

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 550*
Committee Substitute Favorable 4/22/93

Short Title: Mining Act Improvements.

(Public)

Sponsors:

Referred to:

March 25, 1993

1 A BILL TO BE ENTITLED
2 AN ACT TO INCREASE THE EFFECTIVENESS OF PUBLIC PARTICIPATION IN
3 AND ENFORCEMENT OF THE MINING ACT OF 1971.

4 The General Assembly of North Carolina enacts:

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

6 **"§ 74-49. Definitions.**

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

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

15 (1a) 'Affiliate' means a person that directly, or indirectly through one or
16 more intermediaries, controls, or is controlled by, or is under
17 common control with, a specified person.

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

21 (3) 'Commission' means the Mining Commission created by G.S.
22 143B-290.

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

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

1 (16a) 'Subsidiary' means an affiliate controlled by a specified person
2 directly, or indirectly through one or more intermediaries.

3 (17) 'Termination of mining' means cessation of mining operations with
4 intent not to resume, or cessation of mining operations as a result of
5 expiration or revocation of the permit of the operator. Whenever
6 the Department shall have reason to believe that a mining operation
7 has terminated, it shall give the operator written notice of its
8 intention to declare the operation terminated, and he shall have an
9 opportunity to appear within 30 days and present evidence that the
10 operation is continuing; where the Department finds that such
11 evidence is satisfactory, it shall not make such a declaration."

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

13 **"§ 74-50. Permits – General.**

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

21 No permit shall be issued except in accordance with the procedures set forth in G.S.
22 74-51, nor modified or renewed except in accordance with the procedures set forth in
23 G.S. 74-52.

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

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

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

43 An operating permit shall be granted for a period not exceeding 10 years. If the
44 mining operation terminates and the reclamation required under the approved

1 reclamation plan is completed prior to the end of said period, the permit shall terminate.
2 Termination of a permit shall not have the effect of relieving the operator of any
3 obligations which he has incurred under his approved reclamation plan or otherwise.
4 Where the mining operation itself has terminated, no permit shall be required in order to
5 carry out reclamation measures under the reclamation plan.

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

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

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

11 **"§ 74-51. Permits – Application, granting, conditions.**

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

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

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

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

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

44 The Department may deny such permit upon finding:

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

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

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

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

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

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

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

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

23 **"§ 74-52. Permits – Modification, renewal.**

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

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

42 A modification under this section may affect the land area covered by the permit, the
43 approved reclamation plan coupled with the permit, or other terms and conditions of the
44 permit. A permit may be modified to include land neighboring the affected land, but

1 not other lands. The reclamation plan may be modified in any manner, so long as the
2 Department determines that the modified plan fully meets the standards set forth in G.S.
3 74-53 and that the modifications would be generally consistent with the bases for
4 issuance of the original permit. Other terms and conditions may be modified only
5 where the Department determines that the permit as modified would meet all
6 requirements of G.S. 74-50 and 74-51. No modification shall extend the expiration date
7 of any permit issued under this Article.

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

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

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

15 **"§ 74-54. Bonds.**

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

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

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

41 In lieu of the surety bond required by this section, the operator may file with the
42 Department a cash deposit, ~~negotiable securities, a mortgage of real property acceptable to~~
43 ~~the Department, or an irrevocable letter of credit, a guaranty of payment from an~~
44 acceptable bank, an assignment of a savings account in a North Carolina acceptable

1 bank on an assignment form prescribed by the ~~Department~~.—Department, or other
2 security acceptable to the Department. Security shall be subject to the release
3 provisions of G.S. 74-56.

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

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

10 **"§ 74-54.1. Permit fees.**

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

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

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

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

34 **"§ 74-56. Inspection and approval of reclamation; bond release or forfeiture.**

35 The Department may direct investigations as it may reasonably deem necessary to
36 carry out its duties as prescribed by this Article, and for this purpose to enter at
37 reasonable times upon any mining operation for the purpose of determining compliance
38 with this Article and any rules adopted pursuant to this Article and for determining
39 compliance with the terms and conditions of a mining permit, but for no other purpose.
40 No person shall refuse entry or access to any authorized representative of the
41 Department who enters the mining operation for purposes of inspection or other official
42 duties and who presents appropriate credentials; nor shall any person obstruct, hamper,
43 or interfere with the representative while in the process of carrying out his official
44 duties. Upon arriving at the site, the representative of the Department shall make every

1 reasonable effort to notify the operator or the operator's agent that he intends to inspect
2 the site. If there is no person on the site or if the site is not permitted pursuant to this
3 Article, the representative of the Department may inspect the site. Upon receipt of the
4 operator's annual report or report of completion of reclamation and at any other
5 reasonable time the Department may elect, the Department shall cause the permit area to
6 be inspected to determine whether the operator has complied with the reclamation plan,
7 the requirements of this Article, any rules promulgated hereunder, adopted pursuant to
8 this Article, and the terms and conditions of his permit. Accredited representatives of the
9 Department shall have the right at all reasonable times to enter upon the land subject to the
10 permit for the purpose of making such inspection and investigation.

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

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

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

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

35 **"§ 74-58. Suspension or revocation of permit.**

36 Whenever the Department shall have reason to believe that a violation of (i) this
37 Article, (ii) any rules promulgated hereunder, or (iii) the terms and conditions of a
38 permit, including the approved reclamation plan, has taken place, it shall serve written
39 notice of such fact upon the operator, specifying the facts constituting such apparent
40 violation and informing the operator of his right to ~~a hearing~~ an informal conference
41 with the Department. The date for ~~such hearing~~ an informal conference shall be not less
42 than ~~30-15~~ nor more than 60-30 days after the date of the notice, unless the Department
43 and the operator shall mutually agree on another date. ~~The operator may appear at the~~
44 ~~hearing, either personally or through counsel, and present such evidence as he may desire in~~

1 ~~order to prove that no violation has taken place or exists.~~ If the operator or his representative
2 does not appear at the ~~hearing,~~ informal conference, or if the Department following the
3 ~~hearing~~ informal conference finds that there has been a violation, the Department may
4 suspend the permit until such time as the violation is corrected or may revoke the permit
5 where the violation appears to be willful.

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

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

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

23 **"§ 74-61. Administrative and judicial review of decisions.**

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

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

32 "(a) Civil Penalties.

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

41 b. Any permitted operator who violates any of the provisions of
42 this Article, any rules promulgated thereunder, or any of the
43 terms and conditions of his mining permit shall be subject to a
44 civil penalty of not more than ~~one~~ five hundred dollars

1 ~~(\$100.00)-(\$500.00).~~ Each day of a continuing violation shall
2 constitute a separate violation. Prior to the assessment of any
3 such civil penalty, written notice of the violation shall be given.
4 The notice shall describe the violation with reasonable
5 particularity, shall specify a time period reasonably calculated
6 to permit the violator to complete actions to correct the
7 violation, and shall state that failure to correct the violation
8 within that period may result in the assessment of a civil
9 penalty.

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

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

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

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

- 1 (5) In addition to other remedies, the Department may request the
2 Attorney General to institute any appropriate action or proceedings to
3 prevent, restrain, correct or abate any violation of this Article or any
4 rules ~~promulgated hereunder.~~ adopted pursuant to this Article, or the
5 obstruction, hampering, or interference with an authorized
6 representative of the Department while in the process of carrying out
7 his official duties pursuant to this Article."
8 Sec. 11. This act is effective upon ratification and applies to any applications
9 for new permits or for modifications or renewals filed on or after that date or to any
10 penalties imposed on or after that date.