

GENERAL ASSEMBLY OF NORTH CAROLINA
1993 SESSION

CHAPTER 568
HOUSE BILL 550

AN ACT TO MAKE IMPROVEMENTS TO THE MINING ACT OF 1971.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-49 reads as rewritten:

"§ 74-49. Definitions.

Wherever used or referred to in this Article, unless a different meaning clearly appears from the context:

- (1) 'Affected land' means the surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.
- (1a) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'affiliate' as a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (2) 'Borrow pit' means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.
- (3) 'Commission' means the Mining Commission created by G.S. 143B-290.
- (4) 'Department' means the Department of Environment, Health, and Natural Resources. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or ~~by such of his subordinates as he may designate.~~ an employee of the Department designated by the Secretary.
- (5) 'Land' shall include submerged lands underlying any river, stream, lake, sound, or other body of water and shall specifically include, among others, estuarine and tidal lands.
- (6) 'Minerals' means soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.
- (7) 'Mining' ~~means~~ means:

- a. The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid ~~matter,~~ matter.
- b. Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from ~~its~~ their original ~~location,~~ location.
- c. The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

'Mining' does not include:

- ~~a. It shall not include those~~ Those aspects of deep mining not having significant effect on the surface, where the affected land does not exceed one acre in area.
 - ~~b. It shall not include mining~~ Mining operations where the affected land does not exceed one acre in area.
 - ~~c. It shall not include plants~~ Plants engaged in processing minerals produced elsewhere and whose refuse does not affect more than one acre of land.
 - ~~d. It shall not include excavation~~ Excavation or grading when conducted solely in aid of on-site farming or of on-site construction for purposes other than mining.
 - ~~e. Removal of overburden and mining of limited amounts of any ores or mineral solids shall not be considered mining~~ when done only for the purpose and to the extent necessary to determine the location, quantity, or quality of any natural deposit, provided that no ores or mineral solids removed during ~~such~~ exploratory excavation or mining are sold, processed for sale, or consumed in the regular operation of a business, and provided further that the affected land resulting from any ~~such~~ exploratory excavation does not exceed one acre in area.
- (8) 'Neighboring' means in close proximity, in the immediate vicinity, or in actual contact.
 - (9) 'Operator' means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, engaged in mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.
 - (10) 'Overburden' means the earth, rock, and other materials that lie above the natural deposit of minerals.
 - (10a) 'Parent' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'parent' as an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
 - (11) 'Peak' means overburden removed from its natural position and deposited elsewhere in the shape of conical piles or projecting points.

- (12) 'Reclamation' means the reasonable rehabilitation of the affected land for useful purposes, and the protection of the natural resources of the surrounding area. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance, the basic objective will be to establish on a continuing basis the vegetative cover, soil stability, water conditions and safety conditions appropriate to the area.
- (13) 'Reclamation plan' means the operator's written proposal as required and approved by the Department for reclamation of the affected land, which shall include but not be limited to:
- a. Proposed practices to protect adjacent surface resources;
 - b. Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
 - c. Manner and type of revegetation or other surface treatment of the affected areas;
 - d. Method of prevention or elimination of conditions that will be hazardous to animal or fish life in or adjacent to the area;
 - e. Method of compliance with State air and water pollution laws;
 - f. Method of rehabilitation of settling ponds;
 - g. Method of control of contaminants and disposal of mining refuse;
 - h. Method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
 - i. ~~Such maps~~ Maps and other supporting documents as may be reasonably required by the Department; and
 - j. A time schedule that meets the requirements of G.S. 74-53.
- (14) 'Refuse' means all waste soil, rock, mineral, scrap, tailings, slimes, and other material directly connected with the mining, cleaning, and preparation of substances mined and shall include all waste materials deposited on or in the permit area from other sources.
- (15) 'Ridge' means overburden removed from its natural position and deposited elsewhere in the shape of a long, narrow elevation.
- (16) 'Spoil bank' means a deposit of excavated overburden or refuse.
- (16a) 'Subsidiary' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition), which defines 'subsidiary' as an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (17) 'Termination of mining' means cessation of mining operations with intent not to resume, or cessation of mining operations as a result of expiration or revocation of the permit of the operator. Whenever the Department shall have reason to believe that a mining operation has

terminated, ~~it~~ the Department shall give the operator written notice of its intention to declare the operation terminated, and ~~he~~ the operator shall have an opportunity to appear within 30 days and present evidence that the operation is continuing; where the Department finds that ~~such~~ the evidence is satisfactory, ~~it shall not make such a declaration.~~ the Department shall not declare the mining operation terminated."

Sec. 2. G.S. 74-50 reads as rewritten:

"§ 74-50. Permits – General.

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

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

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

(b) ~~Prior to the issuance of a new mining permit,~~ At the time of the application for a new mining permit or permit modifications that add owners of record of lands adjoining the permit boundaries, the operator shall make a reasonable effort, satisfactory to the Department, to notify all owners of record of land adjoining the proposed site, and to notify the chief administrative officer of the county or municipality in which the site is located that ~~he~~ the operator intends to conduct a mining operation on the site in question. The notice shall inform the owners of record and chief administrative officers of the opportunity to submit written comments to the Department regarding the proposed mining operation and the opportunity to request a public hearing regarding the proposed mining operation. Requests for public hearing shall be made within 30 days of issuance of the notice.

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

(d) An operating permit shall be granted for a period not exceeding 10 years. If the mining operation terminates and the reclamation required under the approved reclamation plan is completed prior to the end of ~~said~~ the period, the permit shall terminate. Termination of a permit shall not have the effect of relieving the operator of

any obligations ~~which he~~ that the operator has incurred under ~~his~~ an approved reclamation plan or otherwise. Where the mining operation itself has terminated, no permit shall be required in order to carry out reclamation measures under the reclamation plan.

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

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

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

"§ 74-51. Permits – Application, granting, conditions.

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. ~~Such~~ The application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish ~~such~~ any other information as may be deemed necessary by the Department in order adequately to enforce this Article. The application shall be accompanied by a reclamation plan ~~which~~ that meets the requirements of G.S. 74-53. No permit shall be issued until ~~such~~ a reclamation plan has been approved by the Department. The application shall be accompanied by a signed agreement, in a form specified by the Department, that in the event a bond forfeiture is ordered pursuant to G.S. 74-59, the Department and its representatives and ~~its~~ contractors shall have the right to make whatever entries on the land and to take whatever actions may be necessary in order to carry out reclamation ~~which~~ that the operator has failed to complete.

(b) Before deciding whether to grant a new permit, the Department shall circulate copies of a notice of application for review and comment as it deems advisable. The Department shall grant or deny the permit requested as expeditiously as possible, but in no event later than 60 days after the application form and any relevant and material supplemental information reasonably required shall have been filed with the Department, or if a public hearing is held, within 30 days following the hearing and the filing of any relevant and material supplemental information reasonably required by the Department. Priority consideration shall be given to applicants who submit evidence that the mining proposed will be for the purpose of supplying materials to the Board of Transportation.

(c) ~~Upon its determination~~ If the Department determines, based on public comment relevant to the provisions of this Article, that significant public interest exists, the Department shall conduct a public hearing on any application for a new mining ~~permit~~ permit or for permit modifications that add owners of record of lands adjoining the permit boundaries. ~~Such~~ The hearing shall be held before the Department reaches a final decision on the application, and in making its determination, the Department shall give full consideration to all comments submitted at the public hearing. ~~Such~~ The public hearing shall be held within 60 days of the ~~filing of the application~~ end of the 30-day period within which any requests for the public hearing shall be made.

(d) The Department may deny ~~such~~ the permit upon finding:

- (1) That any requirement of this Article or any rule promulgated hereunder will be violated by the proposed operation;
- (2) That the operation will have unduly adverse effects on potable groundwater supplies, ~~wildlife~~ wildlife, or fresh water, estuarine, or marine fisheries;
- (3) That the operation will violate standards of air quality, surface water quality, or groundwater quality ~~which~~ that have been promulgated by the Department;
- (4) That the operation will constitute a direct and substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public ~~property; property, excluding matters relating to use of a public road;~~
- (5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;
- (6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or
- (7) That the ~~operator~~ applicant or any parent, subsidiary, or other affiliate of the applicant or parent has not been in substantial compliance with this Article, rules adopted under this Article, or other laws or rules of this State for the protection of the environment or has not corrected all violations which he that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under any prior permit this Article or rules adopted under this Article and which that resulted in, in:
 - a. Revocation of ~~his~~ a permit,
 - b. Forfeiture of part or all of ~~his~~ a bond or other security,
 - c. Conviction of a misdemeanor under G.S. 74-64, ~~or~~
 - d. Any other court order issued under ~~G.S. 74-64~~ G.S. 74-64, or
 - e. Final assessment of a civil penalty under G.S. 74-64.

(e) In the absence of any ~~such findings, finding~~ set out in subsection (d) of this section, or if adverse effects are mitigated by the applicant as determined necessary by the Department, a permit shall be granted.

(f) Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved reclamation plan for the operation and with ~~such further any other~~ reasonable and appropriate requirements and safeguards as may be deemed necessary by that the Department determines are necessary to assure that the operation will comply fully with the requirements and objectives of this Article. ~~Such~~ These conditions may, among others, include a requirement of visual screening, vegetative or otherwise, so as to screen the view of the operation from public highways, public parks, or residential areas, where the Department finds ~~such~~ screening to be feasible and

desirable. Violation of any ~~such~~ conditions of the permit shall be treated as a violation of this Article and shall constitute a basis for suspension or revocation of the permit.

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

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

(h) Upon approval of an application, the Department shall set the amount of the performance bond or other security ~~which that~~ is to be required pursuant to G.S. 74-54. The operator shall have 60 days ~~following the mailing of such notification after the~~ Department mails a notice of the required bond to the operator in which to deposit the required bond or security with the Department. The operating permit shall not be issued until receipt of this deposit.

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

Sec. 4. G.S. 74-52 reads as rewritten:

"§ 74-52. Permits – Modification, renewal.

(a) Any operator engaged in mining under an operating permit may apply at any time for modification of ~~said permit, and the permit.~~ A permittee may apply for renewal of the permit at any time during the two years prior to its ~~the~~ expiration date for renewal of the permit. ~~Such~~ The application shall be in writing upon forms furnished by the Department and shall fully state the information called ~~for,~~ in for. The applicant must provide the Department with any additional information necessary to satisfy application requirements. The applicant is not required to resubmit information that remains unchanged since the time of the prior application. In addition, the applicant may be required to furnish such ~~any~~ other information as may be deemed necessary by the Department in order adequately to enforce the Article. ~~However, it shall not be necessary to resubmit information which has not changed since the time of a prior application, where the applicant states in writing that such information has not changed.~~

(b) The procedure to be followed and standards to be applied in renewing a permit shall be the same as those for issuing a permit; provided, however, that in the absence of any changes in legal requirements for issuance of a permit since the date on which the prior permit was issued, the only basis for denying a renewal permit shall be

an uncorrected violation of the type listed in G.S. 74-51(7), or failure to submit an adequate reclamation plan in light of conditions then existing.

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

~~In lieu of a modification or a renewal, an operator may apply for a new permit in the manner prescribed by G.S. 74-50 and 74-51.~~

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

Sec. 5. G.S. 74-54 reads as rewritten:

"§ 74-54. Bonds.

(a) Each applicant for an operating permit, or for the renewal thereof, ~~shall file with the Department following approval of his application and shall thereafter of a permit shall, following the approval of the application, file and maintain in force a bond~~ in favor of the State of North Carolina, executed by a surety approved by the Commissioner of Insurance, in the amount set forth below. The bond herein provided for must be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only upon 60 days written notice thereof to the Department and to the operator.

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

(c) The bond shall be conditioned upon the faithful performance of the requirements set forth in this Article and of the rules adopted ~~pursuant thereto~~ under this Article. Upon filing the bond with the Department, the operator shall lose all right, title, and interest in the bond while the bond is held by the Department. Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved reclamation plan unless released only upon written notification from the Department. Notification shall be given upon completion of compliance or acceptance

by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this section.

(d) In lieu of the surety bond required by this section, the operator may file with the Department a cash deposit, ~~negotiable securities, a mortgage of real property acceptable to the Department, or an irrevocable letter of credit, a guaranty of payment from an acceptable bank,~~ an assignment of a savings account in a ~~North Carolina an acceptable bank~~ on an assignment form prescribed by the ~~Department.~~ Department, or other security acceptable to the Department. Security shall be subject to the release provisions of G.S. 74-56.

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

Sec. 6. G.S. 74-54.1 reads as rewritten:

"§ 74-54.1. Permit fees.

(a) The Commission may establish a fee schedule for the processing of permit applications and permit renewals and modifications. The fees may vary on the basis of the acreage, size, and nature of the proposed or permitted operations or modifications. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related compliance activities and safeguards to prevent unusual fee assessments that would impose a serious economic burden on an individual applicant or a class of applicants.

(b) The total amount of permit fees collected for any fiscal year may not exceed one-third of the total personnel and administrative costs incurred by the Department for processing applications for permits and permit renewals and modifications and for related compliance costs in the prior fiscal year. A fee for an application for a new permit may not exceed two thousand five hundred dollars (\$2,500), and a fee for an application to renew or modify a permit may not exceed five hundred dollars (\$500.00). The Mining Account is established as a nonreverting account within the Department. Fees collected under this section shall be credited to the Mining Account and shall be applied to the costs of administering this Article.

(c) The Department shall annually report on or before 1 September to the Environmental Review Commission on the cost of implementing this Article. The report shall include the fees established, collected, and disbursed under this section and any other information requested by the General Assembly or the Commission."

Sec. 7. G.S. 74-56 reads as rewritten:

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

(a) The Department may direct investigations as it may reasonably deem necessary to carry out its duties as prescribed by this Article, and for this purpose to enter at reasonable times upon any mining operation for the purpose of determining

compliance with this Article and any rules adopted under this Article and for determining compliance with the terms and conditions of a mining permit, but for no other purpose. No person shall refuse entry or access to any authorized representative of the Department who enters the mining operation for purposes of inspection or other official duties and who presents appropriate credentials; nor shall any person obstruct, hamper, or interfere with the representative while the representative is carrying out official duties. Upon arriving at the site, the representative of the Department shall make every reasonable effort to notify the operator or the operator's agent that the representative of the Department intends to inspect the site. Upon receipt of the operator's annual report or report of completion of reclamation and at any other reasonable time the Department may elect, the Department shall cause the permit area to be inspected to determine whether the operator has complied with the reclamation plan, the requirements of this Article, any rules promulgated hereunder, adopted under this Article, and the terms and conditions of his-the permit. Accredited representatives of the Department shall have the right at all reasonable times to enter upon the land subject to the permit for the purpose of making such inspection and investigation.

(b) The operator shall proceed with reclamation as scheduled in the approved reclamation plan. ~~Following its inspection, the~~ The Department shall conduct an inspection and give written notice to the operator of any deficiencies noted. The operator shall thereupon commence action within 30 days to rectify these deficiencies and shall diligently proceed until they have been corrected. The Department may extend performance periods referred to in this section and in G.S. 74-53 for delays clearly beyond the operator's control, but only in cases where the Department finds that the operator is making every reasonable effort to comply.

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

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

Sec. 8. G.S. 74-58 reads as rewritten:

"§ 74-58. Suspension or revocation of permit.

(a) Whenever the Department shall have reason to believe that a violation of (i) this Article, (ii) any rules ~~promulgated hereunder, adopted under this Article,~~ or (iii) the

terms and conditions of a permit, including the approved reclamation plan, has taken place, it shall serve written notice of ~~such fact~~ the apparent violation upon the operator, specifying the facts constituting ~~such~~ the apparent violation and informing the operator of ~~his~~ the operator's right to a ~~hearing~~ an informal conference with the Department. The date for ~~such hearing~~ an informal conference shall be not less than ~~30~~ 15 nor more than ~~60~~ 30 days after the date of the notice, unless the Department and the operator shall mutually agree on another date. ~~The operator may appear at the hearing, either personally or through counsel, and present such evidence as he may desire in order to prove that no violation has taken place or exists.~~ If the operator or ~~his~~ the operator's representative does not appear at the ~~hearing~~ informal conference, or if the Department following the ~~hearing~~ informal conference finds that there has been a violation, the Department may suspend the permit until ~~such time as~~ the violation is corrected or may revoke the permit where the violation appears to be willful.

(b) The effective date of any ~~such~~ suspension or revocation shall be 30 days following the date of the decision. ~~An appeal to the Mining Commission~~ The filing of a petition for a contested case under G.S. 74-61 shall stay such ~~the~~ effective date until the ~~Commission's decision.~~ A further appeal to superior court under G.S. 74-61 shall stay such effective date until the date of the superior court judgment. Commission makes a final decision. If the Department finds at the time of its initial decision that any delay in correcting a violation would result in imminent peril to life or danger to property or to the environment, it shall promptly initiate a proceeding for injunctive relief under G.S. 74-64 hereof and Rule 65 of the Rules of Civil Procedure. The pendency of any appeal from a suspension or revocation of a permit shall have no effect upon ~~such action~~ an action for injunctive relief.

(c) Any operator whose permit has been suspended or revoked shall be denied a new permit or a renewal of ~~the old~~ an existing permit to engage in mining until ~~he~~ the operator gives evidence satisfactory to the Department of ~~his~~ the operator's ability and intent to fully comply with the provisions of this Article and rules ~~promulgated hereunder,~~ adopted under this Article, and the terms and conditions of ~~his~~ the permit, including the approved reclamation plan, and that ~~he~~ the operator has satisfactorily corrected all previous violations."

Sec. 9. G.S. 74-61 reads as rewritten:

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

~~Any~~ An applicant, permittee, or affected person may contest a decision of the Department to deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within ~~60~~ 30 days after the Department makes the decision. The Commission shall make the final decision in a contested case under this section. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission."

Sec. 10. G.S. 74-64(a) reads as rewritten:

"(a) Civil Penalties.

(1) a. A civil penalty of not more than five thousand dollars (\$5,000) may be assessed by the Department against any person who

fails to secure a valid operating permit prior to engaging in mining, as required by G.S. 74-50. No civil penalty shall be assessed until the operator has been given notice of the violation pursuant to G.S. 74-60. Each day of a continuing violation shall constitute a separate violation and a civil penalty of not more than five thousand dollars (\$5,000) per day may be assessed for each day the violation continues.

- b. Any permitted operator who violates any of the provisions of this Article, any rules ~~promulgated thereunder,~~ adopted under this Article, or any of the terms and conditions of ~~his~~ the mining permit shall be subject to a civil penalty of not more than ~~one five hundred dollars (\$100.00).~~ (\$500.00). Each day of a continuing violation shall constitute a separate violation. Prior to the assessment of any ~~such~~ civil penalty, written notice of the violation shall be given. The notice shall describe the violation with reasonable particularity, shall specify a time period reasonably calculated to permit the violator to complete actions to correct the violation, and shall state that failure to correct the violation within that period may result in the assessment of a civil penalty.
 - c. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by ~~his~~ the noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.
- (2) The Department shall determine the amount of the civil penalty to be assessed pursuant to G.S. 74-64(a)(1) and shall give notice to the operator of the assessment of the civil penalty pursuant to ~~G.S. 74-60.~~ G.S. 74-60, or by any means authorized by G.S. 1A-1, Rule 4. ~~Said~~ The notice shall set forth in detail the violation or violations for which the civil penalty has been assessed. The operator may appeal the assessment of any civil penalty assessed pursuant to this section in accordance with the procedures set forth in G.S. 74-61.
 - (3) ~~If payment of any civil penalty assessed pursuant to this section is not received by the Department or equitable settlement reached within 30 days following notice to the operator of the assessment of the civil penalty, or within 30 days following the denial of any appeal by the operator pursuant to G.S. 74-61, the Department shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the penalty. The notice of assessment shall direct the violator to pay the assessment or contest the assessment as provided in G.S. 74-61. If the violator does~~

not pay the assessment within 30 days after receipt of the notice of assessment or within 30 days after receipt of the final agency decision, where the assessment has been contested, the Department shall request the Attorney General to institute a civil action in superior court to recover the amount of the penalty. A civil action under this section shall be filed within three years of the date the final agency decision was served on the violator.

- (4) ~~All funds collected pursuant to this section shall be placed in the special fund created pursuant to G.S. 74-59 and shall be used to carry out the purposes of this Article.~~ credited to the General Fund as nontax revenue.
- (5) In addition to other remedies, the Department may request the Attorney General to institute any appropriate action or proceedings to prevent, restrain, correct or abate any violation of this Article or any rules ~~promulgated hereunder.~~ adopted under this Article, or the obstruction, hampering, or interference with an authorized representative of the Department while the representative is carrying out official duties pursuant to this Article."

Sec. 11. This act becomes effective 1 July 1994 and applies to any application for a new permit or modification or renewal of an existing permit filed on or after that date and to any penalty imposed on or after that date.

In the General Assembly read three times and ratified this the 21st day of June, 1994.

Dennis A. Wicker
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives