

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 472

H. P. 344

House of Representatives, January 28, 1969

Referred to Committee on Natural Resources. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lund of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

**AN ACT Providing for the Conservation and Rehabilitation of Land Affected
in Connection With Mining.**

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 10, Part 5-A, additional. Title 10 of the Revised Statutes is amended by adding a new part 5-A, to read as follows:

PART 5-A

MINING — CONSERVATION AND REHABILITATION OF LAND

CHAPTER 451

CONSERVATION AND REHABILITATION OF LAND

§ 2201. Declaration of policy

Where mining operations are conducted, it is declared to be the policy of this State to provide for the reclamation of affected lands and to encourage its productive use including but not limited to: The planting of forests; the seeding of grasses and legumes for grazing purposes; the planting of crops for harvest; the enhancement of wildlife and aquatic resources; the establishment of recreational, home and industrial sites; and for the conservation, development, management and appropriate use of all the natural resources of such areas for compatible multiple purposes, and protecting the health, safety and general welfare of the people, as well as the natural beauty and aesthetic and environmental values.

It is the policy of the State of Maine that unless the mining operation can afford the cost of all measures needed to rehabilitate and restore the area of

land affected to productivity, safety, recreational or scenic requirements, a permit to mine is justified only in case of national emergency.

§ 2202. Definitions

1. Area of land affected. "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden, product or byproduct is to be or has been deposited or will by natural forces be deposited and shall include all lands excavated or cleared of vegetation in the operation, including those disturbed or to be disturbed by the construction of canals or roads other than public roads to gain access.

2. Bench. "Bench" means the ledge, shelf or terrace formed in the contour method of mining.

3. Commissioner. "Commissioner" means the Commissioner of Mines.

4. Degree. "Degree" when used in this chapter shall mean from the horizontal and in each case shall be subject to a tolerance of 5% error.

5. Fill bench. "Fill bench" means that portion of the bench which is formed by depositing overburden beyond the cut section.

6. Highwall. "Highwall" means the vertical or sloping wall consisting of the cut face of the overburden and the product above the bench following the removal of the overburden and the product from the area of land affected.

7. Method of operation. "Method of operation" means the method or manner by which the shaft, drift, cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the product.

8. Mining. "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of clay, sand and gravel, peat, stone, minerals, ores, topsoils or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of product; and the preparation washing, cleaning or other treatment of such product so as to make it suitable for commercial, industrial or construction use but shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

9. Operation. "Operation" means all of the premises, facilities, roads, plants and equipment used in the process of producing and concentrating a product from a designated mine area or removing overburden for the purpose of determining the location, quality or quantity of a product.

10. Operator. "Operator" means any person engaged in mining who removes or intends to remove more than 100 cubic yards of product from the earth by mining within 12 successive calendar months or who removes overburden for the purpose of determining the location, quality or quantity of a product.

11. Overburden. "Overburden" means earth and other materials naturally lying over the product to be mined.

12. Person. "Person" shall include governmental entity.
13. Product. "Product" means clay, sand and gravel, peat, stone, minerals, ores, topsoils or other solid matter.
14. Reclamation. "Reclamation" means the reconditioning of the area of land affected by mining under a plan approved by the commission.
15. Spoil. "Spoil" means relocated overburden and waste products from the operation.

§ 2203. The Maine Mining Commission

The Maine Mining Commission shall administer this chapter. The commission shall consist of the Commissioner of Mines, who shall be appointed by the Governor with the advice and consent of the Executive Council, and his staff which he shall appoint pursuant to the Personnel Law. The commissioner shall serve for a term concurrent with the term of the Governor. In addition, there shall be constituted a board of 5 advisors to the commission. The 5 members of the Board of Advisors to the Commission shall be appointed by the Governor with the advice and consent of the Executive Council for a term of 3 years, and each be technically qualified in geology, planning biological science, civil engineering or law. Initially, 2 members shall be appointed for 3 years; 2 members shall be appointed for 2 years, and one member shall be appointed for one year. The members of the board shall receive compensation as shall be determined by the Governor with the advice and consent of the Executive Council, and shall be reimbursed for their expenses incurred in performing their functions. The board shall meet on the call of any member but shall meet at least 4 times each year. The board shall make recommendations to the commissioner regarding the effectiveness of the existing laws, regulations and procedures of the commission in carrying out the declaration of policy of this Act and their impact upon the mining industry.

§ 2204. Powers of the commission

The commission shall have and exercise the following powers:

1. Rules and regulations. To adopt rules and regulations to carry out the purposes of this chapter in accordance with the Administrative Code.
2. General supervision. To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder.
3. Research. To conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to mining and reclamation of lands and waters affected by mining;
4. Approval of plans. To examine and approve all plans and specifications submitted by the operator for the method of operation and reclamation of the area of land affected by his operation;
5. Limitations. The commission shall not have jurisdiction over sand, gravel and borrow operations of the State or its subdivisions by quasi-

municipal corporations or the removal of said materials by persons contracting with said agencies, provided said agencies shall by contract or regulation or otherwise accomplish the objectives of this chapter. If after hearing the commission shall determine that such operation is not being carried out in a manner consistent with the objectives of this chapter, then it may take jurisdiction over said operation.

6. Prior approval. Unless the commission finds that no waters under the jurisdiction of the Water and Air Environmental Improvement Commission are affected by the proposed mining operation, the commission shall require approval of the Water and Air Environmental Improvement Commission prior to the granting of a permit to operate. The commission may in its discretion submit the plan of operations and restoration plan and time table to the Soil and Water Conservation District in which it is located for advice and approval.

§ 2205. Hearings

The commission may hold a hearing in connection with any activity which may constitute a violation of this chapter, and any person aggrieved by any action or order of the commission may request a hearing before the commissioner, and in connection with any hearing, the commissioner shall have the following authority:

1. Powers and duties. To conduct hearings under this chapter or regulations adopted by the commission and for the purpose of any investigation or hearing, the commissioner may administer oaths of affirmations, subpoena witnesses, take evidence and require production of any books, papers, correspondence, memoranda, agreements or other documents or records which the Commissioner deems relevant or material to the inquiry;

Hearings may be held by the commissioner or by a hearing examiner or member of the commission staff. A transcript shall be prepared for all hearings. The commissioner may make any order authorized under this chapter after review of the transcript and any exhibits if he did not conduct the hearing himself.

2. Orders, remedial measures. To issue, after hearing, orders requiring an operator to adopt such remedial measures as are necessary to comply with this chapter and regulations adopted pursuant thereto;

3. Final orders. To issue, after hearing, a final order revoking a permit, when the requirements set forth by the notice of noncompliance, order of suspension, or an order of the commissioner requiring remedial measures have not been complied with according to the terms therein.

4. Stop orders. To order, after hearing, the stopping of any operation in violation of this chapter. If the commissioner shall find that an emergency exists, he may issue a stop order pending a hearing.

5. Appeal. Any person aggrieved by final order or action of the commissioner may appeal therefrom to the Superior Court. Such appeal shall not,

unless ordered by the court, operate as a stay of the commissioner's order or action.

§ 2206. Permit required ; contents of application ; map ; fee ; bond

1. Permit. No operator shall engage in mining without first having obtained from the commission a permit designating the area of land affected by the operation. The permit shall authorize the operator to engage in mining upon the area of land described in his application for a period of one year from the date of its issuance.

2. Application. An operator desiring a permit shall file an application which shall contain such information as the Commission shall determine by rule and regulation.

3. Plans. In addition to the information required in subsection 1 and 2, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time and distance for backfilling, grading work and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and rules and regulations adopted pursuant thereto.

4. Fees ; bond. The application shall be accompanied by a fee of \$50 plus \$25 for each acre or fraction thereof of the affected area. The operator shall file with the commission a bond payable to the State of Maine with sureties satisfactory to the commission in an amount to be determined by the commissioner of not less than \$100 nor more than \$2,000 for each acre or fraction thereof of the affected area, conditioned upon the faithful performance of the requirements set forth in this chapter and of the rules and regulations of the commission. In determining the amount of the bond within the limits, the commissioner shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of backfilling, grading and reclamation to be required.

5. Renewals. The permit may be renewed by the commission for additional periods of one year upon filing a renewal application containing such information as may be required by the commission accompanied by payment as in the case of an original application.

6. Regulations. The commission shall issue regulations to facilitate prospecting and exploration for products, consistent with the foregoing declaration of policy.

§ 2207. Procedure for increase or decrease of acreage affected by permit

An operator may, at any time, apply to the commission for an amendment of the permit to increase or reduce the areage affected by it. The operator shall file an application in such form as shall be determined by the commission and shall pay a fee and post a bond for any additional area affected as in the case of an original application. If the commission approves a reduction in the acreage covered by the original or amended permit, it shall release the bond for each acre reduced, except as provided in section 2206, subsection 4.

§ 2208. Permits, denial authorized when ; deletions of areas of land ; distance limits for strip mining

1. Nonobservance. No application for a permit shall be approved by the commission if there is found on the basis of the information set forth in the application that the requirements of this chapter or regulations will not be observed or that there is not probable cause to believe that the proposed method of operation, backfilling, grading or reclamation of the affected area can be carried out consistent with the purpose of this chapter.

2. Forfeited bond. No permit shall be granted where the applicant, or a real party in interest in the applicant shall have forfeited a bond posted for reclamation, either personally or through another business entity.

3. Hazards. If the commission finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake or other public property, the commission shall refuse to issue its permit, in whole or in part.

4. Location. The commission shall not give approval to mine any area which is within 100 feet of any public way, waterway or other public property or to mine any area where the mining operation will adversely affect any park unless adequate screening and other measures as approved by the commissioner are incorporated into the permit application.

§ 2209. Procedure

The commission shall, within 20 working days after receipt of the application, notify the applicant if it is accepted or rejected. If the application is rejected, the commission shall set forth the reasons for the rejection. The commission may propose modifications, or may accept the application in part only. Should the applicant disagree with the acceptance or rejection, he may by written notice, request a hearing by the commissioner. The commissioner shall notify the applicant of his decision by registered mail within twenty days of the hearing. Any person aggrieved by the final order of the commissioner may appeal as provided in section 2205, subsection 5.

1. Amended application. The applicant may, before operation is started or after, file an amended application, which shall be approved or rejected by the commission as in the case of an original application. No additional fee or bond shall be required unless warranted by a change in the area affected or other circumstances.

2. Reports. The commission may require reports to be filed to show compliance with the permit.

3. Revoke or suspend permit. The commission may, after hearing, suspend or revoke a permit, or issue a conditional permit if it shall appear the plan of operation or reclamation is not being followed.

§ 2210. Backfilling and grading requirements ; alternative water impoundments ; bond released, when

1. **Backfilling.** On lands where the method of operation does not produce a bench, complete backfilling shall be required, beginning at or beyond the top of the highwall and sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land with no depressions to accumulate water. Such backfilling shall eliminate all highwalls and soil peaks. Whenever directed by the commission, the operator shall construct in the final grading, such diversion ditches or terraces as will control the water runoff on long uninterrupted slopes. Additional restoration work may be required by the Commission according to regulations adopted by the commission.

2. — terrace. On lands where the method of operation produces a bench, terrace backfilling shall be required and performed as follows:

A. All highwalls must be reduced or backfilled. The steepest slope of the reduced or backfilled highwall and of the outer slope of the fill bench shall be no greater than 30° from the horizontal, provided, if the highwall is composed of solid rock and sufficient material is not available to backfill or cover the solid rock suitable to establish vegetative cover, the commission, by regulation, may make modifications to the requirements of this section.

B. There shall be no depressions to accumulate water but lateral drainage ditches connecting to natural or constructed waterways shall be constructed whenever directed by the commission.

C. Additional restoration work may be required by the commission according to regulations adopted by the commission.

3. **Alternative plans.** An operator may proposed alternative plans other than backfilling where a water impoundment is desired, if such restoration will be consistent with the purpose of this chapter. Such plans are to be submitted to the commission and if such plans are approved by the commissioner and complied with within the time limits as may be determined by the commissioner as being reasonable for carrying out such plans, the backfilling requirements of this chapter may be modified by the commission.

4. **Time limits.** As determined by regulations of the commission, time limits shall be established requiring backfilling, grading and planting to be kept current. All backfilling and grading shall be completed before necessary equipment is moved from the operation.

5. **Locations.** If the operator or other person desires to conduct drift mining upon the premises or use the openings for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as provided for until such drift mining or other use is completed, during which time the bond on file for that portion of the operation shall not be released. That portion of such locations shall be described and designated on the map attached thereto.

6. **Bond released.** When the backfilling and grading have been completed and approved by the commission, the commission shall release the bond which

was filed for that portion of such operation in an amount to be determined by the commission. The remaining amount of the bond shall not be released until such time as the planting and revegetation is done according to law and approved by the commission.

§ 2211. Vegetative cover requirements

After the operation has been backfilled, graded and approved by the commission, the operator shall prepare the soil and plant trees, shrubs, grasses and legumes upon the area of the land affected in order to provide suitable vegetative cover. The seed or plant mixtures, quantities, method of planting, type and amount of lime or fertilizer, and any other measures necessary to provide a suitable vegetative cover shall be defined by regulations of the commission.

§ 2212. Time for commencement and completion of reclamation;
deferred planting

It shall be the duty of an operator to commence the reclamation of the area of land affected by his operation as soon as possible after the beginning of mining of that area in accordance with plans previously approved by the commission, and to complete such reclamation within 12 months after the permit has expired except that such grading, backfilling and water management practices that are approved in the plans shall be kept current with the operation as defined by regulations of the commission and no permit or supplement to a permit shall be issued, if the commission shall find these practices are not current.

If an investigation indicates that planting to provide vegetative cover of an affected area may not be successful, the commission may authorize the operator to defer such planting until the soil has become suitable for such purposes and a yearly report shall be filed with the commission indicating the soil conditions until a successful planting or seeding has been completed.

§ 2213. Partial release of bond when planting deferred;
payment in lieu of forfeiture

If the commission authorizes an operator to defer planting to provide vegetative cover for an area of land, it shall set the time within which such planting shall be carried out. If the operator has carried out on that area of land the method of operation, backfilling, grading and reclamation plans approved by the commission other than the planting, the commission shall issue to the operator and to his surety a release of his surety bond or other securities held on deposit for each acre of land for which such method of operation, backfilling, grading and reclamation have been carried out, less revegetation costs as determined by the commission. This amount of the bond or other securities for each acre of land affected shall remain in the possession of the commission until a satisfactory planting plan has been carried out, or until it has been forfeited by the operator. If the remainder is forfeited, it shall be expended by the commission in a planting program for the area of land for which it has been posted. If the operator does not meet the planting requirements but does not want his bond forfeited, he may pay to the commission a sufficient sum to cover the remaining reclamation costs as determined by the

commission and the bond filed by him as surety may then be released by the commission.

§ 2214. Report on expiration of permit, contents

Within 60 days after the date of expiration of a permit, the operator shall file with the commission a final report containing such information as shall be determined by the commission. Upon the filing of the final report and upon determination that this Act has been complied with, the commission shall release the bond. Appeal from a decision not to release the bond shall be subject to hearing and appeal as provided in section 2209.

§ 2215. Additional powers

The commission may acquire in the name of the State land by gift or purchase which has been affected by mining operation for the purpose of carrying out reclamation work. Upon completion of reclamation, the land may be sold at public auction, conveyed to the municipality or may remain property of the State. The Commission may accept funds from private, federal or other public sources, to be used for reclamation purposes, whether in conjunction with appropriated funds of the State of Maine or otherwise.

All fees, proceeds of forfeited bonds and other funds received by the commission pursuant to this chapter shall be placed in a reclamation fund to carry out the purposes of this chapter, which fund shall not lapse.

§ 2216. Conformance to statutes and regulations required, when

Notwithstanding the issuance of a permit, all operations shall immediately conform to any statutes enacted or regulations adopted on the effective date of such statute or regulation. This section shall not require the regrading or replanting of any area on which such work was satisfactorily performed prior to the effective date of the statute or regulation.

§ 2217. Penalties

Any person or operator who violates this chapter or regulations adopted pursuant thereto or who fails to obtain a permit as provided, or who fails to obey an order promulgated pursuant to this chapter, shall be liable to a penalty of not more than \$1,000 for each day of said violation, and in addition, may be enjoined from continuing such violations.