

**FINAL REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
SURFACE MINING OF MINERALS
OTHER THAN COAL**

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 31

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PURCHASES AND SUPPLY
RICHMOND**

1978

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SIEGLINDE F. NIX

**Final Report of the
Virginia Advisory Legislative Council
On Surface Mining of Minerals**

Other Than Coal

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

November, 1977

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 1973 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 examination of the ways and means of reclaiming the orphaned lands." Senators Barnes, Buchanan and Dalton introduced Senate Joint Resolution 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.

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 areas 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 the 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. 7, 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.

The 1974 study resulted in a report to the 1975 General Assembly, House Document 34, which included the following recommendations:

1. That the study directed by House Joint Resolution No. 16 be continued.
2. That legislation be enacted to amend Chapter 16 of Title 45.1 of the Code of Virginia.
3. That legislation be enacted to direct the Department of Conservation

and Economic Development to conduct a study of orphaned lands.

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

The staff of the Department of Conservation and Economic Development in analyzing the recommendations which had been approved by the Virginia Advisory Legislative Council requested that the legislation directing the Department to conduct a study of orphaned lands not be enacted during the 1975 legislature. The Department, after a reevaluation of the amount of monies to be generated from the minerals other than coal permit fees in the proposed legislation, determined that the funds would not be sufficient to conduct the orphaned land study and also employ additional necessary personnel as originally anticipated by the study committee. In order to allow the full committee the opportunity to reevaluate the new information, the study committee chairman requested that the recommendations of the Virginia Advisory Legislative Council not be enacted in the 1975 Session of the General Assembly, but that the study be continued.

HOUSE JOINT RESOLUTION NO. 228

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.

The Council filed an interim report to the 1976 General Assembly (House Document No. 27), which made the following recommendations:

A. That specific legislation to control the deep mining of minerals other than coal not be enacted at this time.

B. That specific legislation to control the offshore mining of underwater minerals not be enacted at this time.

C. That legislation be enacted to amend Chapter 16 of Title 45.1 of the Code of Virginia, relating to the surface mining of minerals other than coal. As a result of this recommendation, House Bill No. 984 was enacted into law by the 1977 Session of the General Assembly.

D. That Virginia should join the Interstate Mining Compact. As a result of this recommendation, Virginia is now a signatory to the Interstate Mining Compact.

Upon the completion of House Document No. 27, the Council turned to its last major task, the completion of a study on the "orphaned land" problem. Orphaned lands are lands disturbed by mining operation which were not required to be reclaimed by law or which have not in fact been reclaimed.

The Soil Conservation Service of the United States Department of Agriculture (hereafter referred to as SCS) was requested to assist the Committee of the Council in conducting a survey of mineral other than coal orphaned lands and to arrive at an approximate figure which would represent the extent of non-coal orphaned lands in Virginia. The SCS contacted its agents in every Virginia county requesting that they complete a standardized questionnaire developed by the staff. Maps were also submitted so that each agent might show the location of orphaned lands within his county. The same materials submitted to the SCS agents were also sent to the various Planning District Commissions within the State to help supplement the data received from the SCS.

The Council submitted the results of the survey (See Appendix 1) in House Document No. 9 to the 1977 Session of the General Assembly. The Council realized that although the survey determined that a non-coal orphaned land problem existed, a far more thorough cost analysis was needed on a site by site basis. Therefore, the Council recommended in House Joint Resolution No. 197 that the life of the Commission of the Council be continued for an additional year.

HOUSE JOINT RESOLUTION NO. 197

Directing the Virginia Advisory Legislative Council to continue its study on non-coal orphaned lands and to make such recommendations as are deemed necessary to improve the reclamation program.

WHEREAS, the Virginia Advisory Legislative Council reported in House Document No. 27 to the 1976 Session of the Virginia General Assembly on certain mining and related matters but omitted studying the problem of non-coal orphaned lands; and

WHEREAS, the Council conducted a preliminary survey of non-coal orphaned lands which was the first modern in-depth survey conducted on the subject; and

WHEREAS, the Council reported the results of this survey to the 1977 Session of the Virginia General Assembly; 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 the 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 examine all aspects of the non-coal orphaned land problem in Virginia so as to make such recommendations as the Council deems necessary to improve upon the current reclamation program in this State.

All agencies of the State shall assist the Council in its work.

The Council shall conclude its study and make a final report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-seven.

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

The following senator served on the Committee of the Council: John C. Buchanan, of Wise, and Clive L. DuVal, 2d of Arlington.

In addition to the Chairman and Vice-Chairman, L. Ray Ashworth, a member of the House of Delegates, served on the Committee of the Council.

The following citizens from the State at large served on the Committee of the Council: C. Hill Carter of Charles City; Robert T. Dennis of Amisville; Allen R. Potts of Norfolk and Monroe W. Williamson of Falls Church. Bragdon R. Bowling, Jr. and Sieglinde F. Nix of the Division of Legislative Services served as staff to the Committee of the Council.

The Committee of the Council received valuable testimony and assistance from the Department of Conservation and Economic Development (hereinafter referred to as Department) particularly from Mr. I. Steven Grile, Programs Supervisor of the Department.

The Council would like to express its appreciation to Mr. David Grimwood, State Conservationist of the Soil Conservation Service of the United States Department of Agriculture and to the many SCS field agents for their invaluable assistance. In addition, the Council also expresses its gratitude for the cooperation of the minerals other than coal industry in this State, particularly Mr. James E. Fox, Executive Secretary of the Virginia Aggregates Association.

ACTIVITIES DURING 1977

Pursuant to the direction of House Joint Resolution No. 197, the Committee of the Council conducted a work session on June 6, 1977, at the State Capitol in Richmond. Personnel from the Department of Conservation and Economic Development and the SCS conferred with the Committee of the Council with the intention of determining the best way of obtaining a site by site "best cost estimate" for reclaiming the non-coal orphaned land identified by the 1976 Council Survey (see Appendix I). It was generally agreed that the 1976 survey would serve as a valuable and useful tool in determining the costs of reclaiming Virginia's non-coal orphaned land.

The Committee of the Council requested the SCS to distribute worksheets to its field agents so that they might inspect all sites identified by the 1976 survey in their area and determine priorities for all sites needing reclamation. The agents were further requested to determine the approximate amount and cost of practices necessary for reclaiming each non-coal orphaned land site. The various Soil and Water Conservation Districts within this State were requested to lend their assistance to the SCS field agents. A deadline of September 1, 1977 was set for returning the completed worksheets.

Information that was collected on the worksheet was compiled and summarized. Copies of the worksheets are on file in the Department of Conservation and Economic Development. The summary of worksheet contents is included as Appendix II to this report. The summary indicates that the cost of reclamation would be approximately \$1,216,177.00. This cost does not include the manpower necessary to supervise the reclamation which possibly would cost \$20,000.00 per year. The 1976 summary was based on general estimates of reclamation cost without detail analysis of any site. The 1977 projected cost of reclamation is based on a field analysis of each particular site and is a more accurate reflection of cost. The fund will allow for the Department of Conservation and Economic Development to address orphaned lands which may be creating environmental or safety hazards. However, the fund, as presently envisioned, would only generate funds to reclaim a small number of acres of orphaned lands each year.

RECOMMENDATIONS

It is agreed by the Council that the summary enables the Council to put the non-coal orphaned land problem in perspective and will help to develop a workable non-coal orphaned lands reclamation program for Virginia.

As a result of a proposal made by the minerals other than coal industry and concurred in by the Department of Conservation and Economic Development, the Council recommends that there be enacted legislation which would:

1. Establish a non-coal orphaned lands reclamation procedure similar to the present coal surface mining orphaned lands program contained in Article 3 of Chapter 17 of Title 45.1 (§ 45.1-216 et seq.).

2. Provide a unique funding mechanism for the non-coal orphaned lands program.

A copy of the proposed legislation is contained in Appendix III of this report.

The present bonding law (see Appendix IV) for minerals other than coal operators provides that the Director of the Department of Conservation and Economic Development shall establish the amount of reclamation bond for each operation; the amount of each bond is to 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 affected by mining operations during the next ensuing year. Prior to 1975, the amount per acre of bond was \$50.00. At this level there was very little trouble in obtaining surety bonding from insurance companies. Because of the increasing cost of reclamation, the Director has increased the per acre figure to \$800.00. At the anniversary date of the permits in 1977, the operators were faced with the requirement of furnishing bond at the higher rate, and many operators discovered that when they contacted their insurance companies, the companies would not write the bond unless the operator provided either a letter of credit from a bank or pledged the company's assets in an amount equal to the total amount of the bond. By requiring letters of credit or pledges, or both, insurance companies have reduced their risks to zero. Many operators have found it necessary to post capital in lieu of bond since the letters of credit and bond earn no interest whatsoever. However, this method results in the companies' working capital being pledged to a non-productive use. The bond currently posted are required to be automatically renewed yearly and in many instances will be outstanding from ten to fifty years.

By incorporating Article III and IV in Chapter 16 of Title 45.1, both the operator and the State will benefit. Annually, the funds will be paid to the State Treasurer and placed in a special reclamation fund until such time as the operator has deposited \$500.00 per acre for the affected lands. Section 45.1-197.9 of the proposed legislation provides that upon completion of the mining operation and after the operator reclaims the affected

acreage to the satisfaction of the Director, the deposits shall be returned to the operator.

There are approximately \$10,000 acres bonded by the minerals other than coal industry under Virginia law. It is estimated that the proposed legislation would generate \$500,000.00 during its first year of existence. The Council is of the opinion that the proposed bonding procedure will provide the Commonwealth with sufficient safeguards to assure that all minerals other than coal lands will be reclaimed. The proposed legislation will allow the Director of the Department of Conservation and Economic Development to assess operators an amount necessary to assure that the fund never goes below two hundred and fifty thousand dollars (\$250,000.00). The legislation will allow an operator after he has contributed five hundred dollars (\$500.00) per acre to cease paying into the fund. It is estimated that at the rate of \$12.50 per acre a year, it would be forty years before an operator would cease payment into the fund. At that time the fund would have a very large sum of money in it and would support the cost of reclaiming all lands in which there has been a bond forfeiture or permit revocation.

RECLAMATION FUND	
10,000 acres @ \$50 per acre for the first year (1978)	\$500,000
\$10,000 acres @ \$12.50 per acre for the second year (1979)	\$125,000
Subsequent years @ \$12.50 per acre	

After ten years the fund would be \$1,625,000 based on the average figure of 10,000 acres each year being disturbed.

In accordance with § 45.1-197.18 of the proposed legislation, interest generated by the fund is designated to be used to reclaim non-coal orphaned lands. Projected revenue available by the end of 1979 (the first full interest bearing year) would amount to \$30,000.00 at six percent. After five years, \$225,000.00 would be available for orphaned land reclamation.

No great change is anticipated in the total bonded acreage since the operator after satisfactorily completing reclamation can apply any monies on deposit to additional acreage to be disturbed.

The minerals other than coal industry supports this legislation as a means of accomplishing the aims of this study by the Council without appropriation from the General Fund. The proposed changes also will make the bonding requirements more palatable to the industry since it has a built-in incentive for voluntary reclamation. In addition, the proposal gives the Director of the Department of Conservation and Economic Development flexibility in the bonding program and will make funds readily available to reclaim any lands subject to forfeiture.

Respectfully submitted,

Edward E. Lane, Chairman

Lawrence Douglas Wilder, Vice-Chairman

George E. Allen, Jr.

Peter K. Babalas

Vincent F. Callahan, Jr.

Joseph V. Gartlan, Jr.

Jerry H. Geisler

Robert R. Gwathmey, III

C. Hardaway Marks

Lewis A. McMurrin, Jr.

Willard J. Moody

James M. Thomson

J. Warren White

Edward E. Willey

APPENDIX I

MINERALS OTHER THAN COAL ORPHANED LAND SURVEY

TYPE OF MATERIAL	DISTURBED	BARE	PARTIALLY VEGETATED	ACTIVE EROSION
Sand & Gravel	3,629	201	3,428	2,262
Sand	3,086.65	437	2,649.65	1,816
Gravel	1,302	203	1,099	837
Stone	2,231.25	1,411	820.25	1,203.25
Clay & Marl	937	289	648	394
Manganese	429	320	109	408
Kyanite	435	183	252	435
Iron Ore	31.5	...	31.5	...
Mica	11.5	2	9.5	1
Flagstone	7	6	1	...
Fil l Material	84	...	84	21
Gold	5	...	5	1
Bauxite	12	...	12	1
Shale	51	...	51
Rutile	15	...	15	15
Feldspar	825	825

	13,091.90	3,877	9,214.9	7,394.25

Acreege figures based on Soil Conservaton Service Field Survey conducted during August 1976.

Responses from Arlington, Southampton and Sussex Counties were not received.

The cost of reclaiming hard rock quarries is approximately \$500.00 per acre. The cost of reclaiming sand, gravel, shale and clay operations is approximately \$300.00 per acre.

I.	Stone	BARE	Gravel, Sand, etc.
	1600		2275
	x \$500		x \$300

	\$ 800,000		\$ 682,500

Therefore, the approximate costs equal \$1,482.500 to reclaim the bare areas based on present bond fees.

II. ACTIVE EROSION/PARTIALLY VEGETATED

Stone	Gravel, Sand, etc.
1072.25	4306

x \$500

.....
\$ 536,125

x \$300

.....
\$ 1,291,800

Total: \$1,827,925

A basic figure of \$3,310,425 is the approximate money needed to reclaim the non-coal orphaned lands in this State based upon the results of the survey. A far more detailed site by site inspection is required to get an exact cost analysis.

*Figures arrived at by the Department of Conservation and Economic Development.

APPENDIX II

U. S. DEPARTMENT OF AGRICULTURE
 SOIL CONSERVATION SERVICE
 EVALUATION OF PROBLEMS AND ESTIMATION OF COST FOR
 RECLAMATION OF ORPHANED MINED LAND (OTHER THAN COAL) IN VIRGINIA

EVAL. SCORE RANGE	NUMBER OF SITES	ACRES		WATER CONTROL OR MISC. STRUCTURE		GRADING & SHAPING		SEEDBED PREP		PLANTING MATERIAL		SCREENING MATERIAL		TOTAL COST	TECH. ASSIST. MAN/DAYS
		TOTAL	NEEDING TRT	(N/A) NO.	COST	ACRES	COST	ACRES	COST	ACRES	COST	ACRES	COST		
1-5	93	1075	3		\$ -0-	1	\$ 190	1	\$ 50	1	\$ 87	0	\$ 10	\$ 337	1
6-10	207	2766	118		-0-	53	4,100	112	3,591	78	13,050	7	480	21,221	31
11-15	86	2344	85		550	14	3,770	62	1,905	60	7,955	1	70	14,250	43
16-20	53	1335	253		8,600	147	24,610	187	8,744	236	24,918	5	405	67,277	43
21-25	31	2365	701		4,250	452	57,820	671	17,614	672	62,796	5	15	142,495	155
26-30	31	901	622		144,200	500	155,730	589	17,686	608	114,405	0	120	432,141	372
31-35	19	630	325		61,065	199	24,949	268	20,860	287	72,090	1	105	179,069	97
36-40	12	482	378		49,140	250	27,460	365	10,322	365	73,400	0	-0-	160,322	100
41-50	8	176	173		51,250	168	22,000	173	7,676	151	118,149	0	-0-	199,075	64
TOTALS	540	12,074	2,658 (acres)		\$ 319,055	(1784)	\$ 320,629	(2428)	\$ 88,448	(2458)	\$ 486,850	(19)	\$ 1,205	\$ 1,216,187	906

The total acres needing treatment does not equal total acres mined due to natural revegetation, reclamation efforts by owners, etc.

Total acres differs from 1976 data (13091 acres) due to reactivation of areas.

APPENDIX III

A BILL to amend the Code of Virginia by adding in Chapter 16 of Title 45.1 an article numbered 3, consisting of sections numbered 45.1-197.3 through 45.1-197.7, and an article numbered 4, consisting of sections numbered 45.1-197.8 through 45.1-197.18, the added sections relating to the reclamation of non-coal orphaned lands and the creation of the Minerals Reclamation Fund; allocation of funds.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 16 of Title 45.1 an article numbered 3, consisting of sections numbered 45.1-197.3 through 45.1-197.7, and an article numbered 4, consisting of sections numbered 45.1-197.8 through 45.1-197.18, as follows:

Article 3.

Orphaned Lands.

§ 45.1-197.3. Definition.—For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed.

§ 45.1-197.4. Survey; priorities for reclamation.—The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this Commonwealth and shall establish priorities for the reclamation thereof.

§ 45.1-197.5. Agreements with owners or lessees; reclamation by Director.—The Director is authorized to enter into agreements with owners or lessees of orphaned lands whereby the owners shall agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the Director return orphaned land to other than the minimum potential use thereof which obtained prior to the initiation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, but in no event shall the Director enter into such agreement unless funds are immediately available for the performance of the agreement by the Director as hereinafter provided.

§ 45.1-197.6. Contracts for reclamation.—The Director is authorized to contract with any State agency, federal agency, or private contractor through the Division for the purpose of reclaiming orphaned lands pursuant to the agreements herein specified.

§ 45.1-197.7. *Acceptance of federal funds, gifts, etc.*—The Director is authorized to accept federal funds or gifts or grants from any source for the purposes of this article and is further authorized to acquire by gift or purchase, but not by the exercise of the power of eminent domain, such orphaned lands as in his judgment is in the public interest and to utilize any such funds, gifts or grants for the purposes of this article.

Article 4.

Minerals Reclamation Fund.

§ 45.1-197.8. *Creation of fund.*—There is hereby created in the State Treasurer's Office a special fund to be known as the Minerals Reclamation Fund, hereinafter referred to as the Fund, which shall be under the supervision of the Department. The Fund shall consist of all payments made into the Fund by operators in accordance with the provisions of this article.

§ 45.1-197.9. *Membership in Fund; payments required.*—Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 of Title 45.1 of the Code shall become a member of the Fund by making an initial payment to the Fund of fifty dollars for each acre estimated to be affected by mining operations during the next ensuing year. Thereafter, the member shall, within ten days following the anniversary date of each permit issued to the member, make a payment to the Fund of twelve dollars and fifty cents for each acre estimated to be affected by mining operations during the next ensuing year. Such payments shall continue to be made until the member has paid into the Fund a total of five hundred dollars for each acre, estimated to be affected under the permits issued to the member.

45.1-197.10. *Release of bonds and other securities.*—When the size of the Fund shall have reached four hundred thousand dollars, the bonds and other securities previously posted, pursuant to § 45.1-183, by all members shall be released.

45.1-197.11. *Return of member payments.*—Subject to the provisions of § 45.1-197.14, the Director shall return from the Fund to the member, the payments which the member has paid previously to the Fund, when the Director has determined that the member has completed satisfactory reclamation, in accordance with § 45.1-185. The payments returned shall be only those payments which the member has made for the acres which have been satisfactorily reclaimed. In lieu of a return, the member may request the Director to retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

§ 45.1-197.12. *Revocation of permits; reclamation work.*—If a permit which has been issued to a member is revoked pursuant to § 45.1-186.1, then the payments which the member has made to the Fund, with respect to the permit so revoked, shall be forfeited to the Fund. The Director shall

use the payments so forfeited or as much thereof as shall be necessary, for the reclamation of the mining operation to which the permit had applied. In the event that the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit, in accordance with § 45.1-186.1, except that if all members' bonds and other securities have been released pursuant to § 45.1-197.10 then the Director shall draw upon the Fund for the entire cost of reclamation.

§ 45.1-197.13. Collection of debts.—The amount by which the cost of reclamation exceeds the amount of a member's forfeited payments and, if any, the member's bond or other security also forfeited, shall constitute a debt of the member to the Commonwealth of Virginia. The Director is authorized to collect such debts together with the cost of collection, through appropriate legal action, or by declaring the forfeiture of other payments made by the member to the Fund. Moneys collected through legal action, less the costs of collection, shall be deposited in the Fund.

§ 45.1-197.14. Decreases in the size of the Fund.—Whenever the size of the Fund shall decrease to less than two hundred and fifty thousand dollars the Director shall suspend the return of payments pursuant to § 45.1-197.11 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to two hundred and fifty thousand dollars. In lieu of such an assessment all members shall at the request of the Director post bonds or other securities, within six months after the Director so notifies the members. Failure to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with § 45.1-197.12.

§ 45.1-197.15. Order of return of payments.—The return of payments to members shall be in the order in which the Director approves the completion of reclamation pursuant to § 45.1-185.

§ 45.1-197.16. Discontinuance of Fund.—In the event of the discontinuance of the Fund, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

§ 45.1-197.17. Miscellaneous.—Nothing in this article shall be construed as vesting in any member any right, title or interest in the Fund, or the disposition thereof. The Fund shall be used solely for reclamation of land pursuant to this chapter.

§ 45.1-197.18. Reclamation Funding.—An amount equal to the average interest rate earned for all funds in the State Treasury as applied to the Fund shall be paid annually to the Department of Conservation and Economic Development to be used for the reclamation of orphaned lands pursuant to Article 3 of this chapter and is hereby allocated for such purpose.

APPENDIX IV

§ 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 as approved and directed by the Department. 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 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.

