and supervision of a State agency, provided regulations satisfactory to the ~~Chief~~ *Director* have been promulgated and are incorporated in any contract for such removal.

§ 45.1-197.1. Nothing in this chapter shall be construed to encroach on the powers and duties of the Chief of the Division of Mines and Quarries relating to the health and safety of the workers in underground and surface mining operations. In safety and health, all surface workers are to be governed solely by Title 45.1, Chapters 1 through 14 and such rules and regulations adopted by the Chief Mine Inspector as he may deem appropriate.

2. That § 45.1-190 of the Code of Virginia is repealed.

