

SURFACE MINING OF MINERALS OTHER THAN COAL

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



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**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
On
SURFACE MINING OF MINERALS OTHER THAN COAL
To
THE GOVERNOR AND GENERAL ASSEMBLY OF VIRGINIA
Richmond, Virginia
January 1975**

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

and

The General Assembly of Virginia

INTRODUCTION

House Joint Resolution No. 31 was adopted by the 1966 General Assembly of Virginia to direct the Virginia Advisory Legislative Council to "study all forms of surface mining other than strip coal mining, with a view to determining the needs for laws requiring restoration of mined areas and control of mining operations to minimize their harmful effects on the future use of such areas". As a result of the Council's report in 1968, comprehensive legislation was enacted dealing with the surface mining of minerals other than coal.

At the 1968 General Assembly session, it was decided that further study was necessary concerning surface mining of minerals other than coal particularly regarding the lands mined prior to the adoption of the legislation which were not reclaimed. Also, "for 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". Senators Barnes, Buchanan and Dalton introduced Senate Joint Reslution No. 78 which directed this study.

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.

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The Council conducted the study on laws controlling the surface mining of minerals other than coal so as to minimize the harmful effects on the future use of mined area and to cope with the problems of "orphaned lands" and reported to the General Assembly in December of 1973. House Joint Resolution No. 16. was passed during the 1974 Session directing the Virginia Advisory Legislative Council to conclude its study with a report to the Governor and General Assembly no later than November 1, 1974. The chief patrons were Messrs. Geisler, Anderson and Ashworth.

HOUSE JOINT RESOLUTION NO. 16

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.

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Jerry H. Geisler of Hillsville, a member of the House of Delegates and of the Council, was selected as the Chairman while Claude W. Anderson of Buckingham, a member of the House of Delegates, served as Vice-Chairman.

The following Senators were selected to serve on this Committee: George F. Barnes, of Tazewell; John C. Buchanan, of Wise; and Clive L. DuVal, 2nd, of Arlington.

In addition to the Chairman and Vice-Chairman, L. Ray Ashworth was appointed from the House of Delegates to be a member of the Committee.

The following citizens were appointed from the State at large to serve on the Committee: Samuel Broadhurst of Roanoke; C. Hill Carter of Charles City; Robert T. Dennis of Fairfax; Allen R. Potts of Norfolk and Monroe W. Williamson of Falls Church. Jonathan Murdoch-Kitt and Susan T. Gill of the Division of Legislative Services served as staff to the Committee.

The Committee received valuable testimony and assistance from the Department of Conservation and Economic Development (hereafter Department) particularly from Steven Griles, Program Supervisor of the Department; Gerald F. Moore, Deputy Director of the Department; Adolf U. Honkala, member of the Board of Conservation and Economic Development; and William O. Roller and Oliver Lineberg both of the Division of Mined Land Reclamation.

The Committee decided that field trips were a first priority to familiarize the members with surface mining operations of different size, minerals, mining methods and problems. On July 1, 1974 the members toured the south eastern part of the State viewing eight sites including active sand and gravel operations, reclamation sites which impressed them, and orphaned land which disturbed them. On July 8th and 9th the Committee made a trip to the central part of Virginia to examine eleven sites including a reclaimed granite quarry and different open pit operations mining greenstone, slate, limestone, dolomite, clay and shale.

A statewide public hearing followed by a business meeting was held in Charlottesville on October 25, 1974, to receive testimony and make decisions on amending the present surface mining laws, reclamation of "orphaned land" and the Interstate Mining Compact.

As a result of its deliberations and findings this Committee offers the following recommendations.

RECOMMENDATIONS

- A. That the study directed by House Joint Resolution No. 16 of 1974 be continued. See proposed legislation in Appendix I of this report.
- B. That legislation be enacted to amend Chapter 16 of Title 45.1 of the Code of Virginia. See proposed legislation in Appendix II of this report.
- C. That legislation be enacted to direct the Department of Conservation and Economic Development to conduct a study of

orphaned lands. See proposed legislation in Appendix III of this report.

D. That Virginia should not join the Interstate Mining Compact at this time.

REASONS FOR RECOMMENDATIONS

A. The study directed by House Joint Resolution NO. 16 of 1974 should be continued for an additional year. Deliberations by the Committee uncovered a number of areas that should be addressed before their work is considered finished. These areas include the deep mining of minerals other than coal which has never been examined; offshore mining or dredge mining; increased need coupled with technology that will make mining of marginal deposits of minerals possible; and the assessment of broad aspects and future effects of surface mining of minerals other than coal in the Commonwealth.

B. The Council recommends that changes be made in Chapter 16 of Title 45.1 of the Code of Virginia.

1. The suggested changes provide for a finding of fact and declaration of public policy by the General Assembly. The mining of minerals other than coal within the Commonwealth is a basic activity that makes a significant contribution to the standard of living of the citizens of the State. It is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Adequate controls are necessary and must be enacted to minimize adverse land disturbances. Public health, safety, and natural resources must be protected. These findings and declaration of policy make the General Assembly's position clear.

2. Under the 1968 law there was no adequate delegation of the power to promulgate rules and regulations. The suggested changes place the rule making power in the Board of Conservation and Economic Development.

3. The changes allow restricted mining of one acre or less and removing less than 500 tons of minerals to be exempt from all fees and bond. However, each person intending to engage in such restricted mining must submit a sketch of the mining site and an operations plan. When the accumulated acreage of such restricted mining totals more than one acre or when more than 500 tons of minerals are removed, a permit will be required and such operator will be subject to all provisions of the chapter. In the previous law of 1968, several acres could be disturbed with no reclamation as long as no more than one acre per year was disturbed. This change clarifies the law and protects the State from new orphaned lands being created.

4. The 1968 law required the operator to pay a fee of \$6.00 per acre for each acre proposed to be disturbed up to \$150.00. Included in the suggested changes is a provision requiring the operator to pay a fee of \$12.00 per acre for the area of land to be affected by the

total operation for which plans have been submitted. Approximately 2,500 new acres per year are permitted each year generating approximately \$30,000.00. A renewal fee for each acre affected by the operation is provided for in the suggested changes. During the next twelve months it is estimated that approximately 8,750 acres will be affected, requiring a \$6.00 renewal fee per acre, generating approximately \$52,500.00. The statute authorizes the Director to use the special fund created by the fees for the administration of the chapter, which should include the employment of six additional inspectors, one area supervisor, and one permit officer.

At present, the Division of Mined Land Reclamation has two field inspectors handling 67 active operations scattered over Planning Districts 16, 17, and 18 (14 counties) and Planning Districts 20, 21, and 22 (7 counties and cities in the Tidewater area). There are no personnel assigned to the other 16 Planning Districts which include approximately 213 active permitted operations throughout approximately 72 counties. This means that these operations cannot be inspected on a regular periodic basis and are only inspected in response to complaints or some unusual occurrence. There are approximately 100 operations which have not been bonded and permitted.

Before a permit is issued, the field men, along with the operator or his designee, should walk the entire area to be permitted in order to prepare an adequate plan with proper maps and applications. The bond has to be established and fees determined. Once a permit is issued, the requirements under the law and regulations must be enforced. Experience has shown that a field man may spend from one to three weeks supervising the grading and seeding of a quarry operation. The problem is aggravated by additional time that must be spent checking out complaints of individuals and counties about surface mining operations and settling reclamation problems regarding older operations. Experience has shown that complaints will be more numerous in the future. There will be more surface mines (quarries, sand pits, gravel pits) to be reclaimed and established operations will require more planning, which will ultimately result in a demand for more inspections, more supervision of grading and seeding, more public relations and routine office procedures. Additional personnel are also essential to permit proper attention to regulation as required by Chapter 16 of Title 45.1.

The field man has considerably more to do than inspect active operations. An inspector is allotted several hours of fixed time per month including eight hours vacation, approximately 81 hours job to job travel time (2,438 miles at 30 MPH), eight hours vehicle maintenance, in addition to any sick leave that may be necessary. The addition of six inspectors, one area supervisor, and one permit officer will allow greater attention to be given to each operation with a reduction in travel time of about thirty hours per month.

Future consideration should be given to increasing the appropriation for the Division of Mined Land Reclamation so that they can carry out the law.

5. The 1968 law makes reference to what shall be accomplished in reclamation. Under the suggested changes an additional provision is included in the operations plan, and reclamation requirements are clarified. It will be necessary to provide an operations plan which will include a reclamation provision. The additional provision is essential to give the Department an over-view of the entire project; and by the inclusion of this provision, the Department as well as the operator can minimize and in many cases, eliminate possible damage to streams and surrounding land areas before the operation is begun.

6. The proposed amendments provide for notice of non-compliance which is essential in insuring that the operation is carried out while complying with the operations plan. A court injunction may be secured when an operation causes adverse disruptions which cannot be corrected by application of the various control techniques contained in the plan.

7. If there is a serious threat to the public health, safety, welfare or property rights and abatement is not feasible, the Director of the Department has the authority to seek an injunction in equity to prohibit mining operations.

8. The suggested changes provide for the Board of Surface Mining Review to include a citizen at large with no financial interest in surface mining.

9. Under the 1968 law there were no clear provisions for the succession of one operator by another at an uncompleted project. A new section provides for the succession of one operator by another and the release of the first operator from all liability provided the successor operator has been issued a permit. The fee for the successor operator will be \$6.00 per acre.

10. Article 3 of the suggested changes authorizes the Department to cause a survey to be conducted to determine the extent of the orphaned lands in the State. "Orphaned lands" may be defined as lands disturbed by minerals other than coal surface mining operations which were not required by law to be reclaimed or which in fact have not been reclaimed.

11. The suggested changes direct the applicant to cause notice of the application to be placed each week for a period of two weeks in a newspaper having general circulation in an area where the proposed mining site lies. This is necessary so that concerned persons may submit comments to the Director regarding the proposed mining.

12. All property owners within 1,000 feet of the property lines of a proposed mining site shall be notified by certified mail of the application for a permit. This is necessary to inform the public of plans for surface mining projects that may affect them. Similar notice must also be given to the chief administrative official of the local political subdivision.

C. The Council recommends that the Department be directed to

conduct a study of orphaned lands and to report its recommendations to the Governor and General Assembly by November 1, 1976. The members of the Committee were familiarized with the size and scope of the orphaned land problem in Virginia on the tours they took in July of 1974 in the central and eastern parts of the State.

It has been estimated that there are approximately 18,000 to 20,000 acres of orphaned mineral lands scattered throughout the State exclusive of coal strip mined orphaned lands. These figures are based on old reports, the last one done by the Department of the Interior prior to 1967. No recent accurate survey of minerals other than coal orphaned lands has been done. Therefore, the extent of orphaned lands in the Commonwealth is unknown.

A study with tangible findings and recommendations on amount and location of orphaned lands with methods and costs suggested for reclamation is needed. The funds spent on this study and later reclamation will be returned by the restoration of unsightly, dangerous and environmentally unsound land to the productive land tax base. It is suggested that \$25,000 be used by the Department for a pilot study. The \$12 per acre permits and \$6 per acre renewal fees will generate approximately \$82,500 per year in special revenue funds. It is estimated that approximately \$25,000 would be available out of this amount over a two year period for the orphaned lands study. Because of present fiscal concerns of the Commonwealth, it is the opinion of the Council that although appropriations from the General Fund are necessary to supplement this orphaned land study, no request for such funds will be made at this time. Future consideration should be given to increasing the appropriation for the Division of Mined Land Reclamation so that they can carry out the law.

D. The Council recommends that Virginia not join the Interstate Mining Compact at this time, because the Committee has not had time to adequately examine the Compact's possibilities and discuss its various points.

CONCLUSION

The Council recommends affirmative action on its three recommendations: continuing its study; comprehensive amendment to Chapter 16, Title 45.1; and conducting a study of orphaned lands. Serious future consideration should be given for increasing the appropriation for the Division of Mined Land Reclamation.

Proposed legislation to carry out the recommendations contained in this report is set out in the appendices.

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Respectfully submitted,

Jerry H. Geisler, Chairman

Claude W. Anderson, Vice Chairman

L. Ray Ashworth

George F. Barnes

Samuel Broadhurst

John C. Buchanan

C. Hill Carter

*Robert T. Dennis

Clive L. DuVal, 2d

Allen R. Potts

Monroe W. Williamson

ADDITIONAL COMMENT BY ROBERT T. DENNIS

While I join in this report, I must observe that, should the General Assembly enact the legislation we propose, Virginia still would not have the kind of comprehensive policy and law which I believe will be required in the long run to govern the surface mining of non-coal minerals.

In particular, though we have recognized existence of the issue, the study committee has not dealt with the fact that present law treats all non-coal operations as if they were of the same nature. But surface operations to recover sand, gravel, and building stone are of quite different character than the massive surface disruption experienced elsewhere during recovery of minerals as diverse as phosphate, vermiculite, bauxite, iron, and manganese. The legislation suggested by the study committee is a solid step toward better gravel pit and quarry practices; it is not in my view adequate to deal with long run pressures which Virginia should anticipate with respect to other mineral types enumerated above.

Robert T. Dennis

Appendix I

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, recognizing the need for a reexamination of these laws, the General Assembly, at its nineteen hundred seventy-three session, passed Senate Joint Resolution No. 78 that led to the passage of amendments to the laws governing the surface mining of minerals other than coal at the nineteen hundred seventy-four session; and

Whereas, further work was necessary, House Joint Resolution No. 16, passed by the nineteen hundred seventy-four General Assembly, continued this study; and

Whereas, although progress was made by the Committee to undertake this study, there still remains a significant amount of work to be done; 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 to control the deep mining of minerals other than coal, to appraise the problems inherent with offshore mining, and to recognize the changing demands that what may not be economical to mine today may be economical to mine in the future because of increased technology and the need for raw materials. The Council is also directed to recognize and assess the broader aspects and future effects of surface mining of minerals other than coal in the Commonwealth. 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-six.

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Appendix II

A BILL to amend and reenact §§ 45.1-180, 45.1-181, 45.1-183, 45.1-184, 45.1-185, 45.1-195, 45.1-197, as amended, and 45.1-197.2 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 45.1-180.2, 45.1-180.3, 45.1-180.4, 45.1-182.1, 45.1-184.1, 45.1-184.2, 45.1-186.1, 45.1-193.1 and 45.1-197.3; and to repeal §§ 45.1-182, 45.1-186, 45.1-189, and 45.1-193, as severally amended, of the Code of Virginia, the amended, added and repealed sections relating to surface mining of minerals other than coal.

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-180, 45.1-181, 45.1-183, 45.1-184, 45.1-185, 45.1-195, 45.1-197, as amended, and 45.1-197.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 45.1-180.2, 45.1-180.3, 45.1-180.4, 45.1-182.1, 45.1-184.1, 45.1-184.2, 45.1-186.1, 45.1-193.1, and 45.1-197.3 as follows:

Article I

General Provisions.

§ 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 ÷-. *The Board of Conservation and Economic Development shall have the power to adopt by regulation other definitions as may be necessary to carry out the intent of this chapter.*

(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 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 ~~and refuse~~, 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 including land used for processing, stockpiling, and settling ponds.~~

(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~~ *Any overburden or other material removed from its natural state in the process of mining.*

(e) Operator. - Any individual, ~~group of individuals~~, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, 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), (i) [Repealed.]

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

(k) Reclamation.—*The restoration or conversion of disturbed land to a stable condition which minimizes or prevents adverse disruption and the injurious effects thereof and presents an opportunity for further productive use if such use is reasonable.*

(l) Mineral.—*Ores, rocks, and other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.*

(m) Division.—*The Division of Mined Land Reclamation.*

(n) Refuse.—*All waste soil, rock, mineral tailings, slimes and other material directly connected with the mine, cleaning and preparation of substances mined including all waste material deposited in the permit area from other sources.*

§ 45.1-180.2. *Legislative Findings; Declaration of Policy.—A. The General Assembly finds that the mining of minerals within the Commonwealth is a basic activity that makes a significant contribution to the standard of living of the citizens of the Commonwealth; and that it is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Uncontrolled mining of such minerals and unreclaimed land can adversely affect the environment through the destruction of vegetative cover, the disruption of drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, and the temporary and, in some circumstances, permanent destruction of scenic beauty and wildlife habitats. The General Assembly further finds that it is often not practicable to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original contour; but that it is essential to conduct mining in such a way as to minimize its effects on the environment.*

B. The General Assembly recognizes that there are wide variations in the circumstances and conditions surrounding and arising out of the mining of minerals and that rehabilitation and conservation of land affected by mining of minerals will be assured only

through proper planning; proper use of appropriate methods of mining; consideration of the impact of mining upon the environment as well as the land use of surrounding areas; and through the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of mining of minerals.

C. The General Assembly declares that it is in the public interest and shall be the policy of the Commonwealth to require and encourage the proper control of mining of minerals so as to protect the value of the property, protect the natural resources, protect and promote the public health and safety consistent with the protection of physical property and with maximum employment and the economic well-being of the State through good industry and sound conservation practices, and to require and encourage thorough operations and reclamation planning, consideration of the surrounding environment, and incorporation of control techniques and reclamation actions in mining operations insofar as practicable to assure such proper control of mining. To these ends, the Director of Conservation and Economic Development is mandated to enforce this chapter and the Board of Conservation and Economic Development is mandated to adopt whatever regulations are found necessary to accomplish the provisions of this chapter.

D. The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated Statewide program to aid in the protection of wildlife, in restoring these lands to productive purposes and to control present and future problems associated with mining resources and the reclamation of disturbed lands to the end that mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.

E. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right or rights of any person who is a party to any dispute involving property rights, or the right of any person to damages or other relief on account of injury to persons or property due to mining activities regulated by this chapter and to maintain any action or other appropriate procedure therefor; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

§ 45.1-180.3. Authority of Board and Director of Conservation and Economic Development; enforcement of chapter by injunction.—A. The authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter is hereby vested in the Board of Conservation and Economic Development.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director of the Department of Conservation and Economic Development. In administering and enforcing the provisions of this chapter pursuant to the findings and legislative policy adopted by the General Assembly, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;

2. To issue orders to enforce the provisions of this chapter, all rules and regulations promulgated thereunder, and the terms and conditions of any permit;

3. To make investigations and inspections to insure compliance with any provision of this chapter or any rules, regulations, or orders promulgated thereunder;

4. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining;

5. To receive any federal funds, State funds or any other funds and to enter into any contracts, for which funds are available, to carry out the purposes of this chapter.

C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against any violation of the provisions of this chapter, and the rules, regulations and orders promulgated hereunder or to compel the performance of acts required thereby without regard to any adequate remedy which may exist at law, such injunction to be issued without bond. However, with regard to the suspension of mining operations, § 45.1-193.1 shall control.

§ 45.1-180.4. Exemption for restricted mining.—Any operator engaging in mining and disturbing less than one acre of land and removing less than five hundred tons of minerals at any particular site, is exempt from all mining permit fees and renewal fees and bond requirements of this chapter; however, each person intending to engage in such restricted mining shall submit an application for a permit, a sketch of the mining site and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1. The Director shall approve the application if he determines that the issuance of the permit shall not violate the provisions of this chapter.

Article 2.

Regulation of Mining Activity.

§ 45.1-181. Permit required; fee; renewal fee; 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 Department a permit to engage in such operation and paying a fee therefor of ~~six~~ twelve dollars per acre for every acre ~~proposed to be disturbed, not to exceed the total sum of one hundred fifty dollars, of land to be affected by the total operation for which plans have been submitted,~~ which shall be deposited in the State treasury in a special fund to be used by the Director ~~in performing reclamations under the provisions for the administration 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, then the Director shall renew the permit upon payment of a renewal fee by the operator of six dollars per acre for land to be affected by the total operation in the next ensuing year. The renewal fees shall be deposited in the State treasury in the special fund set out above. 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 ~~this section and §§ 45.1-182 45.1-182.1,~~ 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 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 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 the 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 aerial photograph* or plan and meeting the following requirements:

(a) Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service ~~approved by the Director~~ *or in such a manner as to be acceptable to the director,*

(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 Department until the Director has approved the plan of operation required in § 45.1-182 ~~this section~~ and § 45.1-182.1 and the bond from the applicant as required in § 45.1-183.

§ 45.1-182.1. Operations plan; reclamation; policy of Director.—A. The application for a permit shall be accompanied by an operations plan in such form and with such accompanying material as the Director shall require. The operations plan shall describe the specifications for surface grading and restoration, including sketches delineating placement of spoil, stockpiles, and tailing ponds, to a surface that is suitable for the proposed subsequent use of the land after reclamation is completed.

B. The operations plan shall include a provision for reclamation of all land estimated to be affected by the mining operation for which the permit is sought. The reclamation provision shall be in such form and with such accompanying material as the Director shall require and shall state:

1. The planned use to which the affected land is to be returned through reclamation;

2. Proposed actions to assure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as practicable. The Board shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.

C. It shall be the policy of the Director to encourage adoption of productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, industrial and building sites, and to consider the general original contour in the reclamation. The Director may require an amendment to the operations plan to meet the exigencies of any unanticipated circumstance or event.

§ 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 Director payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the operations 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 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~~ affected 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 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 Director.

§ 45.1-184. Review of operations plan and reclamation provision by Director; issuance of permit.—Upon receipt of a reasonable ~~operations plan of operation~~ and bond prescribed above, the Director shall review the plan and if it meets with his approval issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant shall amend his ~~operations plan of operation~~ to meet the Director's reasonable objections and file a satisfactory amended plan with the Director, no permit shall be issued.

In reviewing such plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or proper drainage control is not feasible, then he may disapprove the permit application. Provided, however, that the Director may approve the permit after deleting the areas from the permit application held to be objectionable in the Director's findings.

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~~ *greater* than the cost of reclamation, such operator shall then become eligible for another permit.

§ 45.1-184.1. Notice of application for permit; adjoining landowners; local official.—A. Upon receipt of an application for a mining permit, the Director shall direct the applicant to cause notice of the application to be placed each week for a period of two weeks in a newspaper or newspapers having general circulation in the area wherein the proposed mining site lies. The Director shall specify the form of the notice to be printed. Following printing of the notice, the applicant shall supply the Director with proof that the notice was printed for the specified period. Such notice shall be printed at the expense of the applicant and shall include a statement that written comment will be received by the Director for a period of time ending ten days after the last publication of notice. The Director may waive the above provision if the operator presents evidence that the public has been made aware of the proposed operation through other public notice methods.

B. The application for a permit shall be accompanied by a statement showing the names and addresses of the owners of adjoining property within one thousand feet of the property line of any land proposed to be permitted and certified that such landowners have been notified by certified mail of the application for a permit. Such residents may file written objections with the Director, and may demand to be heard under § 9-6.10.

C. The application for the permit shall also be accompanied by a statement certifying that the chief administrative official of the local political subdivision has been notified of the proposed operation by certified mail.

§ 45.1-184.2. Succession of one operator by another at uncompleted project.—Where one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability

under this chapter as to that particular operation; provided, however, that the successor operator has been issued a permit and has otherwise complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be six dollars per acre, except as provided by § 45.1-180.4. The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

§ 45.1-185. 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 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~~ *may* be released for the areas disturbed in the last twelve months if reclamation work has been completed and the approval of the Director obtain 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 or issued by a standard mapping service approved by the Director *or in such manner as to be acceptable to the Director* 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.

§ 45.1-186.1. Notice of noncompliance served on operator.—*The Director may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the Director to:*

- 1. Apply the control techniques and institute the actions approved in his operations and reclamation plan;*
- 2. Follow any required amendments to the operations or reclamation plan; or*
- 3. Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto.*

A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in what respects the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice. If the operator has not

complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, which, when collected, shall be deposited in the State treasury in a special reclamation fund to be used by the Director in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: (i) of the bond shall be returned to the corporate surety; or (ii) of the collateral security, certified check or cash that has been deposited in lieu of bond, shall be returned to the person who provided same originally or to the operator.

§ 45.1-193.1. Injunction prohibiting mining operation.—Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or endanger the health, safety, welfare and property rights of citizens of Virginia, and abatement is not feasible by the application of control techniques, the Director shall petition the appropriate circuit court, for an injunction to prohibit further operations. Such injunction shall not relieve the operator from his duty to reclaim lands previously affected according to the terms and conditions of this permit.

§ 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~~ *one* shall be a surface mining ~~operators~~ *operator* who ~~have~~ *has* been engaged in such operation continuously for five years preceding ~~their~~ *his* appointment, ~~and~~ *one shall be* a 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, ~~and one shall be a citizen of this State having no financial interest in any mining activity.~~ 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 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 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 Director. The 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 ~~and is enforcing~~ zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the Director 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.

The 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 Director have been promulgated and are incorporated in any contract for such removal.

The county, city, town or State agency shall assure strict compliance with all the provisions of the ordinances, regulations or contracts and the Director shall from time to time review the ordinances, regulations or contracts and the enforcement programs to assure compliance with this chapter. If the Director determines that there is not strict compliance with this chapter, then he may rescind his waiver of the application of this chapter.

§ 45.1-197.2. Certain powers of Chief not affected by chapter.— 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 (§§ 45.1-1 to 45.1-161) and Chapter 18 (§§ 45.1-221 to 45.1-225) and any other sections of the Code relating to safety and health of such workers and such rules and regulations adopted by the Chief Mine Inspector as he may deem appropriate.

Article 3.

Orphaned Lands.

§ 45.1-197.3. A. *For the purpose of this article, the term "orphaned lands" shall mean lands distrubed by mining operations which were not required by law to be reclaimed or which have not in fact been reclaimed.*

B. *The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this State and establish priorities for the reclamation thereof.*

2. That §§ 45.1-182, 45.1-186, 45.1-189, and 45.1-193, as severally amended, of the Code of Virginia, are repealed.

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Appendix III

A BILL directing the Department of Conservation and Economic Development to conduct a study of the State's orphaned lands caused by the surface mining of minerals other than coal and appropriating funds therefor.

Whereas, no factual study has been done on the problems and the magnitude of orphaned lands caused by the surface mining of minerals other than coal; and

Whereas, the only study done on orphaned lands in Virginia was a Department of the Interior survey completed prior to nineteen hundred sixty-seven that is now both out-of-date and inadequate in scope; and

Whereas, the number of acres of orphaned lands and the reclamation problems associated with the orphaned lands are unknown; and

Whereas, orphaned lands are a burdensome liability to the Commonwealth because they are unproductive, dangerous, an environmental hazard, and an eyesore; and

Whereas, no State agency has the authority to conduct this type of study nor the manpower or financial resources to carry it out; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. The Department of Conservation and Economic Development is hereby directed to conduct a study of orphaned lands caused by the surface mining of minerals other than coal in the Commonwealth; to determine the extent of the orphaned lands; and to make recommendations on methods of reclaiming orphaned lands and establish priorities for the reclamation.

§ 2. In conducting the study the Department shall have the advice of consultive services; and all agencies of the State shall assist the Department in its work.

§ 3. There is hereby allocated the sum of twenty-five thousand dollars from the special fund established in § 45.1-181 to conduct this study.

§ 4. The Department shall conclude its study and make its report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-six.

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