

## **Chapter 74.**

### **Mines and Quarries.**

#### Article 1.

##### Operation of Mines and Quarries.

**§§ 74-1 through 74-14. Repealed by Session Laws 1975, c. 206, s. 21.**

#### Article 2.

##### Inspection of Mines and Quarries.

**§§ 74-15 through 74-24. Repealed by Session Laws 1975, c. 206, s. 21.**

#### Article 2A.

##### Mine Safety and Health Act.

#### **§ 74-24.1. Short title and legislative purpose.**

(a) This Article shall be known as the Mine Safety and Health Act of North Carolina.

(b) Legislative findings and purpose:

(1) The General Assembly finds that the burden of operators and miners of this State's mines resulting from personal injuries and illnesses arising out of work situations is substantial; that the prevention of these injuries and illnesses is an important objective of the government of this State; that the greatest hope in attaining this objective lies in programs of research, engineering, education, and enforcement, and in earnest cooperation of the federal and state governments, operators, and miners.

(2) The General Assembly of North Carolina declares it to be its purpose and policy through the exercise of its powers to assure so far as possible every worker in North Carolina's mines safe and healthful working conditions and to preserve our human resources:

a. By encouraging operators and miners in their effort to reduce the number of occupational safety and health hazards in mines and to stimulate and assist operators and miners to institute new programs and to perfect existing programs for providing safe and healthful working conditions through technical assistance and consultation;

b. By recognizing that operators and miners have separate but interdependent responsibilities and rights with respect to achieving safe and healthful working conditions;

c. By authorizing the Commissioner to develop occupational safety and health standards applicable to mines giving consideration to the needs of operators and miners and to adopt standards promulgated from time to time by the federal government;

d. By providing occupational health criteria which will assure insofar as practicable that no miner will suffer diminished health, functional capacity, or life expectancy as a result of his work experience in a mine;

- e. By providing education and training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
- f. By providing an effective enforcement program which shall include a prohibition against giving advance notice of a mine inspection;
- g. By providing for appropriate reporting procedures with respect to occupational safety and health which will help achieve the objectives of this Article and accurately describe the nature of the occupational safety and health problems in mines;
- h. By providing for research and technical assistance in the field of occupational safety and health in mines and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems in mines; and
- i. By authorizing the Commissioner to enter into agreements and contracts with public and private agencies, including agencies of the United States government, organizations, and individuals in order to carry out the ends and purposes of this Article.

(c) The General Assembly of North Carolina appoints the North Carolina Department of Labor as the designated agency to administer the Mine Safety and Health Act of North Carolina. (1975, c. 206, s. 1.)

**§ 74-24.2. Definitions.**

In this Article, unless the context otherwise requires:

- (1) The term "accident" means an unexpected event resulting in injury to, illness of, or death of a person or persons as a result of mining operations and any mine explosion, mine ignition, mine fire, mine inundation, mine cave-in, or other event which could have readily resulted in serious physical harm.
- (2) The term "Advisory Council" shall mean the Advisory Council or body authorized to be established under this Article.
- (3) The term "agent" means any person charged by the operator with responsibility for the operation of all or part of a mine or supervision of the miners in a mine, and for the purposes of this Article includes contractors, subcontractors, or independent contractors employed by the operator to perform any work or services at, in, or on the mine.
- (4) The term "Commissioner" means the Commissioner of Labor of North Carolina.
- (5) The term "Director" means the person authorized under G.S. 74-24.19 and appointed by the Commissioner for the purpose of assisting in the administration of this Article.
- (6) The term "imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious physical harm immediately to any miner if such condition or practice is not abated at once.
- (7) The term "mine" means an area of land and all private ways and roads appurtenant thereto, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed or

constructed on, under, or above the surface of such land by any person, used in, or to be used in, or resulting from (including the reclamation of mined areas or the storage of materials in mined areas), or to facilitate the work of exploring for, developing of, or extracting by any means or method in such area all minerals, inorganic and organic, from their natural deposits. The term "mine" also includes all mineral processing and milling facilities except those used in the processing of source materials as defined in the Atomic Energy Act of 1954, as amended.

- (8) The term "miner" means any individual, other than an operator or an agent, working in or about a mine.
- (9) The term "operator" means an individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization owning, operating, leasing, controlling, or supervising a mining operation.
- (10) The term "repeated violation" means a violation for which an operator was issued a notice or an order on an inspection and which is found to exist again on the next regular inspection, even though the violation was abated within the time fixed for abatement.
- (11) The term "State" means the State of North Carolina. (1975, c. 206, s. 2.)

#### **§ 74-24.3. Coverage.**

Each mine shall be subject to the provisions of this Article, and each operator of such mine shall comply with all standards, rules, regulations, orders, and notices adopted or issued under this Article. The operator of such mine shall be responsible for the health and safety of all miners in a mine and shall assure insofar as practicable conditions of work and places of work free from hazards that are causing or are likely to cause death or serious physical harm. (1975, c. 206, s. 3.)

#### **§ 74-24.4. Safety and health standards.**

(a) The Commissioner shall develop, adopt, revise, and promulgate safety and health standards for the purpose of the protection of life, the promotion of safety and health, and the prevention of "accidents" in mines which are subject to this Article. In the development of safety and health standards, the Commissioner shall consult with the Advisory Council, interested federal agencies, appropriate representatives of other State agencies, appropriate representatives of mine operators and miners, and other interested persons and organizations whose participation would further the purposes of this Article.

(b) In developing and promulgating safety standards pursuant to this section, the Commissioner shall include standards with respect to the training of miners in first aid, safety, the proper use of rescue equipment available within mines, and periodic evacuation drills and disaster procedure training.

(c) The State Health Director shall have primary responsibility for research and the recommendation of health standards to the Commissioner to effectuate the purposes of this Article, and nothing in this subsection shall affect the authority of the Commissioner with respect to the promulgation and enforcement of both safety and health standards.

(d) The procedures utilized for the adoption and promulgation of safety and health standards, including notice and public hearings, shall be in accordance with the Administrative Procedure Act as set out in Chapter 150B of the General Statutes. (1975, c. 206, s. 4; 1989 (Reg. Sess., 1990), c. 1004, ss. 52, 53; 1993, c. 513, s. 8.)

**§ 74-24.5. Modification of safety and health standards.**

Upon petition by an operator, a representative of miners, or a miner, the Commissioner may modify the application of any safety and health standard to a mine if the Commissioner determines that an alternative method of protecting the miners will guarantee the same measure of protection afforded the miners by the standard, or will enhance the level of safety and health provided by that standard. Upon receipt of such petition the Commissioner shall give public notice thereof and give notice to the operator, the representative of miners, or the miner in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing, at the request of such operator, representative of the miners, or miner to enable the operator, the representative of miners, or miner in such mine or any interested party to present information relating to the modification of such standard. The Commissioner shall issue a decision incorporating his findings of fact therein and send a copy thereof to the operator, the representative of the miners, or miner as appropriate. A record shall be kept of a public hearing held under this section. The decision of the Commissioner is considered a final agency decision for purposes of judicial review. (1975, c. 206, s. 5; 1987, c. 827, s. 258.)

**§ 74-24.6. Advisory Council.**

(a) The Commissioner shall appoint an Advisory Council consisting of 11 members to assist him in the development of safety and health standards for mines which are subject to this Article and to advise him on matters relating to safety and health in such mines. Said Advisory Council shall include three members expressly qualified by experience and affiliation to present the viewpoint of operators of such mines, three persons similarly qualified to present the viewpoint of workers in such mines, and five members of the public sector with knowledge of mining operations or associated health and safety aspects thereof. The Commissioner of Labor shall annually designate one member to act as chairman. The members of the Advisory Council shall serve at the pleasure of the Commissioner and shall have no specific term of office.

(b) The Advisory Council shall hold not fewer than two meetings during each calendar year, and said meetings shall be open to the public. The Commissioner shall furnish to the Advisory Council such secretarial, clerical, and other services as he deems necessary to conduct its business.

(c) The members of the Advisory Council shall be compensated for travel expenses and per diem as authorized by the Commissioner in accordance with those amounts paid to State boards under Chapter 138 of the General Statutes.

(d) The Commissioner may from time to time select representatives of professional organizations of technicians, professional persons specializing in occupational safety and health, and representatives of State agencies who by experience and affiliation are qualified to present the viewpoint of operators of mines and workers in mines to assist the Advisory Council in performing its duties. Such persons, except State employees, selected for temporary purposes may be paid such per diem and travel expenses for attending meetings as may be fixed by the Commissioner. (1975, c. 206, s. 6; 1977, c. 683; 2006-203, s. 20.)

**§ 74-24.7. Inspections and investigations.**

(a) The Commissioner through the Director shall make as many inspections and investigations in mines each year as are deemed necessary to effectively and accurately fulfill the requirements of:

- (1) Obtaining, utilizing, and disseminating information relating to health and safety conditions, the causes of "accidents" and causes of illnesses and physical impairments originating in such mines,
- (2) Gathering information with respect to the necessity for health and safety standards,
- (3) Determining whether an imminent danger exists,
- (4) Determining whether or not there is compliance with safety and health standards or with any notice, order, or decision issued under this Article.
- (5) In carrying out the requirements of (4) of this subsection, no advance notice of an inspection shall be provided to any mine operator, official, miner, representative of the miners, or other person, except that the Commissioner or Director may authorize the giving of advance notice only when such notice is essential to the effectiveness of the inspection.

(b) For the purpose of making any inspection or investigation under this Article, the Commissioner or his authorized representative shall have a right of entry to, upon, or through any mine at reasonable times.

(c) For the purpose of making any investigation of any "accident" relating to safety and health in a mine, the Commissioner may, after notice, hold hearings, and may issue subpoenas for the attendance and testimony of persons and the production of relevant documents, and administer oaths in any investigation conducted by him. In case of contumacy or refusal to obey a subpoena served upon any person under this section, the general court of justice, superior court division, of the county in which such person is found or resides or transacts business, upon application by the Commissioner and after notice to such person, shall have jurisdiction to determine whether such person shall be punished as for contempt of court.

(d) In the event of an "accident" occurring in a mine, the operator shall notify the Commissioner or the Director thereof at such time as may be required and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. In the event of any "accident" occurring in a mine where rescue and recovery work is necessary, the Commissioner through the Director shall take whatever action he deems appropriate to protect the life of any person, and he may, if he deems it appropriate, supervise and direct the rescue and recovery activity in such mine.

(e) In the event of any "accident" occurring in a mine, the Commissioner through the Director may issue such orders as he deems appropriate to insure the safety of any person in the mine, and the operator of such mine shall obtain the approval of the Commissioner or his authorized representative in consultation with appropriate federal representatives, when feasible, of any plan to recover any person in the mine or to recover the mine or to return affected areas of the mine to normal.

(f) Whenever any miner or representative of the miners has reasonable grounds to believe that a violation of a safety or health standard exists, or that an imminent danger exists, such miner or representative of the miners may request an inspection by giving notice to the Commissioner or the Director of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall show the name of the miner, be signed by the miner or representative of the miners, and a copy shall be provided the operator or his agent no later than at the time of inspection, except that, upon request of the person giving such notice, his name and the names of individual miners referred to therein shall not appear in such copy. If, after receipt of such notification, the Commissioner finds that there are reasonable

grounds to believe a violation may exist, a special inspection shall be made as soon as practicable to determine if, in fact, such violation or danger does exist under the provisions of this Article.

(g) At the commencement of any inspection of a mine by the Commissioner or his authorized representative, under subsection (a)(3) or subsection (a)(4) of this section, the authorized representative of the miners at the mine at the time of such inspection shall be given an opportunity to accompany the Commissioner or his authorized representative on such inspection, to inform the Commissioner or his authorized representative of conditions and practices in the mine, without loss or deduction in pay. Where there is no authorized representative of the miners, the Commissioner or his authorized representative shall have the right to consult with a reasonable number of miners concerning matters of safety and health in the work place. (1975, c. 206, s. 7.)

**§ 74-24.8. Findings, notices, and orders.**

- (a) (1) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists, he shall determine the area throughout which such danger exists, and thereupon shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines such imminent danger no longer exists.
- (2) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that an imminent danger exists with respect to the condition or manner of use of any equipment, machinery, article, or apparatus, he shall thereupon issue an order requiring the operator or his agent to cause immediately such equipment, machinery, article, or apparatus to be withdrawn from, and to be prohibited from, use or operation until the Commissioner or his authorized representative determines that such imminent danger no longer exists.
- (3) As a result of any investigation of any "accident" or as a result of any other investigation or tests performed, the Commissioner or his authorized representative may cause to be withdrawn and prohibited from use or operation in any mine any equipment, machinery, article, or apparatus the use of which is likely to cause serious physical harm or an "accident" until the Commissioner or his authorized representative determines that such equipment, machinery, article, or apparatus has been repaired, modified, reconditioned, or altered in such manner that "accidents" or serious physical harm will thereafter be avoided.

(b) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a violation of any safety and health standard but the violation has not created an imminent danger, he shall issue a notice to the operator or his agent fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period as originally fixed or subsequently extended, the Commissioner or his authorized representative finds that the violation has not been totally abated, and if he also finds that the period of time should not be further extended, he shall find the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from

entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(c) If, upon any inspection of a mine, the Commissioner or his authorized representative finds that there has been a repeated violation of a safety or health standard which could reasonably be expected to result in serious physical harm to any miner, he shall issue forthwith an order requiring the operator of the mine or his agent to cause immediately all persons, except as provided in subsection (d) of this section, to be withdrawn from, and to be prohibited from entering, such area until the Commissioner or his authorized representative determines that the violation has been abated.

(d) The following persons may enter, upon approval of the Commissioner or his authorized representative, any area of a mine subject to an order issued under this section:

- (1) Any person whose presence in such area is necessary, in the judgment of the operator or the Commissioner or his authorized representative, to eliminate the condition described in the order;
- (2) A public official whose official duties require him to enter such area;
- (3) A representative of the miners in such mine who, in the judgment of the operator or the Commissioner, or his authorized representative, is qualified to make mine examinations or who is accompanied by such a person and whose presence in such area is necessary for the investigation of the condition described in the order;
- (4) A consultant to any of the foregoing.

(e) Notices and orders issued pursuant to this section shall contain a detailed description of the conditions or practices which cause and constitute an imminent danger or a violation of any safety or health standard and where appropriate, a description of the area of the mine from which persons must be withdrawn and prohibited from entering, and a description of the equipment, machinery, article, or apparatus which shall be withdrawn and prohibited from use or operation.

(f) A notice or order issued pursuant to this section may be modified, vacated, or terminated upon review by the Commissioner or his authorized representative. (1975, c. 206, s. 8.)

#### **§ 74-24.9. Issuance and delivery of notices, orders, and decisions.**

(a) All notices or orders issued under G.S. 74-24.8 shall be in writing, signed by the Commissioner or his authorized representative, and shall be given promptly to the operator of the mine.

(b) In order to insure prompt compliance with all notices, orders, or decisions issued under this Article, the Commissioner or his authorized representative may deliver such notices, orders, or decisions to an agent of the operator, and such agent shall immediately take appropriate measures to insure compliance with such notice, order, or decision.

(c) Each operator of a mine shall file with the Commissioner the name and address of such mine and the name and address of the operator of the mine. Any revisions in such names or addresses shall be promptly filed with the Commissioner. Each operator of a mine shall designate a responsible official, and shall file the name and address of said official with the Commissioner, as the principal officer in charge of safety and health at such mine, and such official shall receive a copy of any notice, order, or decision issued under this Article affecting such mine. In any case, where the mine is subject to the control of any person not directly involved in the daily operations of the mine, there shall be filed with the Commissioner the name and address of such person and the name and address of a principal official who shall have overall responsibility for the conduct

of an effective safety and health program at any mine subject to the control of such person, and such official shall receive a copy of any notice, order, or decision issued affecting any such mine. The mere designation of a safety and health official under this subsection shall not be construed as making such official subject to any penalty under this Article. (1975, c. 206, s. 9.)

**§ 74-24.10. Administrative and judicial review of decisions on mine safety.**

(a) An operator to whom a notice or order is issued under G.S. 74-24.8 and G.S. 74-24.9 may contest the notice or order by filing a petition for a contested case under G.S. 150B-23 within 30 days after receiving the notice or order. An operator who files a petition for a contested case shall send a copy of the petition to all affected miners or to their representative, if any, when the petition is filed. Judicial review of a decision by the Commissioner in a contested case is available under Article 4 of Chapter 150B of the General Statutes.

(b) A notice or order, except an order issued under G.S. 74-24.8(a), shall be stayed while it is under administrative or judicial review. (1975, c. 206, s. 10; 1987, c. 827, s. 259.)

**§ 74-24.11. Repealed by Session Laws 1987, c. 827, s. 260.**

**§ 74-24.12. Injunctions.**

The Commissioner through the Director may institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the superior court of the county in which a mine is located or in which the operator of such mine has his principal office, whenever such operator or his agent (i) violates or fails or refuses to comply with any final order or decision issued under this Article or (ii) interferes with, hinders, or delays the Commissioner in carrying out the provisions of this Article, or (iii) refuses to admit the Commissioner or his authorized representative to the mine, or (iv) refuses to permit the inspection of the mine, or the investigation of an accident or occupational illness occurring in, or connected with, such mine, or (v) refuses to furnish any information or report requested by the Commissioner in furtherance of the provisions of this Article. (1975, c. 206, s. 12.)

**§ 74-24.13. Mandatory reporting.**

Under such regulations as he may prescribe, the Commissioner shall require that:

- (1) Operators of mines which are subject to this Article submit, at least annually and at such other times as he deems necessary, and in such form as he may prescribe, reports of "accidents," injuries, occupational disease, and related data, and the Commissioner through the Director shall compile, analyze, and publish, either in summary or detailed form, the information obtained; and all information, reports, orders, or findings, obtained or issued under this Article may be published and released to any interested person, and shall be made available for public inspection.
- (2) All "accidents" shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence. Records of such "accidents" and investigations shall be kept, and the information shall be made readily available for inspection by the Commissioner or his authorized representative. Such records shall include man-hours worked and shall be reported for periods determined by the Commissioner, but at least annually.

- (3) The operators of mines which are subject to this Article shall notify the Commissioner, before starting operations, of the approximate or actual date mine operations will commence. The notification shall include mine name, location, the company name, mailing address, the person in charge, and whether operations will be continuous or intermittent. When any mine subject to this Article is closed, the operator shall notify the Commissioner of such closure and indicate whether the closure is temporary or permanent. (1975, c. 206, s. 13.)

#### **§ 74-24.14. Criminal penalties.**

Any person who (i) willfully violates any standard, order, notice, decision, rule, or regulation issued under authority of this Article, and said violation causes death or serious physical harm to another; (ii) knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Article or required by any order, notice, or decision issued under this Article; (iii) knowingly distributes, sells, offers for sale, introduces, or delivers any equipment, machinery, article, or apparatus which is represented as complying with the provisions of this Article, or with any specification or regulation of the Commissioner applicable to such equipment, machinery, article, or apparatus and knowing it does not so comply, shall be guilty of a Class 2 misdemeanor. In any instance in which such offense is committed by a corporation, the officer or authorized representative of such corporation who knowingly permits such offense to be committed shall, upon conviction, be subject to the same fine or imprisonment, or both. (1975, c. 206, s. 14; 1993, c. 539, s. 553; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 74-24.15. Rights and duties of miners.**

Miners shall comply with all safety and health standards and all rules, regulations, or orders issued pursuant to this Article which are applicable to their own actions and conduct and shall have the rights afforded under Article 21 of Chapter 95 of the General Statutes. (1975, c. 206, s. 15; 1987, c. 827, s. 261; 1991 (Reg. Sess., 1992), c. 1021, s. 5.)

#### **§ 74-24.16. Education, training, technical assistance, and research.**

(a) The Commissioner through the Director is authorized to develop and conduct expanded programs for the education, training, and technical assistance of operators and miners in the recognition, avoidance, and prevention of accidents or unsafe or unhealthful working conditions and to conduct such research as may be necessary in mines which are subject to this Article.

(b) The Commissioner is authorized to conduct, directly or by grants, short-term training of personnel engaged in work related to the Commissioner's responsibilities under this Article.

(c) In carrying out the provisions of this Article, the Commissioner is authorized to enter into agreements and contracts with, and accept grants from and make grants to, public and private agencies and organizations and individuals.

(d) Repealed by Session Laws 2006-66, s. 13.1, effective July 1, 2006. (1975, c. 206, s. 16; 2005-276, s. 42.2(a); 2005-345, s. 48(a); 2006-66, s. 13.1.)

#### **§ 74-24.17. State-federal plan.**

In order to promote sound and effective coordination in State and federal activities within the field covered by this Article, the Commissioner is hereby authorized to enter into and, from time

to time, to amend or terminate a State-federal plan agreement with the federal agency charged with administering laws relating to safety and health in mines. (1975, c. 206, s. 17.)

**§ 74-24.18. Legal representation.**

It shall be the duty of the Attorney General of North Carolina to represent the Department of Labor in all actions or proceedings in connection with this Article. (1975, c. 206, s. 18.)

**§ 74-24.19. Administrative provisions.**

(a) The Commissioner shall appoint a Director to assist him in administering the provisions of this Article and, through the Director, shall have authority to appoint, subject to Chapter 126 of the General Statutes of North Carolina, such officers, engineers, inspectors, and employees as he deems requisite for the administration of this Article; and to prescribe powers, duties, and responsibilities of all officers, engineers, inspectors, and employees engaged in the administration of this Article.

(b) All persons appointed as representatives of the Commissioner shall be qualified by practical experience in mine safety and health administration or practical experience in mining or by experience as a practical mining engineer or by education. All persons so appointed shall be physically able to perform their duties predicated on their work assignments, and all persons subject to making inspections, investigations, or participating in rescue and recovery work shall be examined prior to their employment and annually thereafter by a physician who shall certify their physical ability to perform their duties in mines subject to this Article. The fee for the required annual examination shall be satisfied as recommended by the Commissioner.

(c) The Commissioner, the Director, or any other officer, engineer, inspector, or employee engaged in the administration of this Article shall not, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation, financial or otherwise, with any operating mining company, operator's association, or labor union. (1975, c. 206, s. 19.)

**§ 74-24.20. Construction of Article and severability.**

This Article shall receive a liberal construction to the end that the safety and health of miners in the State may be effectuated and protected. If any provision of this Article or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are severable. (1975, c. 206, s. 20.)

Article 3.

Waterways Obtained.

**§ 74-25. Water and drainage rights obtained.**

Any person or body corporate engaged or about to engage in mining, who may find it necessary for the furtherance of his operations to convey water either to or from his mine or mines over the lands of any other person or persons, may make application by petition in writing to the clerk of the superior court of the county in which the lands to be affected or the greater part are situate, for the right so to convey such water. The owner of the lands to be affected shall be made a party defendant, and the proceedings shall be conducted as other special proceedings. (1871-2, c. 158, ss. 1, 3; Code, ss. 3293, 3294, 3300; Rev., s. 4953; C.S., s. 6920.)

**§ 74-26. The petition, what to contain.**

The petition shall specify the lands to be affected, the name of the owner of such lands, and the character of the ditch or drain intended to be made. (1871-2, c. 158, s. 3; Code, s. 3294; Rev., s. 4954; C.S., s. 6921.)

**§ 74-27. Appraisers; appointment and duties.**

Upon the hearing of the petition, if the prayer thereof be granted, the clerk shall appoint three disinterested persons, qualified to act as jurors, and not connected either by blood or marriage with the parties, appraisers to assess the damage, if any, that will accrue to the lands by the contemplated work, and shall issue a notice to them to meet upon the premises at a day specified, not to exceed 10 days from the date of such notice. The appraisers having met, shall take an oath before some officer qualified to administer oaths to faithfully perform their duty and to do impartial justice in the case, and shall then examine all the lands in any way to be affected by such work, and assess the damage thereto, and make report thereof under their hands and seals to the clerk from whom the notice issued. (1871-2, c. 158, ss. 4, 5, 9; Code, ss. 3295, 3296, 3299; Rev., s. 4955; C.S., s. 6922.)

**§ 74-28. Confirmation of report; payment of damages; rights of petitioner.**

After the filing of the report and confirmation thereof by the clerk, who shall have power to confirm or, for good cause, set aside the same, the petitioner shall have full right and power to enter upon such lands and make such ditches, drains, or other necessary work: Provided, he has first paid or tendered the damages, assessed as above, to the owner of such lands or his known and recognized agent, if he be a resident of this State, or have such agent in this State. If the owner be a nonresident and have no known agent in this State, the amount so assessed shall be paid by the petitioner into the office of the clerk of the superior court of the county for the use of such owner. (1871-2, c. 158, s. 12; Code, s. 3298; Rev., s. 4957; C.S., s. 6923.)

**§ 74-29. Registration of report.**

The petitioner, or any other person interested, may have the report of the appraisers registered upon the certificate of the clerk and shall pay the register a fee of twenty-five cents (25¢) therefor. (1871-2, c. 158, s. 8; Code, s. 3298; Rev., s. 4957; C.S., s. 6924.)

**§ 74-30. Obstructing mining drains.**

If any person shall obstruct any drain or ditch constructed under the provisions of this Chapter, he shall be guilty of a Class 1 misdemeanor. (1871-2, c. 158, s. 12; Code, s. 3301; Rev., s. 3380; C.S., s. 6925; 1993, c. 539, s. 554; 1994, Ex. Sess., c. 24, s. 14(c).)

**§ 74-31. Disposition of waste.**

In getting out and washing the products of kaolin and mica mines, the persons engaged in such business shall have the right to allow the waste, water, and sediment to run off into the natural courses and streams. (1917, c. 123; C.S., s. 6926; 1937, c. 378.)

Article 4.

Adjustment of Conflicting Claims.

**§ 74-32. Liability for damage for trespass.**

If any owner or person in possession of any mine or mining claim shall enter upon, either on the surface or underground, any mine or mining claim, the property of another, and shall mine or carry away any valuable mineral therefrom, he shall be liable to the owner of the mine so trespassed upon for double the value of all such mineral mined or carried away and for all other damages; and the value of the mineral mined or carried away shall be presumed to be the amount of the gross value ascertained by an average assay of the excavated material or vein or ledge from which it was taken. If such trespass is wrongfully and willfully made, punitive damages may be allowed. (1913, c. 51, s. 1; C.S., s. 6927.)

**§ 74-33. Persons entitled to bring suit.**

The owner of a mine in this State, or any person in possession under a lease or other contract, may maintain an action to recover damages to such property arising from the operation of any adjacent mine by the owner thereof or other person in possession and working the same under lease or contract, and also to prevent the continuance of the operation of the adjacent mine in such a manner as to injure or endanger the safety of the complainant's mine. (1913, c. 51, s. 1; C.S., s. 6928.)

**§ 74-34. Application and order for survey.**

The person entitled to bring an action, as provided in G.S. 74-33, may apply to any judge of the superior court having jurisdiction to grant injunctions and restraining orders, and obtain an order of survey in the following manner: He shall file an affidavit giving the names of the parties and the location as near as may be, of the mine complained of; the location of the plaintiff's mine, and that he has reason to believe that the defendant, or his agents or employees, are or have been trespassing upon his mine, or working the defendant's mine in such a manner as to damage or endanger the plaintiff's property. Upon the filing of the affidavit, the judge shall cause a notice to be issued to the defendant or his agents, stating the time and place and before whom the application will be heard, and requiring them to appear, in not less than 10 nor more than 20 days from the date thereof, and show cause why an order of survey should not be granted. Upon the hearing, and for good cause shown, the judge shall grant an order directed to some competent disinterested surveyor or mining engineer, or both, as the case may be, who shall proceed to make the necessary examination and surveys, as directed by the court, and report their action to the court. The persons selected by the judge to make the survey and examination shall be residents of the State, and, before entering upon the discharge of their duty, shall take and subscribe an oath that they will fairly and impartially survey the mines described in the petition. In all other respects, except as stated above, the surveyors appointed by the judge shall proceed as in surveys in disputed boundaries. (1913, c. 51, s. 2; C.S., s. 6929.)

**§ 74-35. Free access to mine for survey.**

Upon the order made for the survey in the manner, at the time, and by the persons mentioned in the order, which shall include a representative of the party making the application, who shall not be one of the surveyors, there shall be given free access to the mine for the purpose of survey, and any interference with the persons acting under the order of survey shall be contempt of court and punished accordingly. If the persons named in the order of survey so require, they, with their instruments, shall be carefully lowered and raised in and out of the mine with the cage, bucket, or skip ordinarily used in the shafts of the mine; and they may demand of the owner of the mine, or

his manager or agent, that they be so raised and lowered at a speed agreeable to them and not to endanger their comfort and safety or to injure the accuracy of their instruments. The owner of the mine, his managers or agents, shall be liable in damages to the persons making the examination for any injury to them or to their instruments, caused by the careless and negligent operation of any bucket, cage, or skip at such a high rate of speed as to injure the persons or their instruments while being lowered or raised in the mine. (1913, c. 51, s. 2; C.S., s. 6930.)

**§ 74-36. Costs of the survey.**

The costs of the order and survey shall be paid by the person making the application; but if he shall maintain an action and recover damages for the injury done or threatened prior to such survey and examination, the costs of the order and survey shall be taxed against the defendant as other costs in the action. The party obtaining the survey shall be liable for any unnecessary injury done to the property examined and surveyed in making the survey. (1913, c. 51, s. 2; C.S., s. 6931.)

Article 5.

Interstate Mining Compact.

**§ 74-37. Compact enacted into law.**

The Interstate Mining Compact is hereby enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

INTERSTATE MINING COMPACT

Article I. - Findings and Purposes

(a) The party states find that:

- (1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.
- (2) The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.
- (3) Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.
- (4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

- (5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.
- (b) The purposes of this Compact are to:
- (1) Advance the protection and restoration of land, water and other resources affected by mining.
  - (2) Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.
  - (3) Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.
  - (4) Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.
  - (5) Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

#### Article II. - Definitions

As used in this Compact, the term:

- (1) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and 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; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on site farming or construction.
- (2) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

#### Article III. - State Programs

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

- (1) The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the

abandonment or neglect of land and property formerly used in the conduct of such operations.

- (2) The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.
- (3) The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.
- (4) The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

#### Article IV. - Powers

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this Compact, such Commission shall have power to:

- (1) Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.
- (2) Study the conservation, adaption, improvement and restoration of land and related resources affected by mining.
- (3) Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this Compact.
- (4) Gather and disseminate information relating to any of the matters within the purview of this Compact.
- (5) Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this Compact.
- (6) Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this Compact.
- (7) Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.
- (8) Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

#### Article V. - The Commission

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the Commission." The Commission shall be composed of one commissioner from each party state who shall be Governor thereof. Pursuant to the laws of his party state, each Governor shall have the assistance of

an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the Commission. In any instance where a Governor is unable to attend a meeting of the Commission or perform any other function in connection with the business of the Commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph or an official of the state environmental protection agency with responsibility for protecting and restoring lands affected by mining, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Articles V(g), V(h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting: Provided that action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the Commission. The executive director, the treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the Commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(h) The Commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The Commission annually shall make to the Governor, legislature and advisory body required by Article V(a) of each party state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

#### Article VI. - Advisory, Technical and Regional Committees

The Commission shall establish such advisory and technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the Commission.

#### Article VII. - Finance

(a) The Commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: One half in equal shares; and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the Commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under Article

V(h) of this Compact: Provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article V(h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

#### Article VIII. - Entry into Force and Withdrawal

(a) This Compact shall enter into force when enacted into law by any four or more states. Thereafter, this Compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this Compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### Article IX. - Effect on Other Laws

Nothing in this Compact shall be construed to limit, repeal or supersede any other law of any party state.

#### Article X. - Construction and Severability

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating herein, the Compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. (1967, c. 946, s. 1; 2015-1, s. 1.)

### **§ 74-38. Commission to file copies of bylaws with Department of Environmental Quality.**

(a), (b) Repealed by Session Laws 1973, c. 1262, s. 33.

(c) In accordance with Article V(i) of the Compact, the Commission shall file copies of the bylaws and any amendments thereto with the Department of Environmental Quality. (1967, c. 946, s. 2; 1973, c. 1262, s. 33; 1977, c. 771, s. 4; 1989, c. 727, s. 218(12); 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

## ARTICLE 6.

### Mining Registration.

**§§ 74-39 through 74-40: Repealed by Session Laws 1977, c. 712, s. 2.**

**§ 74-41. Repealed by Session Laws 1973, c. 1262, s. 33.**

**§§ 74-42 through 74-45: Repealed by Session Laws 1977, c. 712, s. 2.**

## Article 7.

### The Mining Act of 1971.

**§ 74-46. Title.**

This Article may be known and cited as "The Mining Act of 1971." (1971, c. 545, s. 1.)

**§ 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 is possible to conduct mining in such a way as to minimize its effects on the surrounding environment. 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 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. (1971, c. 545, s. 2.)

**§ 74-48. Purposes.**

The purposes of this Article are to provide:

- (1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration.
- (2) That from June 11, 1971, no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining. (1971, c. 545, s. 3.)

**§ 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 North Carolina Mining Commission created by G.S. 143B-290.
- (4) "Department" means the Department of Environmental Quality. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or 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 any of the following: (i) the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; (ii) 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 their original location; or (iii) 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. Those aspects of deep mining not having significant effect on the surface, where the affected land does not exceed one acre in area.
- b. Mining operations where the affected land does not exceed one acre in area.
- c. Plants engaged in processing minerals produced elsewhere and whose refuse does not affect more than one acre of land.

- d. Excavation or grading when conducted solely for on-site construction for purposes other than mining.
  - e. Removal of overburden and mining of limited amounts of any ores or mineral solids 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 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 exploratory excavation does not exceed one acre in area.
  - f. Excavation or grading where all of the following apply:
    - 1. The excavation or grading is conducted to provide soil or other unconsolidated material to be used without further processing for a single off-site construction project for which an erosion and sedimentation control plan has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
    - 2. The affected land, including nonpublic access roads, does not exceed five acres.
    - 3. The excavation or grading is completed within one year.
    - 4. The excavation or grading does not involve blasting, the removal of material from rivers or streams, the disposal of off-site waste on the affected land, or the surface disposal of groundwater beyond the affected land.
    - 5. The excavation or grading is not in violation of any local ordinance.
    - 6. An erosion and sedimentation control plan for the excavation or grading has been approved in accordance with Article 4 of Chapter 113A of the General Statutes.
  - g. Excavation or grading when conducted solely for activities undertaken on agricultural land that are exempt, pursuant to G.S. 113A-52.01(1), from the requirements of Article 4 of Chapter 113A of the General Statutes.
- (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. 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, the Department shall give the operator written notice of its intention to declare the operation terminated, and the operator shall have an opportunity to appear within 30 days and present evidence that the operation is continuing; where the Department finds that the evidence is satisfactory, the Department shall not declare the mining operation terminated. (1971, c. 545, s. 4; 1973, c. 1262, ss. 33, 86; 1977, c. 771, s. 4; c. 845, s. 1; 1989, c. 727, s. 218(13); 1993 (Reg. Sess., 1994), c. 568, s. 1; 1997-443, s. 11A.119(a); 1999-82, s. 1; 2002-165, s. 2.1; 2012-143, s. 1(d); 2014-4, s. 5(c); 2015-241, s. 14.30(u); 2015-263, s. 23.)

#### **§ 74-50. Permits – General.**

(a) No operator shall engage in mining without having first obtained from the Department an operating permit that covers the affected land and that has not been terminated, revoked, 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.

(b) As used in subsection (b1) of this section:

- (1) "Land adjoining" means any parcel or tract of land that is not owned in whole or in part by, or that is not under the control of, the applicant or operator or any lessor, affiliate, parent, or subsidiary of the applicant or operator and that is contiguous to either: (i) any parcel or tract that includes the permitted area or (ii) any parcels or tracts of land that are owned in whole or in part by or under the control of the applicant or operator or any lessor, affiliate, parent, or subsidiary of the applicant or operator and that, taken together, are contiguous to the permitted area.
- (2) "Permit boundaries" means the boundaries of a permitted area.
- (3) "Permitted area" means affected land and all other land used for or designated as buffers or reserves, or used for other purposes, as delineated in a mining permit or an application for a mining permit.

(b1) At the time of an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the applicant or operator shall make a reasonable effort, satisfactory to the Department, to notify:

- (1) The chief administrative officer of each county and municipality in which any part of the permitted area is located.
- (2) The owners of record of land adjoining that lies within 1,000 feet of the permit boundaries.
- (3) The owners of record of land that lies directly across and is contiguous to any highway; creek, stream, river, or other watercourse; railroad track; or utility or other public right-of-way and that lies within 1,000 feet of the permit boundaries. For purposes of this subdivision, "highway" means a

highway, as defined in G.S. 20-4.01(13) that has four lanes of travel or less and that has not been designated a part of the Interstate Highway System.

(b2) 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.

(b3) When the Department receives an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the Department shall send a notice of the application to each of the following agencies with a request that each agency review and provide written comment on the application within 30 days of the date on which the request is made:

- (1) Division of Air Quality, Department of Environmental Quality.
- (2) Division of Parks and Recreation, Department of Natural and Cultural Resources.
- (3) Repealed by Session Laws 2013-413, s. 57(b), effective August 23, 2013.
- (4) Division of Water Resources, Department of Environmental Quality.
- (5) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality.
- (6) Wildlife Resources Commission, Department of Environmental Quality.
- (7) Office of Archives and History, Department of Natural and Cultural Resources.
- (8) United States Fish and Wildlife Service, United States Department of the Interior.
- (9) Any other federal or State agency that the Department determines to be appropriate, including the Division of Coastal Management, the Division of Marine Fisheries, and the Division of Waste Management of the Department of Environmental Quality, and the Department of Transportation.

(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 the bond or other security, or any part thereof, shall lapse for any reason other than a release by the Department, and the lapsed bond or security is not replaced by the operator within 30 days after notice of the lapse, the permit to which the lapsed bond or security pertains shall be automatically revoked.

(d) Except as provided in subsection (d1) of this section, permits for mining operations shall be issued for the life-of-site of the operation unless revoked as otherwise provided under this Article. For purposes of this section, "life-of-site" means the period from the initial receipt of a permit from the operation until the mining operation terminates and the reclamation required under the approved reclamation plan is completed. Termination of a permit shall not have the effect of relieving the operator of any obligations that the operator has incurred under 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.

(d1) Permits for mining operations conducted on real property that is leased from a public entity shall be issued for the life-of-lease. For purposes of this subsection, the following terms apply: (i) "life-of-lease" means the duration of the lease between the owner or operator of the mining operation and a public entity and (ii) "public entity" means the State, any State agency, State college or university, county, municipal corporation, local board of education, community college, special district, or other political subdivision of the State. Termination of a permit shall not have the effect of relieving the operator of any obligations that the operator has incurred under 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. (1971, c. 545, s. 5; 1973, c. 1262, s. 33; 1981, c. 787, s. 1; 1993 (Reg. Sess., 1994), c. 568, s. 2; 2000-116, s. 1; 2002-159, s. 35(d); 2012-143, s. 1(f); 2013-413, s. 57(b); 2014-115, s. 17; 2015-241, s. 14.30(kk); 2017-209, s. 13(a).)

#### **§ 74-51. Permits – Application, granting, conditions.**

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. 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 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 that meets the requirements of G.S. 74-53. No permit shall be issued until 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 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 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) 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 or for a modification of a mining permit to add land to the permitted area, as defined in G.S. 74-50(b). 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. The public hearing shall be held within 60 days of the end of the 30-day period within which any requests for the public hearing shall be made. A public hearing shall not be required for a modification of a mining permit to extend the duration of the permit to a life-of-site, or life-of-lease, pursuant to G.S. 74-50(d) or (d1), respectively.

(d) The Department may deny 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, or fresh water, estuarine, or marine fisheries;
- (3) That the operation will violate standards of air quality, surface water quality, or groundwater quality 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, 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 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 that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under this Article or rules adopted under this Article and that resulted in:
  - a. Revocation of a permit,
  - b. Forfeiture of part or all of a bond or other security,
  - c. Conviction of a misdemeanor under G.S. 74-64,
  - d. Any other court order issued under G.S. 74-64, or
  - e. Final assessment of a civil penalty under G.S. 74-64, [or]
  - f. Failure to pay the application processing fee required under G.S. 74-54.1.

(e) In the absence of any 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 any other

reasonable and appropriate requirements and safeguards that the Department determines are necessary to assure that the operation will comply fully with the requirements and objectives of this Article. 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 screening to be feasible and desirable. Violation of any 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.

(g) If the Department denies an application for a permit, the Department shall notify the operator in writing, stating the reasons for the denial and any modifications in the application that would make the application acceptable. The operator may thereupon modify and resubmit the application, or file an appeal as provided in G.S. 74-61.

(h) Upon approval of an application, the Department shall set the amount of the performance bond or other security that is to be required pursuant to G.S. 74-54. The operator shall have 60 days 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 by virtue of a sale, lease, assignment, or otherwise, the Department may release the first operator from the duties imposed upon the operator by this Article with reference to 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. (1971, c. 545, s. 6; 1973, c. 507, s. 5; 1977, c. 771, s. 4; c. 845, s. 2; 1981, c. 787, ss. 2, 3; 1987, c. 827, c. 82; 1989, c. 727, s. 11; 1993 (Reg. Sess., 1994), c. 568, s. 3; 2000-116, s. 2; 2017-209, s. 13(b).)

#### **§ 74-52. Permit modifications.**

(a) Any operator engaged in mining under an operating permit may apply at any time for modification of the permit. The application shall be in writing upon forms furnished by the Department and shall fully state the information called for. The applicant must provide the Department with any additional information necessary to satisfy application requirements. In addition, the applicant may be required to furnish any other information as may be deemed necessary by the Department in order adequately to enforce the Article.

(b) Repealed by Session Laws 2017-209, s. 13(c), effective October 4, 2017.

(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 [G.S.] 74-51.

(d) No modification 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. (1971, c. 545, s. 7; 1993 (Reg. Sess., 1994), c. 568, s. 4; 2017-209, s. 13(c).)

#### **§ 74-53. Reclamation plan.**

The operator shall submit with his application for an operating permit a proposed reclamation plan. Said plan shall include as a minimum, each of the elements specified in the definition of "reclamation plan" in G.S. 74-49, plus such other information as may be reasonably required by the Department. The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, shall to the extent feasible be conducted simultaneously with mining operations and in any event be initiated at the earliest practicable time after completion or termination of mining on any segment of the permit area. The plan shall provide that reclamation activities shall be completed within two years after completion or termination of mining on each segment of the area for which a permit is requested unless a longer period is specifically permitted by the Department.

The Department may approve, approve subject to stated modifications, or reject the plan which is proposed. The Department shall approve a reclamation plan (as submitted or as modified) only where it finds that it adequately provides for those actions necessary to achieve the purposes and requirements of this Article, and that in addition, the plan meets the following minimum standards:

- (1) The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
- (2) Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
- (3) At open pit mining operations, all overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
- (4) In no event shall any provision of this section be construed to allow small pools of water that are, or are likely to become, noxious, odious, or foul to collect or remain on the mined area. Suitable drainage ditches or conduits shall be constructed or installed to avoid such conditions. Lakes, ponds, and marsh lands shall be considered adequately reclaimed lands when approved by the Department.
- (5) The type of vegetative cover and methods of its establishment shall be specified, and in every case shall conform to accepted and recommended agronomic and reforestation restoration practices as established by the

North Carolina Agricultural Experiment Station and Department of Environmental Quality. Advice and technical assistance may be obtained through the State soil and water conservation districts.

The Department shall be authorized to approve a reclamation plan despite the fact that such plan does not provide for reclamation treatment of every portion of the affected land, where the Department finds that because of special conditions such treatment would not be feasible for particular areas and that the plan takes all practical steps to minimize the extent of such areas. (1971, c. 545, s. 8; 1973, c. 1262, s. 86; 1977, c. 771, s. 4; 1989, c. 727, s. 218(14); 1991, c. 342, s. 1; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

#### **§ 74-54. Bonds.**

(a) Each applicant for an operating permit, or for the modification of an existing 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 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 the bond pertains, less any area where reclamation has been completed and released from coverage by the Department, pursuant to G.S. 74-56, or based on any other criteria established by the Commission, but shall not exceed one million dollars (\$1,000,000). The Department shall set the amount of the required bond in all cases, based upon a schedule established by the Commission.

(c) The bond shall be conditioned upon the faithful performance of the requirements set forth in this Article and of the rules adopted 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, an irrevocable letter of credit, a guaranty of payment from an acceptable bank, an assignment of a savings account in an acceptable bank on an assignment form prescribed by the 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 the surety a good and sufficient corporate surety authorized to do business in this State. Upon failure of the operator to substitute sufficient surety within the time specified, the operator's permit shall be automatically revoked. (1971, c. 545, s. 9; 1981, c. 787, s. 4; 1987, c. 827, s. 85; 1993 (Reg. Sess., 1994), c. 568, s. 5; 2012-143, s. 1(d); 2013-410, s. 7(a); 2017-209, s. 13(d).)

**§ 74-54.1. Permit fees.**

(a) The fee schedule for the processing of permit applications, transfers, and modifications is as follows:

	0-25 acres	26+ acres
New Permit Applications	\$3,750.00	\$5,000.00
Permit Modifications	\$750.00	\$1,000.00
Permit Transfers	\$100.00	\$100.00

(a1) In addition to the fees set forth in subsection (a) of this section, permittees shall pay an annual operating fee of four hundred dollars (\$400.00) per permit per year as set forth in G.S. 74-55. The Department may charge a late fee of fifty dollars (\$50.00) per month per permit for every month or partial month that payment of the annual operating fee is delinquent.

(b) Fees collected under this section shall be credited to the General Fund and shall be applied to the costs of administering this Article.

(c) Repealed by Session Laws 2017-10, s. 4.1, effective May 4, 2017. (1989 (Reg. Sess., 1990), c. 944, s. 1; 1991 (Reg. Sess., 1992), c. 1039, s. 16; 1993, c. 513, s. 3; 1993 (Reg. Sess., 1994), c. 568, s. 6; 2007-323, s. 30.2(a); 2012-143, s. 1(d); 2013-410, s. 7(b); 2015-241, s. 14.16(b); 2017-10, s. 4.1; 2017-209, s. 13(e).)

**§ 74-55. Reclamation report.**

(a) By July 1 of each year, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which includes all of the following:

- (1) Identify the mine, the operator and the permit number.
- (2) State acreage disturbed by mining in the last 12-month period.
- (3) State and describe amount and type of reclamation carried out in the last 12-month period.
- (4) Estimate acreage to be newly disturbed by mining in the next 12-month period.
- (5) Provide such maps as may be specifically requested by the Department.
- (6) Include the annual operating fee pursuant to G.S. 74-54.1(a1).

(b) When filing the annual report, the permittee shall pay the annual operating fee for the permit to the Department until the permit has been terminated by the Department. The Department may assess and collect a monthly penalty for each annual report or annual operating fee not filed by July 31 of each year until the annual report and annual operating fee are filed with the Department. If the required annual report and operating fee, including any late payment penalties, are not filed by December 31 of each year, the Department

shall give written notice to the operator and shall then initiate permit revocation proceedings in accordance with G.S. 74-58. (1971, c. 545, s. 10; 1987, c. 827, s. 85; 2017-209, s. 13(f).)

**§ 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 may 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 adopted under this Article, and the terms and conditions of the permit.

(b) The operator shall proceed with reclamation as scheduled in the approved reclamation plan. 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 the operator from further obligations regarding the affected land. At the same time the Department shall release all or the appropriate portion of any performance bond or other security 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, the Department shall initiate forfeiture proceedings against the bond or other security filed by the operator under G.S. 74-59. In addition, 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. (1971, c. 545, s. 11; 1987, c. 827, s. 85; 1993 (Reg. Sess., 1994), c. 568, s. 7; 1995, c. 504, s. 3.)

**§ 74-57. Departmental modification of permit or reclamation plan.**

If at any time it appears to the Department from its inspection of the affected land that the activities under the reclamation plan and other terms and conditions of the permit are failing to

achieve the purposes and requirements of this Article, it shall give the operator written notice of that fact, of its intention to modify the reclamation plan and other terms and conditions of the permit in a stated manner, and of the operator's right to a hearing on the proposed modification at a stated time and place. The date for such hearing shall be not less than 30 nor more than 60 days after the date of the notice unless the Department and the operator shall mutually agree on another date. Following the hearing the Department shall have the right to modify the reclamation plan and other terms and conditions of the permit in the manner stated in the notice or in such other manner as it deems appropriate in view of the evidence submitted at the hearing. (1971, c. 545, s. 12.)

#### **§ 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 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 the apparent violation upon the operator, specifying the facts constituting the apparent violation and informing the operator of the operator's right to an informal conference with the Department. The date for an informal conference shall be not less than 15 nor more than 30 days after the date of the notice, unless the Department and the operator mutually agree on another date. If the operator or the operator's representative does not appear at the informal conference, or if the Department following the informal conference finds that there has been a violation, the Department may suspend the permit until the violation is corrected or may revoke the permit where the violation appears to be willful, or where the permittee has failed to pay the fee or late payment penalties required by G.S. 74-55(b).

(b) The effective date of any suspension or revocation shall be 30 days following the date of the decision. The filing of a petition for a contested case under G.S. 74-61 shall stay the effective date until issuance of 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 an action for injunctive relief.

(c) Any operator whose permit has been suspended or revoked shall be denied a new permit or reinstatement of the suspended permit to engage in mining until the operator gives evidence satisfactory to the Department of the operator's ability and intent to fully comply with the provisions of this Article and rules adopted under this Article, and the terms and conditions of the permit, including the approved reclamation plan, and that the operator has satisfactorily corrected all previous violations. (1971, c. 545, s. 13; 1973, c. 1262, s. 33; 1979, c. 252, s. 1; 1987, c. 827, s. 82A; 1993 (Reg. Sess., 1994), c. 568, s. 8; 2011-398, s. 29; 2017-209, s. 13(g).)

#### **§ 74-59. Bond forfeiture proceedings.**

Whenever the Department determines the necessity of a bond forfeiture under the provisions of G.S. 74-56, or whenever it revokes an operating permit under the provisions of G.S. 74-58, it

shall request the Attorney General to initiate forfeiture proceedings against the bond or other security filed by the operator under G.S. 74-54; provided, however, that no such request shall be made for forfeiture of a bond until the surety has been given written notice of the violation and a reasonable opportunity to take corrective action. Such proceedings shall be brought in the name of the State of North Carolina. In such proceedings, the face amount of the bond or other security, less any amount released by the Department pursuant to G.S. 74-56, shall be treated as liquidated damages and subject to forfeiture. All funds collected as a result of such proceedings shall be placed in a special fund and used by the Department to carry out, to the extent possible, the reclamation measures which the operator has failed to complete. If the amount of the bond or other security filed pursuant to this section proves to be insufficient to complete the required reclamation pursuant to the approved reclamation plan, the operator shall be liable to the Department for any excess above the amount of the bond or other security which may be required to defray the cost of completing the required reclamation. (1971, c. 545, s. 14.)

**§ 74-60. Notice.**

Whenever in this Article written notice is required to be given by the Department, such notice shall be mailed by registered or certified mail to the permanent address of the operator set forth in his most recent application for an operating permit or for a modification of such permit. No other notice shall be required. (1971, c. 545, s. 15; 2017-209, s. 13(h).)

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

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 30 days after the Department makes the decision. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission. (1971, c. 545, s. 16; 1973, c. 1262, s. 33; 1977, c. 771, s. 4; 1979, c. 252, s. 3; 1987, c. 827, s. 86; 1993 (Reg. Sess., 1994), c. 568, s. 9; 2011-398, s. 30.)

**§ 74-62. Repealed by Session Laws 1987, c. 827, s. 83.**

**§ 74-63. Rules.**

The Commission may adopt rules necessary to administer this Article. (1971, c. 545, s. 18; 1973, c. 1262, s. 33; c. 1331, s. 3; 1987, c. 827, s. 84.)

**§ 74-64. Penalties for violations.**

(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 adopted under this Article, or any of the terms and conditions of the mining permit shall be subject to a civil penalty of not more than five hundred dollars (\$500.00). Each day of a continuing violation shall constitute a separate violation. Prior to the assessment of any 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 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, or by any means authorized by G.S. 1A-1, Rule 4. 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) 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) The clear proceeds of civil penalties collected pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.
  - (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 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.

(b) **Criminal Penalties.** – In addition to other penalties provided by this Article, any operator who engages in mining in willful violation of the provisions of this Article or of any rules promulgated hereunder or who willfully misrepresents any fact in any action taken pursuant to this Article or willfully gives false information in any application or report required by this Article shall be guilty of a Class 3 misdemeanor and, upon conviction thereof, shall only be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each offense. Each day of continued violation after written notification shall be considered a separate offense. (1971, c. 545, s. 19; 1979, c. 252, s. 2; 1981, c. 787, ss. 7, 8; 1987, c. 246, s. 1; c. 827, s. 85; 1989 (Reg. Sess., 1990), c. 1024, s. 16; 1993, c. 539, s. 555; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 568, s. 10; 1998-215, s. 42.)

**§ 74-65. Effect on local zoning regulations.**

No provision of this Article shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina, except insofar as a provision of said regulation or ordinance is in direct conflict with this Article. (1971, c. 545, s. 20.)

**§ 74-66. Private relief against nuisance or hazard.**

No provision of this Article shall be construed to restrict or impair the right of any private or public person, association, corporation, partnership, officer, or agency to bring any legal or equitable action for redress against nuisances or hazards. (1971, c. 545, s. 21.)

**§ 74-67. Exemptions.**

The provisions of this Article shall not apply to those activities of the Department of Transportation, nor of any person, firm, or corporation acting under contract with the Department of Transportation, on highway rights-of-way or borrow pits maintained solely in connection with the construction, repair, and maintenance of the public road systems of North Carolina; provided, that this exemption shall not become effective until the Department of Transportation shall have adopted reclamation standards applying to such activities and such standards have been approved by the Commission. The provisions of this Article shall not apply to mining on federal lands under a valid permit from the U.S. Forest Service or the U.S. Bureau of Land Management. (1971, c. 545, s. 22; 1973, c. 507, s. 5; c. 1262, s. 33; 1977, c. 464, s. 34; 2012-143, s. 1(d); 2013-410, s. 7(c).)

**§ 74-68. Cooperation with other agencies; contracts and grants.**

The Department, with the approval of the Governor, and in order to accomplish any of the purposes of the Department, may apply for, accept, and expend grants from the federal government and its agencies and from any foundation, corporation, association, or individual; may enter into contracts relating to such grants; and may comply with the terms, conditions, and limitations of any such grant or contract. The Department may engage in such research as may be appropriate to further its ability to accomplish its purposes under this Article, and may contract for such research to be done by others. The Department may cooperate with any federal, state, or local government or agency, of this or any other state, in mutual programs to improve the enforcement of this Article or to accomplish its purposes more successfully. (1971, c. 545, s. 23.)

**§§ 74-69 through 74-74. Reserved for future codification purposes.**

## Article 8.

### Control of Exploration for Uranium in North Carolina.

#### **§ 74-75. Legislative findings; declaration of policy.**

The General Assembly finds that exploration for uranium within the State has the potential to lead to employment opportunities and other economic benefits for the citizens of North Carolina.

However, improper and unregulated exploration for uranium could adversely affect the health, safety and general welfare of the citizens of this State and could cause environmental harm.

The purpose of this Article is to assure that such exploration will be accomplished in a manner that protects the environment and the health, safety and welfare of the public. (1983, c. 279, s. 1.)

#### **§ 74-76. Definitions.**

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

- (1) "Commission" means the North Carolina Mining Commission created by G.S. 143B-290.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Exploration activity" means (i) the breaking of the surface soil in order to locate a natural deposit of uranium and to determine its quality and quantity or (ii) any activity that is directly connected with the breaking of the surface soil and that is undertaken to facilitate or accomplish the location and analysis of a uranium deposit. Exploration activity does not include an insignificant breaking of the surface soil and extraction of samples by hand tools for exploration purposes. This Article shall in no way limit or restrict to applicability of the Mining Act of 1971 to any activity that satisfies the definition of mining in that act.
- (4) "Land" includes submerged, tidal and estuarine lands. (1983, c. 279, s. 1; 1989, c. 727, s. 218(15); 1997-443, s. 11A.119(a); 2012-143, s. 1(d); 2014-4, s. 5(c); 2015-241, s. 14.30(u).)

#### **§ 74-77. Permit requirement.**

No person shall engage in exploration activity for the discovery of uranium without having first obtained from the Department an exploration permit which covers the affected land and which has not terminated, been revoked, or otherwise become invalid. (1983, c. 279, s. 1.)

#### **§ 74-78. Permits; application; granting; terms; duration; renewal.**

(a) A person desiring to engage in exploration activities for discovery of uranium shall make written application to the Department for an exploration permit. An 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 any other information the Department deems necessary in order to enforce this Article.

The application shall be accompanied by a signed agreement, in form specified by the Department, that in the event a bond or other security forfeiture is ordered pursuant to G.S. 74-81,

the Department and its representatives and contractors may make any necessary entries on the land and take any necessary action to carry out abandonment procedures not completed by the permit holder.

The Department shall also notify the Radiation Protection Commission of the application and request its views and comments on the application.

The applicant shall make a reasonable effort, satisfactory to the Department, to notify all owners of record of land adjoining the proposed site and the chief administrative officer of the county or municipality in which the proposed site is located that he intends to explore for uranium on the site.

- (b) The Department shall deny an application upon finding:
  - (1) That the proposed exploration activity will or is likely to violate any requirement of this Article or any rule promulgated under it; or
  - (2) That the person seeking to conduct the exploration activity has not corrected all violations which he committed under a prior uranium exploration permit. In the absence of any such findings, a permit shall be granted.

The Department shall grant or deny the permit as expeditiously as possible, but in no event later than 60 days after the filing of the application and of any reasonably required supplementary information.

(c) A permit may be conditioned upon any reasonable requirements and safeguards the Department deems necessary to assure that exploration activity will comply fully with the requirements and objectives of this Article and of other applicable State environmental and public health laws.

The Department shall set the amount of the performance bond or other security required pursuant to G.S. 74-79. The applicant shall have 30 days following the mailing of notification of the bond or security requirement in which to deposit the required bond or security with the Department. The exploration permit shall be issued upon timely receipt of this deposit.

(d) Exploration permits shall be valid for a period of one year. Permits may be renewed annually upon a showing that the person conducting exploration activity has complied with this Article, the rules promulgated under it, and the terms of his permit. Renewal applications shall be upon a form furnished by the Department and shall state the information called for, as well as other information the Department deems necessary. (1983, c. 279, s. 1; 1989, c. 727, s. 12.)

#### **§ 74-79. Bonds.**

Each applicant for an exploration permit shall file with the Department following approval of his application and shall thereafter maintain in force a bond or other security in favor of the State of North Carolina. The bond or other security shall be acceptable to the Department and shall be in an amount determined by the Department based upon a schedule established by the Commission. That schedule shall provide for bond or other security at a level that will allow the Department, through whatever reasonable means it chooses, to perform the abandonment and other work required by this Article. The bond or other security shall be continuous in nature and shall remain in force until cancelled by the guarantor. Cancellation shall be effectuated upon written notice thereof by certified mail, return receipt requested, to the Department and to the permit holder, and shall be effective no sooner than 60 days following receipt by the Department and the operator.

The bond or other security shall be conditioned upon the faithful performance of the requirements set forth in this Article and of the rules adopted pursuant to it. Liability under the

bond or other security shall remain in effect until completion of abandonment or until substitution of a good and sufficient bond or other security acceptable to the Department. In no event shall the liability of the surety exceed the amount of the bond or other security required by this section.

If notice of impending cancellation is issued by the surety, or if for any reason, the bond or other security provided is suspended or revoked or ceases to be effective, the permit holder shall, within 30 days of receipt of notice thereof, substitute a good and sufficient bond or other security acceptable to the Department. Upon failure of the permit holder to make the required substitution, his permit shall automatically become void and of no effect. Any continuation of exploration after the permit becomes void and ineffective shall make him subject to all sanctions and remedies afforded by this Article. (1983, c. 279, s. 1.)

#### **§ 74-80. Abandonment.**

All exploration holes shall be abandoned by adequately plugging them with cement from the bottom of the hole upward to a point three feet below ground surface. The remainder of the hole between the top of the plug and the surface shall be filled with cuttings or nontoxic material.

If multiple aquifers are encountered that have alternating usable quality water and salt water zones, or if other conditions determined by the Department to be potentially deleterious to surface or ground water are encountered, the conditions must be isolated immediately by cement plugs. Each such hole shall be plugged with cement to prevent water from flowing into or out of the hole or mixing within the hole. Usable quality water is ground water that is used or can be used for a beneficial purpose, including, domestic, livestock, irrigation or industrial uses.

Alternative plugging procedures and materials may be utilized when the applicant has demonstrated to the Department's satisfaction that the alternatives will protect ground waters and comply with the provisions of this Article. In the event that a hole is more suitably plugged with a nonporous material other than cement, the material shall have sealing and lasting characteristics at least equal to cement.

All other excavations or disturbances made in connection with exploration activities shall be adequately reclaimed so as to protect the natural resources of the surrounding area and to prevent the release of toxic substances.

Abandonment shall be undertaken as soon as practicable after exploration, except if multiple aquifers or other conditions potentially deleterious to surface or ground water are encountered. In any event, all abandonment shall be accomplished no later than 30 days following completion of exploration activity in an area of affected land. (1983, c. 279, s. 1.)

#### **§ 74-81. Inspection and approval of abandonment; bond release; forfeiture.**

Upon completion of abandonment of an area of affected land, the permit holder shall notify the Department on a form and in a manner it shall require. Upon receipt of the report, and at any other time it deems reasonable, the Department shall make an inspection of the area to determine whether the permit holder has complied with the requirements of this Article, any rules promulgated under it and the terms and conditions of his permit. Following its inspection, the Department shall give written notice to the permit holder of any deficiencies noted. The permit holder shall commence action within 10 days of receipt of notice to rectify these deficiencies and shall diligently proceed to correct them. The Department may extend the 10-day performance period if it finds that the permit holder is making every reasonable effort to comply.

Whenever the Department finds that the person conducting exploration activity has failed to properly abandon an area of affected land within the time allowed by G.S. 74-80 and has failed to

undertake timely corrective actions following notice, it shall initiate forfeiture proceedings against the bond or other security filed pursuant to G.S. 74-79.

If the Department finds that abandonment has been properly completed, it shall so notify the person conducting the exploration activity in writing within 10 days after that finding and release him from further obligations under this Article. At the same time it shall release all or the appropriate portion of the bond or other security that has been provided. (1983, c. 279, s. 1.)

**§ 74-82. Suspension, revocation or modification of permit.**

The Department may revoke, suspend or modify a permit for violations of this Article, any rules promulgated under it, or other terms or conditions of the permit. This authority is subject to the "Special Provisions on Licensing" of G.S. 150B-3. (1983, c. 279, s. 1; 1989 (Reg. Sess., 1990), c. 1004, s. 54.)

**§ 74-83. Forfeiture proceedings.**

Whenever the Department determines the necessity of a bond or other security forfeiture under the provisions of G.S. 74-81, or whenever it revokes, suspends or modifies a permit under the provisions of G.S. 74-82, it shall request the Attorney General to initiate forfeiture proceedings against the bond or other security filed by the permit holder: Provided, however, that no such request shall be made for forfeiture of a bond or other security until the guarantor has been given written notice of the violation and a reasonable opportunity to take corrective action. These proceedings shall be brought in the name of the State of North Carolina. In these proceedings, the face amount of the bond or other security, less any amount previously released by the Department, shall be treated as liquidated damages and subject to forfeiture. All funds collected as a result of these proceedings shall be placed in a special fund and used by the Department to carry out, to the extent possible, the abandonment measures which the permit holder has failed to complete. If the amount of the bond or other security filed pursuant to this section proves to be insufficient to complete the required abandonment, the permit holder shall be liable to the Department for any excess above the amount of the bond or other security which may be required to defray the cost of completing the required reclamation. (1983, c. 279, s. 1.)

**§ 74-84. Notice.**

Whenever in this Article written notice is required to be given by the Department, such notice, unless otherwise provided, shall be mailed by registered or certified mail to the permanent address of the person set forth in his most recent application for an exploration permit. No other notice shall be required. (1983, c. 279, s. 1.)

**§ 74-85. Administrative and judicial review of decisions.**

Any affected person may contest a decision of the Department to approve, deny, suspend, or revoke a permit, to require additional abandonment work, 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 30 days after the Department makes the decision. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the Commission. (1983, c. 279, s. 1; 1987, c. 827, s. 87; 2011-398, s. 31.)

**§ 74-86. Rules.**

The North Carolina Mining Commission may promulgate any rules necessary to administer and carry out the purposes of this Article. (1983, c. 279, s. 1; 1987, c. 827, s. 88; 2012-143, s. 1(d); 2014-4, s. 5(c).)

**§ 74-87. Penalty for violations.**

(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 exploration permit prior to engaging in the exploration for uranium, as required by G.S. 74-48. Each day of 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 person with an exploration permit who violates any of the provisions of this Article, any rules promulgated under it, or any of the terms and conditions of his exploration permit shall be subject to a civil penalty of not more than two hundred fifty dollars (\$250.00). Each day of a continuing violation shall constitute a separate violation. Prior to the assessment of any civil penalty, written notice of the violation shall be given pursuant to G.S. 74-84. 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 violations, and shall state that failure to correct the violations within that period will be considered an aggravating factor in the determination of the amount of the civil penalty, if any, to be assessed.
- (2) The Department shall determine the amount of the civil penalty to be assessed. 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 noncompliance, the violator's state of mind in committing the violation, the prior record of the violator in complying or failing to comply with this Article, and any corrective action taken by the violator. The Department shall notify the person conducting exploration activity of the assessment of the civil penalty by certified mail, return receipt requested or by other reasonable means calculated to provide actual notice. This notice shall describe the violations for which the civil penalty has been assessed. The person conducting exploration activity may appeal the assessment of any civil penalty assessed pursuant to this section in accordance with the procedures set forth in G.S. 74-85.
  - (3) If payment of any civil penalty assessed pursuant to this section is not received by the Department or if no administrative hearing is requested within 30 days following notice to the person of the assessment of the civil penalty, or within 30 days following denial of appeal pursuant to G.S. 74-85, 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.

- (4) The clear proceeds of civil penalties collected pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Injunctive Relief. – 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 under it.

(c) Criminal Penalties. – In addition to other penalties provided by this Article, any person who engaged in exploration activity in willful violation of the provisions of this Article or of any rules promulgated under it or who willfully misrepresented any material fact in any action taken pursuant to this Article shall be guilty of a Class 3 misdemeanor and, upon conviction thereof, shall only be fined not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000) for each offense. Each day of continued violation after written notification shall be considered a separate offense. (1983, c. 279, s. 1; 1993, c. 539, s. 556; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 43.)

**§ 74-88. Confidentiality of logs, surveys, and reports.**

If a person engaged in uranium exploration shows to the satisfaction of the Department that logs, surveys plats, and reports filed under this Article are of a proprietary nature relating to his competitive rights, that information shall be confidential and not subject to inspection and examination (as authorized by G.S. 132-6) for four years after receipt of the information by the Department. Further, upon written request of any such person, and a showing of a continued proprietary interest affecting competitive rights, the Department shall hold the material confidential for additional two-year periods. Nothing in this section shall be construed to deny the North Carolina Geological Survey access to all logs, plats, and reports filed under this Chapter. The North Carolina Geological Survey shall be bound to hold this information confidential to the same extent that the Department is bound. (1983, c. 279, s. 1.)

**§ 74-89. Delay before mining permits issued.**

No permit for the mining of uranium shall be issued to an applicant for either three years, beginning with the date of issuance of his first permit to explore for uranium, or for two years, beginning with the date of the filing of his first application for a permit to mine uranium, whichever comes first. (1983, c. 279, s. 1.)