

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 653

Short Title: Mining Act Amendments.

(Public)

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Sponsors: Senator Kaplan.

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Referred to: Judiciary I.

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March 31, 1993

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MINING ACT OF 1971.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-47 reads as rewritten:

**"§ 74-47. Findings.**

The General Assembly finds that the extraction of minerals by mining is a basic and essential activity making an important contribution to the economic well-being of North Carolina and the nation. ~~Furthermore, it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain surface mining operations precludes complete restoration of the land to its original condition. However, it~~ It is possible to conduct mining in such a way as to minimize its effects on the surrounding environment, including homes and land in close proximity to a proposed mining site. Furthermore, proper reclamation of mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State. The General Assembly finds that it is necessary to balance the economic benefits of mining operations and the interests to the State in protecting the environment. The General Assembly finds that the Department of Environment, Health, and Natural Resources should consider the number of acres subject to mining permits both in the State and in a particular area of the State. The General Assembly finds that the conduct of mining and reclamation of mined lands as provided by this Article will allow the mining of valuable minerals and will provide for the protection of the State's environment and for the subsequent beneficial use of the mined and reclaimed land."

1           Sec. 2. G.S. 74-48 reads as rewritten:

2   "**§ 74-48. Purposes.**

3       The purposes of this Article are to provide:

- 4           (1) That the usefulness, productivity, and scenic values of all lands and  
5           waters involved in mining within the State will receive the greatest  
6           practical degree of protection and restoration.
- 7           (2) That ~~from June 11, 1971,~~ no mining shall be carried on in the State  
8           unless plans for such mining include reasonable provisions for  
9           protection of the surrounding ~~environment~~ environment, including  
10          protection to the residents whose homes are in close proximity to a  
11          proposed mining site, and for reclamation of the area of land affected  
12          by mining."

13       Sec. 3. G.S. 74-49(13) reads as rewritten:

14       "(13) 'Reclamation plan' means the operator's written proposal ~~as required and~~  
15       ~~approved by the Department~~ for reclamation of the affected land, which  
16       ~~shall include but not be limited to:~~

- 17       a. ~~Proposed practices to protect adjacent surface resources;~~  
18       b. ~~Specifications for surface gradient restoration to a surface~~  
19       ~~suitable for the proposed subsequent use of the land after~~  
20       ~~reclamation is completed, and proposed method of~~  
21       ~~accomplishment;~~  
22       c. ~~Manner and type of revegetation or other surface treatment of~~  
23       ~~the affected areas;~~  
24       d. ~~Method of prevention or elimination of conditions that will be~~  
25       ~~hazardous to animal or fish life in or adjacent to the area;~~  
26       e. ~~Method of compliance with State air and water pollution laws;~~  
27       f. ~~Method of rehabilitation of settling ponds;~~  
28       g. ~~Method of control of contaminants and disposal of mining~~  
29       ~~refuse;~~  
30       h. ~~Method of restoration or establishment of stream channels and~~  
31       ~~stream banks to a condition minimizing erosion, siltation, and~~  
32       ~~other pollution;~~  
33       i. ~~Such maps and other supporting documents as may be~~  
34       ~~reasonably required by the Department; and~~  
35       j. ~~A time schedule that meets the requirements of G.S. 74-53-~~  
36       ~~land."~~

37       ◆ Sec 4. G.S. 74-49 is amended by adding the following subdivision to read:

38       "(11a) 'Person affected' means a person aggrieved, as defined in G.S. 150B-2,  
39       who either:

- 40       a. Submits to the Department in a timely manner, either  
41       individually or jointly with other persons, written comment  
42       containing specific recommendations on a permit application.  
43       b. Presents oral comment at a public hearing if a public hearing is  
44       conducted by the Department on a permit application and, if

1                    there is an opportunity to submit written comment following the  
2                    public hearing, submits to the Department in a timely manner,  
3                    written comment containing specific recommendations on the  
4                    permit application.

5                    c.    Makes a good cause showing that comment was not submitted  
6                    or presented because there was no reason to have anticipated  
7                    being adversely affected by the permit decision."

8                    Sec. 5. G.S. 74-50 reads as rewritten:

9    **"§ 74-50. Permits – General.**

10                  ~~(a) After July 1, 1972, no operator~~ No person shall engage in mining without  
11 ~~having first obtained from the Department an operating a permit which covers the~~  
12 ~~affected land and which has not terminated, been revoked, been suspended for the~~  
13 ~~period in question, or otherwise become invalid. issued by the Department. An~~  
14 ~~operating permit may be modified from time to time to include land neighboring the~~  
15 ~~affected land, in accordance with procedures set forth in G.S. 74-52. A separate permit~~  
16 ~~shall be required for each mining operation that is not on land neighboring a mining~~  
17 ~~operation for which the operator has a valid subject to an existing permit.~~

18                  ~~No permit shall be issued except in accordance with the procedures set forth in G.S.~~  
19 ~~74-51, nor modified or renewed except in accordance with the procedures set forth in~~  
20 ~~G.S. 74-52.~~

21                  ~~An appeal from the Department's denial of a permit may be taken to the Mining~~  
22 ~~Commission, as provided by G.S. 74-61.~~

23                  ~~Prior to the issuance of a new mining permit, the operator shall make a reasonable~~  
24 ~~effort, satisfactory to the Department, to notify all owners of record of land adjoining~~  
25 ~~the proposed site, and to notify the chief administrative officer of the county or~~  
26 ~~municipality in which the site is located that he intends to conduct a mining operation~~  
27 ~~on the site in question.~~

28                  ~~(b) No permit shall become effective until the operator has deposited with the~~  
29 ~~Department an acceptable a performance bond or other security pursuant to G.S. 74-54.~~  
30 ~~If at any time said bond or other security, or any part thereof, shall lapse a bond or other~~  
31 ~~security lapses for any reason other than a release by the Department, and said lapsed~~  
32 ~~bond or security the bond or other security is not replaced by the operator within 30 days~~  
33 ~~after notice of the lapse, the permit to which it pertains shall automatically become void~~  
34 ~~and of no further effect. terminate.~~

35                  ~~(c) An operating A permit shall be granted for a period not exceeding 40 five~~  
36 ~~years. If the mining operation terminates and the reclamation required under the approved~~  
37 ~~reclamation plan pursuant to G.S. 74-53 is completed prior to the end of said this period,~~  
38 ~~the permit shall terminate. Termination of a permit shall not have the effect of relieving~~  
39 ~~does not relieve the operator of any obligations which he has incurred under his approved~~  
40 ~~reclamation plan or otherwise. obligations. Where the mining operation itself has terminated,~~  
41 ~~no A permit shall be is not required in order to carry out reclamation measures under the~~  
42 ~~a reclamation plan.~~

43                  ~~An operating permit may be renewed from time to time, pursuant to procedures set~~  
44 ~~forth in G.S. 74-52.~~

1 ~~An operating permit may be suspended or revoked for cause, pursuant to procedures~~  
2 ~~set forth in G.S. 74-58."~~

3 Sec. 6. G.S. 74-51 reads as rewritten:

4 "**§ 74-51. Permits** ~~—Application, granting, conditions.~~ **Application procedure.**

5 (a) ~~Any operator-person~~ desiring to engage in mining shall ~~make written application~~  
6 ~~apply~~ to the Department for a permit. ~~Such~~ ~~The~~ application shall be upon a form  
7 furnished by the Department and shall fully state the information called for; in addition, the  
8 Department. ~~The applicant may be required to~~ shall furnish ~~such other~~ any additional  
9 information as may be deemed necessary by the Department requests in order adequately  
10 to enforce this Article.

11 (b) ~~The application shall be accompanied by a reclamation plan which meets the~~  
12 ~~requirements of G.S. 74-53.~~ The applicant shall submit a reclamation plan with its  
13 application. No permit shall be issued ~~until such~~ unless a final reclamation plan has been  
14 approved by the Department. ~~Department pursuant to G.S. 74-53.~~

15 (c) The application shall be accompanied by a signed agreement, in a form  
16 specified by the Department, that in the event a bond forfeiture is ordered pursuant to  
17 G.S. 74-59, the Department and its representatives and its contractors ~~shall have the right~~  
18 ~~to make whatever entries on~~ may enter the land and ~~to take whatever actions may be~~ any  
19 action necessary in order to carry out reclamation ~~which that~~ the operator has failed to  
20 complete.

21 (d) When an applicant submits an application for a permit, the Department shall  
22 set a period of not less than 30 days during which the Department will accept written  
23 comment on the application. Within 10 days after receiving the application, the  
24 Department shall send the applicant written notification of the starting and ending dates  
25 of the comment period. Within 10 days after receiving notification regarding the  
26 comment period, the applicant shall:

27 (1) Publish a notice of the application in a newspaper having general  
28 circulation in each county in which any part of the mining operation is  
29 proposed to be located; and

30 (2) Notify by certified or registered mail all owners of record of land  
31 adjoining the proposed site, the units of local government in which the  
32 proposed site is located, and any other unit of local government  
33 located within one-half mile of the proposed site.

34 (e) At a minimum, any notice shall:

35 (1) Name the applicant.

36 (2) Clearly identify the proposed area to be mined and the nature of the  
37 proposed mining operation.

38 (3) State the name and address of the agency to which public comment on  
39 the application may be directed and the starting and ending dates of the  
40 comment period.

41 (f) The applicant shall submit to the Department an affidavit of notice by  
42 publication from the publisher of each newspaper in which the notice is published.

1       (g) ~~Before deciding whether to grant a new permit, the~~ The Department shall ~~may~~  
2 circulate copies of a notice of application for review and ~~comment as it deems advisable.~~  
3 written comment.

4       (h) The Department shall conduct a public hearing for any application for a new  
5 permit. Upon its determination that significant public interest exists, the Department  
6 shall conduct a public hearing for any application for a modification, renewal, or  
7 transfer of an existing permit. Any public hearing shall be held within 60 days after the  
8 completed application and all additional information requested by the Department is  
9 filed with the Department. The Department shall consider all relevant oral comment  
10 presented at a public hearing and all relevant written comment received by the  
11 Department during the comment period.

12       (i) The Department shall grant or deny the permit requested as expeditiously as  
13 possible, but in no event later than 60 days after the ~~completed application form and any~~  
14 ~~relevant and material supplemental~~ all additional information reasonably required shall have  
15 requested by the Department has been filed with the Department, or if a public hearing  
16 is held, within 30 days following the hearing and the filing of any relevant and material  
17 ~~supplemental information reasonably required by the Department.~~ hearing. Priority  
18 ~~consideration shall be given to applicants who submit evidence that the mining proposed will~~  
19 ~~be for the purpose of supplying materials to the Board of Transportation.~~

20       ~~Upon its determination that significant public interest exists, the Department shall~~  
21 ~~conduct a public hearing on any application for a new mining permit. Such hearing~~  
22 ~~shall be held before the Department reaches a final decision on the application, and in~~  
23 ~~making its determination, the Department shall give full consideration to all comments~~  
24 ~~submitted at the public hearing. Such public hearing shall be held within 60 days of the~~  
25 ~~filing of the application.~~

26       (j) An applicant for a new permit or for a modification to an existing permit for  
27 the expansion of a mining operation shall request each unit of local government having  
28 jurisdiction over any part of the affected land to issue a determination as to whether the  
29 unit of local government has in effect a zoning or subdivision ordinance applicable to  
30 the mining operation and whether the proposed mining operation would be consistent  
31 with the ordinance. The request to the unit of local government shall be accompanied  
32 by a copy of the draft permit application and shall be delivered to the clerk of the unit of  
33 local government personally or by certified mail. The determination shall be verified or  
34 supported by affidavit signed by the official designated by the unit of local government  
35 to make the determination and, if the unit of local government states that the mining  
36 operation is inconsistent with a zoning or subdivision ordinance, shall include a copy of  
37 the ordinance and the specific reasons for the determination of inconsistency. A copy of  
38 any such determination shall be provided to the applicant when it is submitted to the  
39 Department. The Department shall not act upon an application for a permit under this  
40 section until it has received a determination from each unit of local government  
41 requested to make a determination by the applicant. Unless the unit of local  
42 government makes a subsequent determination of consistency with all ordinances cited  
43 in the determination or the proposed mining operation is determined by a court of  
44 competent jurisdiction to be consistent with the cited ordinances, the Department shall

1 attach as a condition of the permit a requirement that the applicant, prior to operating  
2 under the permit, comply with all lawfully adopted local ordinances, including those  
3 cited in the determination, that apply to the mining operation.

4 (k) The Department ~~may shall~~ deny ~~such any~~ permit upon finding:

5 (1) That any requirement of this Article or any rule ~~promulgated hereunder~~  
6 adopted pursuant to this Article will be violated by the proposed  
7 ~~operation;~~ operation.

8 (2) That the operation will have unduly adverse effects on wildlife or fresh  
9 water, estuarine, or marine ~~fisheries;~~ fisheries.

10 (3) That the operation will violate standards of air quality, surface water  
11 quality, or groundwater quality ~~which that~~ have been ~~promulgated~~  
12 adopted by the ~~Department;~~ Department.

13 (4) That the operation will constitute a substantial physical hazard to a  
14 neighboring dwelling house, school, church, hospital, commercial or  
15 industrial building, public road or other public ~~property;~~ property.

16 (5) That the operation will have a significantly adverse effect on the  
17 purposes of a publicly owned park, ~~forest forest,~~ or recreation ~~area;~~  
18 area.

19 (6) That previous experience with similar operations indicates a  
20 substantial possibility that the operation will result in substantial  
21 deposits of sediment in stream beds or lakes, result in landslides, or  
22 result in acid water ~~pollution;~~ or pollution.

23 (7) That the operator has not corrected all violations ~~which he that~~ it may  
24 have committed under any prior permit and which resulted in,

25 a. Revocation of ~~his-its~~ permit,

26 b. Forfeiture of part or all of ~~his-its~~ bond or other security,

27 c. Conviction of a misdemeanor under G.S. 74-64, or

28 d. Any other court order issued under G.S. 74-64.

29 (8) That any unit of local government in which the proposed site is located  
30 has certified that the activity is not in accordance with its  
31 comprehensive plan and that the Department cannot make consistent  
32 by adding a condition to the permit in accordance with subsection (j)  
33 of this section.

34 (9) That the operation will be within one-half mile of 10 or more occupied  
35 dwellings.

36 (10) That the land cannot be sufficiently restored to its former condition.

37 (11) That the proposed mining operation will adversely impact a property  
38 that appears on the Department of Cultural Resources' statewide  
39 survey due to the property's historic or archaeological significance.

40 (12) That the applicant, or any parent, subsidiary, or other affiliate of the  
41 applicant or parent is not financially qualified to carry out the activity  
42 for which the permit is required or to complete reclamation consistent  
43 with the approved reclamation plan.

1       (l) In the absence of any ~~such findings, a permit shall be granted.~~ findings set forth  
2 in subsection (k) of this section, the Department shall issue the permit. Any permit  
3 issued shall be expressly conditioned upon compliance with all requirements of the  
4 approved reclamation plan for the ~~operation-operation, with local ordinances as provided~~  
5 in subsection (j) of this section, and with such any further reasonable and appropriate  
6 requirements and safeguards as may be deemed necessary by the Department that the  
7 Department determines is necessary to assure that the operation will comply fully with  
8 the requirements and objectives of this Article. ~~Such conditions~~ Conditions may, among  
9 others, include a requirement of visual screening, vegetative or otherwise, so as to  
10 screen the view of the operation from public highways, public parks, or residential  
11 areas, where the Department finds ~~such~~ screening to be feasible and desirable. Violation  
12 of any ~~such~~ conditions shall be treated as a violation of this Article and shall constitute a  
13 basis for suspension or revocation of the permit.

14       Any operator ~~wishing any modification of the terms and conditions of his permit or~~  
15 ~~of the approved reclamation plan shall submit a request for modification in accordance~~  
16 ~~with the provisions of G.S. 74-52.~~

17       (m) If the Department denies an application for a permit, it shall notify the ~~operator~~  
18 applicant in writing, stating the reasons for its denial and any ~~modifications~~ changes in  
19 the application ~~which that~~ would make it acceptable. The ~~operator~~ applicant may  
20 ~~thereupon modify his~~ submit a new application or file an appeal, as provided in G.S. ~~74-~~  
21 ~~61.~~ 74-61, but no such appeal shall be taken more than 60 days after notice of disapproval has  
22 been mailed to him at the address shown on his application.

23       Upon ~~approval of an application, the Department shall set the amount of the~~  
24 ~~performance bond or other security which is to be required pursuant to G.S. 74-54. The~~  
25 ~~operator shall have 60 days following the mailing of such notification in which to~~  
26 ~~deposit the required bond or security with the Department. The operating permit shall~~  
27 ~~not be issued until receipt of this deposit.~~

28       When one operator ~~succeeds to the interest of another in any uncompleted mining~~  
29 ~~operation, by virtue of a sale, lease, assignment, or otherwise, the Department may~~  
30 ~~release the first operator from the duties imposed upon him by this Article with~~  
31 ~~reference to such operation and transfer the permit to the successor operator; provided,~~  
32 ~~that both operators have complied with the requirements of this Article and that the~~  
33 ~~successor operator assumes the duties of the first operator with reference to reclamation~~  
34 ~~of the land and posts a suitable bond or other security."~~

35       Sec. 7. G.S. 74-52 reads as rewritten:

36       "**§ 74-52. Permits – Modification, ~~renewal,~~ renewal, transfer.**

37       (a) Any operator engaged in mining under an operating permit may apply at any  
38 time for modification of said permit, and, at any time during the two years prior to its  
39 expiration date for renewal of the permit. Such application shall be in writing upon  
40 forms furnished by the Department and shall fully state the information called for; in  
41 addition, the applicant may be required to furnish such other information as may be  
42 deemed necessary by the Department in order adequately to enforce the Article.  
43 However, it shall not be necessary to resubmit information which has not changed since  
44 the time of a prior application, where the applicant states in writing that such

1 ~~information has not changed.~~ Any holder of an existing permit desiring to alter the  
2 current reclamation plan or change other terms or conditions of the existing permit shall  
3 apply to modify its permit. A permit holder shall apply for a new permit, rather than for  
4 a modification to an existing permit, in order to include any land that is not subject to an  
5 existing permit or to extend the expiration date of an existing permit.

6 (b) Any holder of an existing permit may, at any time during the two years prior  
7 to the permit's expiration, apply to the Department to renew its permit.

8 (c) Any person succeeding to the interest of a holder of an existing permit when  
9 the holder of the existing permit is engaged in mining prior to completion of the  
10 approved reclamation plan or prior to termination of the mining operation shall apply to  
11 the Department to transfer the permit. The Department may release the holder of the  
12 existing permit from its obligations under this Article and issue a permit to the  
13 applicant. If the Department issues a permit to the applicant, the applicant shall assume,  
14 at a minimum, all the duties that the holder of the existing permit incurred pursuant to  
15 this Article.

16 (d) ~~The Subject to subsection (e) of this section, the procedure to be followed and~~  
17 ~~standards to be applied in renewing—modifying, renewing, or transferring a permit shall~~  
18 ~~be the same as those for issuing a permit; provided, however, that in the absence of any~~  
19 ~~changes in legal requirements for issuance of a permit since the date on which the prior permit~~  
20 ~~was issued, the only basis for denying a renewal permit shall be an uncorrected violation of the~~  
21 ~~type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of~~  
22 ~~conditions then existing—those set forth in G.S. 74-51.~~

23 (e) An applicant is not required to resubmit information that has not changed  
24 since the time of its last application so long as the applicant certifies that the  
25 information has not changed.

26 ~~—A modification under this section may affect the land area covered by the permit,~~  
27 ~~the approved reclamation plan coupled with the permit, or other terms and conditions of~~  
28 ~~the permit. A permit may be modified to include land neighboring the affected land, but~~  
29 ~~not other lands. The reclamation plan may be modified in any manner, so long as the~~  
30 ~~Department determines that the modified plan fully meets the standards set forth in G.S.~~  
31 ~~74-53 and that the modifications would be generally consistent with the bases for~~  
32 ~~issuance of the original permit. Other terms and conditions may be modified only where~~  
33 ~~the Department determines that the permit as modified would meet all requirements of~~  
34 ~~G.S. 74-50 and 74-51. No modification shall extend the expiration date of any permit~~  
35 ~~issued under this Article.~~

36 (f) In lieu of a modification or a renewal, applying for a modification, renewal, or  
37 transfer of an existing permit, an operator may apply for a new permit in the manner  
38 prescribed by G.S. 74-50 and 74-51.

39 ~~No modification or renewal of a permit shall become effective until any required~~  
40 ~~changes have been made in the performance bond or other security posted under the~~  
41 ~~provisions of G.S. 74-54, so as to assure the performance of obligations assumed by the~~  
42 ~~operator under the permit and reclamation plan."~~

43 Sec. 8. G.S. 74-53 reads as rewritten:

44 "**§ 74-53. Reclamation plan.**



1       ~~The operator shall submit with his application for an operating permit a proposed~~  
2 ~~reclamation plan. Said plan shall include as a minimum, each of the elements specified~~  
3 ~~in the definition of 'reclamation plan' in G.S. 74-49, plus such other information as may~~  
4 ~~be reasonably required by the Department. The reclamation plan shall provide that~~  
5 ~~reclamation~~

6       (a) The reclamation plan submitted with an application pursuant to G.S. 74-51(b)  
7 shall include:

- 8           (1) Proposed practices for protecting adjacent surface resources.
- 9           (2) Specifications for and method of restoring the surface gradient to a  
10 surface suitable for the prior and proposed use of the land after  
11 reclamation is completed.
- 12           (3) Manner and type of vegetation or other surface treatment for restoring  
13 the affected areas.
- 14           (4) Method for preventing or eliminating conditions that will be hazardous  
15 to animal or fish life in or adjacent to the area.
- 16           (5) Method for complying with State air and water pollution laws.
- 17           (6) Method for rehabilitating settling ponds.
- 18           (7) Method for controlling contaminants and disposing of mining refuse.
- 19           (8) Method for restoring or establishing stream channels and stream banks  
20 to a condition minimizing erosion, siltation, and other pollution.
- 21           (9) Maps and other supporting documents for aiding the Department to  
22 analyze the plan.
- 23           (10) A time schedule.
- 24           (11) Any other information reasonably requested by the Department.

25       (b) Reclamation activities, particularly those relating to control of erosion, shall  
26 to the extent feasible be conducted simultaneously with mining operations and in any  
27 event shall be initiated at the earliest practicable time after completion or termination of  
28 mining on any segment of the permit area. The plan shall provide that reclamation  
29 Reclamation activities shall be completed within two years after completion or  
30 termination of mining on each segment of the area for which a permit is requested  
31 unless a longer period is specifically permitted by the Department. the Department  
32 specifically approves a longer period.

33       (c) The Department may approve, approve subject to stated modifications, or  
34 reject the reclamation plan which is proposed. The Department shall approve a reclamation  
35 plan (as submitted or as modified) only where it finds that it Subject to subsection (d) of this  
36 section, the Department shall not approve a reclamation plan unless the applicant  
37 satisfies the Department that the reclamation plan adequately provides for those actions  
38 necessary to achieve the purposes and requirements of this Article, and that in addition,  
39 the plan Article and meets the following minimum standards:

- 40           (1) The final slopes in all excavations in soil, sand, gravel, and other  
41 unconsolidated materials shall be restored to the original contours of  
42 the land to the extent this is practicable and consistent with applicable  
43 engineering standards, or, if not practicable or not consistent with

- 1            applicable engineering standards, at such an angle as to minimize the  
2            possibility of slides and be consistent with the future use of the land.  
3            (2) ~~Provisions for safety~~ In all excavations in rock, safety to persons and to  
4            adjoining property must shall be provided in all excavations in rock-  
5            provided.  
6            (3) At open pit mining operations, all overburden and spoil shall be left in  
7            a configuration ~~which~~ that is in accordance with accepted conservation  
8            practices and ~~which~~ that is suitable for the prior and proposed  
9            subsequent use of the land.  
10           (4) ~~In no event shall any provision of this section be construed to allow~~  
11           ~~small pools of water that are, or are likely to become, noxious, odious,~~  
12           ~~or foul to collect or remain on the mined area.—Suitable drainage~~  
13           ~~ditches or conduits shall be constructed or installed to avoid such~~  
14           ~~conditions.~~ prevent or eliminate small pools of water that are, or are  
15           likely to become, noxious, odious, or foul. Lakes, ponds, and marsh  
16           lands shall be considered adequately reclaimed lands when approved  
17           by the Department.  
18           (5) ~~The~~ Subject to the advice and technical assistance of the State soil and  
19           water conservation districts, the type of vegetative cover and methods  
20           of its establishment shall be specified, and in every case shall conform to  
21           accepted and recommended agronomic and reforestation restoration  
22           practices as established by the North Carolina Agricultural Experiment  
23           Station and Department of Environment, Health, and Natural  
24           Resources. Advice and technical assistance may be obtained through the  
25           State soil and water conservation districts.  
26           (6) Lakes, ponds, and marshlands shall be adequately reclaimed.

27           (d) ~~The Department shall be authorized to~~ may approve a reclamation plan ~~despite~~  
28           ~~the fact that such~~ when the plan does not provide for reclamation treatment of every  
29           portion of the affected land, where if the Department finds that that, because of special  
30           ~~conditions such treatment~~ conditions, complete reclamation would not be feasible for  
31           particular areas and that the reclamation plan takes all practical steps to minimize the  
32           extent of such areas. less than complete reclamation."

33           Sec. 9. G.S. 74-54 reads as rewritten:

34           **"§ 74-54. Bonds.**

35           (a) Each applicant for ~~an operating permit, or for the renewal thereof,~~ a permit shall  
36           file with the Department following approval of his application ~~and shall thereafter~~  
37           ~~maintain in force~~ a bond in favor of the State of North Carolina, executed by a surety  
38           approved by the Commissioner of Insurance, in the amount set forth ~~below.~~ in  
39           subsection (b) of this section. The bond herein provided for must be continuous in nature  
40           This bond shall be continuous and shall remain in force until cancelled by the surety.  
41           The bond shall be conditioned upon the faithful performance of the requirements set  
42           forth in this Article and of any rules adopted pursuant to this Article. The operator shall  
43           maintain liability under the bond as long as reclamation is not completed in compliance  
44           with the approved reclamation plan unless released by the Department in writing. The

1 Department shall release the operator upon its completion of compliance or upon the  
2 Department's acceptance of a substitute bond. The liability of the surety shall not  
3 exceed the amount of the surety bond required by this subsection. Cancellation by the  
4 surety shall be effectuated only upon 60 days written notice thereof to the Department  
5 and to the operator.

6 (b) The applicant shall have the option of filing shall file a separate bond for each  
7 operating permit or of filing a blanket bond covering all mining operations within the  
8 State for which he holds a permit. permit. The amount of each bond shall be based  
9 upon the expected actual cost of reclamation of the area of affected land to be reclaimed  
10 under subject to the approved reclamation plan or plans to which it pertains, plans, less  
11 any such area where reclamation has been completed and released from coverage by the  
12 Department, pursuant to G.S. 74-56, or based on such any other criteria established by  
13 the Mining Commission. The Department shall set the amount of the required bond in  
14 all cases, based upon a schedule established by the Mining Commission.

15 The bond shall be conditioned upon the faithful performance of the requirements set  
16 forth in this Article and of the rules adopted pursuant thereto. Liability under the bond  
17 shall be maintained as long as reclamation is not completed in compliance with the  
18 approved reclamation plan unless released only upon written notification from the  
19 Department. Notification shall be given upon completion of compliance or acceptance  
20 by the Department of a substitute bond. In no event shall the liability of the surety  
21 exceed the amount of the surety bond required by this section.

22 (c) In lieu of the surety bond required by this section, subsection (a) of this  
23 section, the operator may file with the Department a cash deposit, negotiable securities,  
24 a mortgage of real property acceptable to the Department, or an assignment of a savings  
25 account in a North Carolina bank on an assignment form prescribed by the Department.

26 (d) If the license to do business in North Carolina of any surety upon a bond filed  
27 pursuant to this Article should be suspended or revoked, the operator shall, within 60  
28 days after receiving notice thereof, substitute for such surety a good and sufficient  
29 corporate surety authorized to do business in this State. Upon failure of the operator to  
30 make such substitution, his permit shall automatically become void and of no effect.  
31 terminate."

32 Sec. 10. G.S. 74-56 reads as rewritten:

33 "**§ 74-56. Inspection and approval of reclamation; bond release or forfeiture.**

34 (a) Upon receipt of the operator's annual report or report of completion of  
35 reclamation and at any other reasonable time the Department may elect, the Department  
36 shall cause the permit area to be inspected to determine whether the operator has  
37 complied with the reclamation plan, the requirements of this Article, any rules  
38 promulgated hereunder, adopted pursuant to this Article, and the terms and conditions of  
39 his its permit. Accredited representatives of the Department shall have the right may at all  
40 reasonable times to enter upon the land subject to the permit for the purpose of making  
41 such inspection and investigation. investigation pursuant to this section.

42 (b) The operator shall proceed with reclamation as scheduled in the approved  
43 reclamation plan. Following its inspection, the Department shall give written notice to  
44 the operator of any deficiencies noted. The operator shall thereupon commence action

1 within 30 days to rectify these deficiencies and shall diligently proceed until they have  
2 been corrected. The Department may extend performance periods ~~referred to in~~ under  
3 this section and ~~in~~ G.S. 74-53 for delays clearly beyond the operator's control, ~~but only in~~  
4 ~~eases where~~ control if the Department finds that the operator is making every reasonable  
5 effort to comply.

6 (c) Upon completion of reclamation of an area of affected land, the operator shall  
7 notify the Department. The Department shall make an inspection of the area, and if it  
8 finds that reclamation has been properly completed, it shall notify the operator in  
9 writing and release ~~him~~ the operator from further obligations regarding ~~such~~ the affected  
10 land. At the same time it shall release all or the appropriate portion of any performance  
11 bond or other security which ~~he~~ the operator has posted under G.S. 74-54.

12 (d) If at any time the Department finds that reclamation of the permit area is not  
13 proceeding in accordance with the reclamation plan and that the operator has failed  
14 within 30 days after notice to commence corrective action, or if the Department finds  
15 that reclamation has not been properly completed in conformance with the reclamation  
16 plan within two years, or longer if authorized by the Department, after termination of  
17 mining on any segment of the permit area, it shall initiate forfeiture proceedings against  
18 the bond or other security filed by the operator under G.S. 74-59. In addition, ~~such~~  
19 ~~failure shall constitute grounds~~ failure to comply with the reclamation plan is a basis for  
20 suspension or revocation of the operator's permit, as provided in G.S. 74-58."

21 Sec. 11. G.S. 74-60 reads as rewritten:

22 "**§ 74-60. Notice. Public notice of certain permit decisions; form of notice to**  
23 **applicants and permit holders.**

24 (a) Public Notice. – The Department shall publish notice of a permit decision in  
25 the North Carolina Register. If the Department has not submitted the notice for  
26 publication within 20 days after it makes the decision, the permit holder may submit the  
27 required notice to the North Carolina Register for publication. At a minimum, the  
28 notice shall:

- 29 (1) Identify the application, including the name of the applicant and the  
30 date the application was submitted.
- 31 (2) Clearly identify the area to be mined including each county in which  
32 the area is located.
- 33 (3) State the decision on the application.
- 34 (4) State the last date on which a contested case petition may be filed in  
35 the Office of Administrative Hearings.
- 36 (5) State the name and address of the agency that made the decision.

37 (b) Applicants and Permit Holders. – Whenever ~~in~~ this Article requires the  
38 Department to give written notice is required to be given by the Department, such to an  
39 applicant for a permit or a holder of a permit, the Department shall mail the notice shall  
40 be mailed by registered or certified mail to the permanent address of the applicant or  
41 operator permit holder set forth in his the applicant's or permit holder's most recent  
42 application for an operating a permit or for a modification or renewal of such a permit.  
43 No other notice shall be required.

1 (c) Effect. – Notice of a qualifying permit decision given in accordance with  
2 subsection (a) of this section satisfies G.S. 150B-23(f).

3 (d) Notice by Mail. – The Department shall, to the extent practicable, mail a copy  
4 of the notice described in subsection (a) of this section to persons who provide the  
5 Department with a self-addressed envelope with sufficient postage affixed."

6 Sec. 12. G.S. 74-61 reads as rewritten:

7 "**§ 74-61. Administrative and judicial review of decisions.**

8 (a) Applicants and Permit Holders. – An applicant for a permit or a permit holder  
9 may contest a permit decision by filing a petition for a contested case under G.S. 150B-  
10 23 within 60 days after notice of the decision is published in the North Carolina  
11 Register. A permit holder Any affected person may contest a decision of the Department to  
12 deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse any other permit  
13 decision, a refusal to release part or all of a the holder's bond or other security, or to  
14 assess the assessment of a civil penalty against a holder by filing a petition for a  
15 contested case under G.S. 150B-23 within 60 days after the Department makes the  
16 decision receiving written notice of the decision.

17 (b) Persons Affected. – A person affected may contest a permit decision, but may  
18 not contest any other permit decision, by filing a petition for a contested case under G.S.  
19 150B-23 within 60 days after notice of the decision is published in the North Carolina  
20 Register. When a person affected contests a permit decision, the assigned  
21 administrative law judge shall by order make the permit holder a party to the contested  
22 case proceeding. In the contested case, the person affected may not contest an issue that  
23 was not raised, either by the person affected or another person, with the Department  
24 when the contested decision was pending before the Department unless the  
25 administrative law judge assigned to the contested case makes an exception for good  
26 cause shown. The assigned administrative law judge may allow a person affected to be  
27 heard on a new issue only if the administrative law judge finds that the issue could not  
28 reasonably have been raised while the contested decision was pending before the  
29 Department. If the contested case concerns the approval of an application to renew a  
30 permit, the person affected may contest only a difference between the renewed permit  
31 and the former permit.

32 (c) Other Persons. – A person who is not a permit holder who is assessed a civil  
33 penalty may contest the penalty by filing a petition for a contested case under G.S.  
34 150B-23 within 60 days after receiving written notice of the assessment. A person  
35 aggrieved by a permit decision who is not a permit applicant, a permit holder, or a  
36 person affected may not contest the decision by filing a petition for a contested case but  
37 may petition to intervene in any contested case on the decision. A person aggrieved  
38 who fails to petition to intervene in a contested case has not exhausted all available  
39 administrative remedies.

40 (d) Stay. – If a permit holder or a person affected files a petition for a contested  
41 case proceeding to challenge a qualifying permit decision, any provision of a renewed  
42 permit that is specifically challenged in the petition and that differs from the former  
43 permit is stayed until the final decision is issued. If a provision of the renewed permit is  
44 stayed under this section, the permit holder shall comply with the provision of the

1 former permit that corresponds to the stayed provision, unless compliance with the  
2 former provision would be technologically incompatible with compliance of other  
3 provisions of the new permit that have not been stayed.

4 (e) Final Decision. – The Commission shall make the final decision in a  
5 contested case under this section. If a permit applicant, permit holder, person affected,  
6 or other person assessed a civil penalty does not file a petition for a contested case  
7 within the required time, the decision by the Department is final and is not subject to  
8 administrative or judicial review.

9 (f) Judicial Review. – Except as provided in this subsection, Article 4 of Chapter  
10 150B of the General Statutes governs judicial review of a ~~decision~~ final decision of the  
11 Commission. ~~in a contested case and of a final decision for which the administrative~~  
12 remedy of a contested case is not available. Any person who seeks judicial review of a  
13 final decision in a contested case must file a petition for review within 30 days after the  
14 parties to the case are served with a written copy of the decision. Any person aggrieved  
15 by a final decision for which the administrative remedy of a contested case is not  
16 available may obtain judicial review of the decision by filing a petition for review  
17 within 30 days after the final decision is issued. A petition for judicial review of a  
18 qualifying permit decision shall be dismissed unless the petitioner is either:

19 (1) A person affected who either filed a contested case petition on the  
20 decision or was a party to a contested case on the decision.

21 (2) A person aggrieved only as a result of the final decision in a contested  
22 case on the decision."

23 Sec. 13. G.S. 74-65 is repealed.

24 Sec. 14. G.S. 143B-291 reads as rewritten:

25 **"§ 143B-291. North Carolina Mining Commission – members; selection; removal;**  
26 **compensation; quorum; services.**

27 The North Carolina Mining Commission shall consist of nine members appointed by  
28 the Governor. The Commission shall be composed of the following: one member who is  
29 the chairman of the North Carolina State University Minerals Research Laboratory  
30 Advisory Committee; three representatives of mining industries; three representatives of  
31 nongovernmental conservation interests and two ~~who shall represent the Environmental~~  
32 ~~Management Commission and be knowledgeable in the principles of water and air resources~~  
33 ~~management.~~ members of the general public who are not associated with commercial  
34 mining operations.

35 The initial members of the North Carolina Mining Commission shall be those  
36 members of the present North Carolina Mining Council who shall meet the above  
37 requirements for membership on the North Carolina Mining Commission and who shall  
38 serve on the North Carolina Mining Commission for a period equal to the remainder of  
39 their current terms on the North Carolina Mining Council. The remaining initial  
40 members shall be appointed by the Governor to staggered terms of six years. Any  
41 appointment to fill a vacancy on the Commission created by the resignation, dismissal,  
42 death or disability of a member shall be for the balance of the unexpired term. At the  
43 expiration of each member's term, the Governor shall replace the member with a new  
44 member of like qualifications for a term of six years.

1 The Governor shall have the power to remove any member of the Commission from  
2 office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions  
3 of G.S. 143B-13 of the Executive Organization Act of 1973.

4 The members of the Commission shall receive per diem and necessary traveling and  
5 subsistence expenses in accordance with the provisions of G.S. 138-5.

6 A majority of the Commission shall constitute a quorum for the transaction of  
7 business.

8 All clerical and other services required by the Commission shall be supplied by the  
9 Secretary of the Department."

10 Sec. 15. G.S. 113A-9(5) reads as rewritten:

11 "(5) 'Major development project' shall include but is not limited to  
12 shopping centers, subdivisions and other housing developments,  
13 mining operations subject to Article 7 of Chapter 74 of the General  
14 Statutes, and industrial and commercial projects, but shall not include  
15 any projects of less than two contiguous acres in extent."

16 Sec. 16. This act becomes effective October 1, 1993, and applies to  
17 applications for a new permit or for a modification, renewal, or transfer of an existing  
18 permit filed on or after that date.