§ 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.)