

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 624*

Short Title: Mining Act Improvements.

(Public)

Sponsors: Senators Kerr and Tally.

Referred to: Environment and Natural Resources.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EFFECTIVENESS OF PUBLIC PARTICIPATION IN AND ENFORCEMENT OF THE MINING ACT OF 1971.

The General Assembly of North Carolina enacts:

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

"§ 74-49. Definitions.

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

(1) 'Affected land' means the surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.

(1a) 'Affiliate' has the same meaning as in 17 Code of Federal Regulations § 240.12(b)-2 (1 April 1992 Edition).

(2) 'Borrow pit' means an area from which soil or other unconsolidated materials are removed to be used, without further processing, for highway construction and maintenance.

(3) 'Commission' means the Mining Commission created by G.S. 143B-290.

(4) 'Department' means the Department of Environment, Health, and Natural Resources. Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or by such of his subordinates as he may designate.

- 1 (5) 'Land' shall include submerged lands underlying any river, stream,
2 lake, sound, or other body of water and shall specifically include,
3 among others, estuarine and tidal lands.
- 4 (6) 'Minerals' means soil, clay, coal, stone, gravel, sand, phosphate, rock,
5 metallic ore, and any other solid material or substance of commercial
6 value found in natural deposits on or in the earth.
- 7 (7) 'Mining' means
- 8 a. The breaking of the surface soil in order to facilitate or
9 accomplish the extraction or removal of minerals, ores, or other
10 solid matter,
- 11 b. Any activity or process constituting all or part of a process for
12 the extraction or removal of minerals, ores, soils, and other
13 solid matter from its original location,
- 14 c. The preparation, washing, cleaning, or other treatment of
15 minerals, ores, or other solid matter so as to make them suitable
16 for commercial, industrial, or construction use.
- 17 It shall not include those aspects of deep mining not having
18 significant effect on the surface, where the affected land does not
19 exceed one acre in area. It shall not include mining operations where
20 the affected land does not exceed one acre in area. It shall not include
21 plants engaged in processing minerals produced elsewhere and whose
22 refuse does not affect more than one acre of land. It shall not include
23 excavation or grading when conducted solely in aid of on-site farming
24 or of on-site construction for purposes other than mining. Removal of
25 overburden and mining of limited amounts of any ores or mineral
26 solids shall not be considered mining when done only for the purpose
27 and to the extent necessary to determine the location, quantity, or
28 quality of any natural deposit, provided that no ores or mineral solids
29 removed during such exploratory excavation or mining are sold,
30 processed for sale, or consumed in the regular operation of a business,
31 and provided further that the affected land resulting from any such
32 exploratory excavation does not exceed one acre in area.
- 33 (8) 'Neighboring' means in close proximity, in the immediate vicinity, or
34 in actual contact.
- 35 (9) 'Operator' means any person or persons, any partnership, limited
36 partnership, or corporation, or any association of persons, engaged in
37 mining operations, whether individually, jointly, or through
38 subsidiaries, agents, employees, or contractors.
- 39 (10) 'Overburden' means the earth, rock, and other materials that lie above
40 the natural deposit of minerals.
- 41 (10a) 'Parent' has the same meaning as in 17 Code of Federal Regulations §
42 240.12(b)-2 (1 April 1992 Edition).
- 43 (11) 'Peak' means overburden removed from its natural position and
44 deposited elsewhere in the shape of conical piles or projecting points.

- 1 (12) 'Reclamation' means the reasonable rehabilitation of the affected land
2 for useful purposes, and the protection of the natural resources of the
3 surrounding area. Although both the need for and the practicability of
4 reclamation will control the type and degree of reclamation in any
5 specific instance, the basic objective will be to establish on a
6 continuing basis the vegetative cover, soil stability, water conditions
7 and safety conditions appropriate to the area.
- 8 (13) 'Reclamation plan' means the operator's written proposal as required
9 and approved by the Department for reclamation of the affected land,
10 which shall include but not be limited to:
- 11 a. Proposed practices to protect adjacent surface resources;
 - 12 b. Specifications for surface gradient restoration to a surface
13 suitable for the proposed subsequent use of the land after
14 reclamation is completed, and proposed method of
15 accomplishment;
 - 16 c. Manner and type of revegetation or other surface treatment of
17 the affected areas;
 - 18 d. Method of prevention or elimination of conditions that will be
19 hazardous to animal or fish life in or adjacent to the area;
 - 20 e. Method of compliance with State air and water pollution laws;
 - 21 f. Method of rehabilitation of settling ponds;
 - 22 g. Method of control of contaminants and disposal of mining
23 refuse;
 - 24 h. Method of restoration or establishment of stream channels and
25 stream banks to a condition minimizing erosion, siltation, and
26 other pollution;
 - 27 i. Such maps and other supporting documents as may be
28 reasonably required by the Department; and
 - 29 j. A time schedule that meets the requirements of G.S. 74-53.
- 30 (14) 'Refuse' means all waste soil, rock, mineral, scrap, tailings, slimes, and
31 other material directly connected with the mining, cleaning, and
32 preparation of substances mined and shall include all waste materials
33 deposited on or in the permit area from other sources.
- 34 (15) 'Ridge' means overburden removed from its natural position and
35 deposited elsewhere in the shape of a long, narrow elevation.
- 36 (16) 'Spoil bank' means a deposit of excavated overburden or refuse.
- 37 (16a) 'Subsidiary' has the same meaning as in 17 Code of Federal
38 Regulations § 240.12(b)-2 (1 April 1992 Edition).
- 39 (17) 'Termination of mining' means cessation of mining operations with
40 intent not to resume, or cessation of mining operations as a result of
41 expiration or revocation of the permit of the operator. Whenever the
42 Department shall have reason to believe that a mining operation has
43 terminated, it shall give the operator written notice of its intention to
44 declare the operation terminated, and he shall have an opportunity to

1 appear within 30 days and present evidence that the operation is
2 continuing; where the Department finds that such evidence is
3 satisfactory, it shall not make such a declaration."

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

5 **"§ 74-50. Permits – General.**

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

13 No permit shall be issued except in accordance with the procedures set forth in G.S.
14 74-51, nor modified or renewed except in accordance with the procedures set forth in
15 G.S. 74-52.

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

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

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

35 An operating permit shall be granted for a period not exceeding 10 years. If the
36 mining operation terminates and the reclamation required under the approved
37 reclamation plan is completed prior to the end of said period, the permit shall terminate.
38 Termination of a permit shall not have the effect of relieving the operator of any
39 obligations which he has incurred under his approved reclamation plan or otherwise.
40 Where the mining operation itself has terminated, no permit shall be required in order to
41 carry out reclamation measures under the reclamation plan.

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

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

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

4 **"§ 74-51. Permits – Application, granting, conditions.**

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

10 The application shall be accompanied by a reclamation plan which meets the
11 requirements of G.S. 74-53. No permit shall be issued until such plan has been
12 approved by the Department.

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

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

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

37 The Department may deny such permit upon finding:

- 38 (1) That any requirement of this Article or any rule promulgated
39 hereunder will be violated by the proposed operation;
- 40 (2) That the operation will have unduly adverse effects on potable
41 groundwater supplies, or on wildlife or fresh water, estuarine, or
42 marine fisheries;

- 1 (3) That the operation will violate standards of air quality, surface water
2 quality, or groundwater quality which have been promulgated by the
3 Department;
- 4 (4) That the operation will constitute a direct and substantial physical
5 hazard to public health and safety or to a neighboring dwelling house,
6 school, church, hospital, commercial or industrial building, public road
7 or other public ~~property~~ property, excluding hazards relating to
8 increased traffic on a public road;
- 9 (5) That the operation will have a significantly adverse effect on the
10 purposes of a publicly owned park, forest or recreation area;
- 11 (6) That previous experience with similar operations indicates a
12 substantial possibility that the operation will result in substantial
13 deposits of sediment in stream beds or lakes, landslides, or acid water
14 pollution; or
- 15 (7) That the ~~operator~~ applicant or any parent, subsidiary, or other affiliate
16 of the applicant or parent has not been in substantial compliance with
17 this Article or its rules or other laws or rules of this State for the
18 protection of the environment or has not corrected all violations which
19 he may have committed under any ~~prior permit~~ this Article or its rules
20 and which resulted in,
- 21 a. Revocation of his permit,
- 22 b. Forfeiture of part or all of his bond or other security,
- 23 c. Conviction of a misdemeanor under G.S. 74-64, ~~or~~
- 24 d. Any other court order issued under ~~G.S. 74-64~~ G.S. 74-64, or
- 25 e. Final assessment of a civil penalty under G.S. 74-64.

26 In the absence of any such ~~findings~~, findings or if adverse effects are mitigated by the
27 applicant as determined necessary by the Department, a permit shall be granted.

28 Any permit issued shall be expressly conditioned upon compliance with all
29 requirements of the approved reclamation plan for the operation and with such further
30 reasonable and appropriate requirements and safeguards as may be deemed necessary
31 by the Department to assure that the operation will comply fully with the requirements
32 and objectives of this Article. Such conditions may, among others, include a
33 requirement of visual screening, vegetative or otherwise, so as to screen the view of the
34 operation from public highways, public parks, or residential areas, where the
35 Department finds such screening to be feasible and desirable. Violation of any such
36 conditions shall be treated as a violation of this Article and shall constitute a basis for
37 suspension or revocation of the permit.

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

41 If the Department denies an application for a permit, it shall notify the operator in
42 writing, stating the reasons for its denial and any modifications in the application which
43 would make it acceptable. The operator may thereupon modify and resubmit his
44 application ~~application~~, or file an appeal, ~~appeal~~ as provided in ~~G.S. 74-61~~, ~~but no such~~

1 ~~appeal shall be taken more than 60 days after notice of disapproval has been mailed to him at~~
2 ~~the address shown on his application. G.S. 74-61.~~

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

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

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

16 "**§ 74-52. Permits – Modification, renewal.**

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

29 The procedure to be followed and standards to be applied in renewing a permit shall
30 be the same as those for issuing a permit; provided, however, that in the absence of any
31 changes in legal requirements for issuance of a permit since the date on which the prior
32 permit was issued, the only basis for denying a renewal permit shall be an uncorrected
33 violation of the type listed in G.S. 74-51(7), or failure to submit an adequate
34 reclamation plan in light of conditions then existing.

35 A modification under this section may affect the land area covered by the permit, the
36 approved reclamation plan coupled with the permit, or other terms and conditions of the
37 permit. A permit may be modified to include land neighboring the affected land, but
38 not other lands. The reclamation plan may be modified in any manner, so long as the
39 Department determines that the modified plan fully meets the standards set forth in G.S.
40 74-53 and that the modifications would be generally consistent with the bases for
41 issuance of the original permit. Other terms and conditions may be modified only
42 where the Department determines that the permit as modified would meet all
43 requirements of G.S. 74-50 and 74-51. No modification shall extend the expiration date
44 of any permit issued under this Article.

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

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

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

8 "**§ 74-54. Bonds.**

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

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

25 The bond shall be conditioned upon the faithful performance of the requirements set
26 forth in this Article and of the rules adopted pursuant thereto. Upon filing the bond with
27 the Department, the operator shall lose all right, title, and interest in the bond while the
28 bond is held by the Department. Liability under the bond shall be maintained as long as
29 reclamation is not completed in compliance with the approved reclamation plan unless
30 released only upon written notification from the Department. Notification shall be
31 given upon completion of compliance or acceptance by the Department of a substitute
32 bond. In no event shall the liability of the surety exceed the amount of the surety bond
33 required by this section.

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

41 If the license to do business in North Carolina of any surety upon a bond filed
42 pursuant to this Article should be suspended or revoked, the operator shall, within 60
43 days after receiving notice thereof, substitute for such surety a good and sufficient

1 corporate surety authorized to do business in this State. Upon failure of the operator to
2 make such substitution, his permit shall automatically become void and of no effect."

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

4 **"§ 74-54.1. Permit fees.**

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

13 The total amount of permit fees collected for any fiscal year may not exceed one-
14 third of the total personnel and administrative costs incurred by the Department for
15 processing applications for permits and permit renewals and modifications and for
16 related compliance costs in the prior fiscal year. A fee for an application for a new
17 permit may not exceed two thousand five hundred dollars (\$2,500), and a fee for an
18 application to renew or modify a permit may not exceed five hundred dollars (\$500.00).
19 The Mining Account is established. The Mining Account is a nonreverting account
20 within the Department, to be administered by the State Treasurer. The Mining Account
21 shall be treated as a special trust fund and shall be credited with interest by the State
22 Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. Fees collected under this
23 section shall be credited to the Mining Account and shall be applied to the costs of
24 administering this Article.

25 The Department shall make an annual report to the Joint Legislative Commission on
26 Governmental Operations and the Director of the Fiscal Research Division on the cost
27 of the State's mining permit program. The report shall include the fees established,
28 collected, and disbursed under this section and any other information requested by the
29 General Assembly or the Commission."

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

31 **"§ 74-56. Inspection and approval of reclamation; bond release or forfeiture.**

32 The Department may direct investigations as it may reasonably deem necessary to
33 carry out its duties as prescribed by this Article, and for this purpose to enter at
34 reasonable times upon any mining operation for the purpose of determining compliance
35 with this Article and any rules adopted pursuant to this Article and for determining
36 compliance with the terms and conditions of a mining permit, but for no other purpose.
37 No person shall refuse entry or access to any authorized representative of the
38 Department who enters the mining operation for purposes of inspection or other official
39 duties and who presents appropriate credentials; nor shall any person obstruct, hamper,
40 or interfere with the representative while in the process of carrying out his official
41 duties. Upon arriving at the site, the representative of the Department shall make every
42 reasonable effort to notify the operator or the operator's agent that he intends to inspect
43 the site. If there is no person on the site or if the site is not permitted pursuant to this
44 Article, the representative of the Department may inspect the site. Upon receipt of the

1 operator's annual report or report of completion of reclamation and at any other
2 reasonable time the Department may elect, the Department shall cause the permit area to
3 be inspected to determine whether the operator has complied with the reclamation plan,
4 the requirements of this Article, any rules ~~promulgated hereunder,~~ adopted pursuant to
5 this Article, and the terms and conditions of his permit. ~~Accredited representatives of the~~
6 ~~Department shall have the right at all reasonable times to enter upon the land subject to the~~
7 ~~permit for the purpose of making such inspection and investigation.~~

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

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

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

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

32 "**§ 74-58. Suspension or revocation of permit.**

33 Whenever the Department shall have reason to believe that a violation of (i) this
34 Article, (ii) any rules promulgated hereunder, or (iii) the terms and conditions of a
35 permit, including the approved reclamation plan, has taken place, it shall serve written
36 notice of such fact upon the operator, specifying the facts constituting such apparent
37 violation and informing the operator of his right to ~~a hearing,~~ an informal conference
38 with the Department. The date for ~~such hearing,~~ an informal conference shall be not less
39 than ~~30-15~~ nor more than ~~60-30~~ days after the date of the notice, unless the Department
40 and the operator shall mutually agree on another date. ~~The operator may appear at the~~
41 ~~hearing, either personally or through counsel, and present such evidence as he may desire in~~
42 ~~order to prove that no violation has taken place or exists.~~ If the operator or his representative
43 does not appear at the ~~hearing,~~ informal conference, or if the Department following the
44 ~~hearing,~~ informal conference finds that there has been a violation, the Department may

1 suspend the permit until such time as the violation is corrected or may revoke the permit
2 where the violation appears to be willful.

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

13 Any operator whose permit has been suspended or revoked shall be denied a new
14 permit or a renewal of the old permit to engage in mining until he gives evidence
15 satisfactory to the Department of his ability and intent to fully comply with the
16 provisions of this Article and rules promulgated hereunder, and the terms and conditions
17 of his permit, including the approved reclamation plan, and that he has satisfactorily
18 corrected all previous violations."

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

20 "**§ 74-61. Administrative and judicial review of decisions.**

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

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

29 "(a) Civil Penalties.

30 (1) a. A civil penalty of not more than five thousand dollars (\$5,000) may
31 be assessed by the Department against any person who fails to secure a
32 valid operating permit prior to engaging in mining, as required by G.S.
33 74-50. No civil penalty shall be assessed until the operator has been
34 given notice of the violation pursuant to G.S. 74-60. Each day of a
35 continuing violation shall constitute a separate violation and a civil
36 penalty of not more than five thousand dollars (\$5,000) per day may be
37 assessed for each day the violation continues.

38 b. Any permitted operator who violates any of the provisions of
39 this Article, any rules promulgated thereunder, or any of the
40 terms and conditions of his mining permit shall be subject to a
41 civil penalty of not more than ~~one~~ five hundred dollars
42 ~~(\$100.00).~~ (\$500.00). Each day of a continuing violation shall
43 constitute a separate violation. Prior to the assessment of any
44 such civil penalty, written notice of the violation shall be given.

1 The notice shall describe the violation with reasonable
2 particularity, shall specify a time period reasonably calculated
3 to permit the violator to complete actions to correct the
4 violation, and shall state that failure to correct the violation
5 within that period may result in the assessment of a civil
6 penalty.

7 c. In determining the amount of the penalty, the Department shall
8 consider the degree and extent of harm caused by the violation,
9 the cost of rectifying the damage, the amount of money the
10 violator saved by his noncompliance, whether the violation was
11 committed willfully, and the prior record of the violator in
12 complying or failing to comply with this Article.

13 (2) The Department shall determine the amount of the civil penalty to be
14 assessed pursuant to G.S. 74-64(a)(1) and shall give notice to the
15 operator of the assessment of the civil penalty pursuant to ~~G.S. 74-60.~~
16 G.S. 74-60, or by any means authorized by G.S. 1A-1, Rule 4. Said
17 notice shall set forth in detail the violation or violations for which the
18 civil penalty has been assessed. The operator may appeal the
19 assessment of any civil penalty assessed pursuant to this section in
20 accordance with the procedures set forth in G.S. 74-61.

21 (3) ~~If payment of any civil penalty assessed pursuant to this section is not~~
22 ~~received by the Department or equitable settlement reached within 30~~
23 ~~days following notice to the operator of the assessment of the civil~~
24 ~~penalty, or within 30 days following the denial of any appeal by the~~
25 ~~operator pursuant to G.S. 74-61, the Department shall refer the matter~~
26 ~~to the Attorney General for the institution of a civil action in the name~~
27 ~~of the State in the superior court of the county in which the violation is~~
28 ~~alleged to have occurred to recover the amount of the penalty. The~~
29 notice of assessment shall direct the violator to pay the assessment or
30 contest the assessment as provided in G.S. 74-61. If the violator does
31 not pay the assessment within 30 days after receipt of the notice of
32 assessment or within 30 days after receipt of the final agency decision,
33 where the assessment has been contested, the Department shall request
34 the Attorney General to institute a civil action in superior court to
35 recover the amount of the penalty. A civil action under this section
36 shall be filed within three years of the date the final agency decision
37 was served on the violator.

38 (4) All funds collected pursuant to this section shall be placed in the
39 special fund created pursuant to G.S. 74-59 and shall be used to carry
40 out the purposes of this Article.

41 (5) In addition to other remedies, the Department may request the
42 Attorney General to institute any appropriate action or proceedings to
43 prevent, restrain, correct or abate any violation of this Article or any
44 rules ~~promulgated hereunder.~~ adopted pursuant to this Article, or the

1 obstruction, hampering, or interference with an authorized
2 representative of the Department while in the process of carrying out
3 his official duties pursuant to this Article."

4 Sec. 11. This act is effective upon ratification and applies to any applications
5 for new permits or for modifications or renewals filed on or after that date or to any
6 penalties imposed on or after that date.