

VIRGINIA FOREST LANDOWNER UPDATE

Events, News, and Information Promoting the Stewardship of Virginia's Forest Resources

An Introduction to Mineral Rights in Virginia

INSIDE

1

An Introduction to Mineral Rights in Virginia

2

Events Calendar

4

New Name, Same Pest - Spongy Moth in Virginia

6 Sponsors & Partners

FIND US ONLINE



VIRGINIAFOREST LANDOWNER EDUCATIONPROGRAM



FORESTUPDATE. FREC.VT.EDU

Jennifer L. Gagnon, Editor

Address all correspondence to: Virginia Forest Landowner Update 228 Cheatham Hall (0324) Blacksburg, VA 24061 540-231-6391 jgagnon@vt.edu https://forestupdate.frec.vt.edu

Virginia Forest Landowner Update is published four times per year (January, April, July, and October) by the Virginia Forest Landowner Education Program. Circulation 4,000.

Subscriptions are free of charge to citizens of the Commonwealth of Virginia and non-resident Virginia forest landowners. Subscriptions to other non-Virginia residents at the discretion of the publisher. Contact the editor to make your subscription request. ©2023 Virginia Landowner Education Program. by Michelle Nelson, Virginia Department of Energy

Mineral Rights

In the United States, land ownership is sometimes separated into two distinct rights: surface rights and mineral rights. Surface rights grant the owner permission to use the land's surface for various purposes such as farming, construction, or recreational activities. Mineral rights grant legal authority to individuals or entities to explore for and extract geologic resources found beneath the land surface. These valuable resources can include industrial minerals, gemstones, oil, natural gas, coal, gold, silver, copper, and other metal ores, and aggregate. According to Virginia code § 55.1-110¹: Conveyance, devise, or grant without words of limitation, when any real estate transaction is made without words of limitation, it will pass as a fee simple or other whole estate and free of any condition or restriction. This means that the property owner has control over the surface and subsurface rights unless otherwise noted.

Mineral rights can be bought, sold, leased, or transferred separately from surface rights, allowing individuals or companies to complete mineral or fossil fuel exploration and extraction without necessarily owning the land. This means that a landowner in Virginia might not necessarily own the mineral rights to their property if the rights have been severed in the past.

Determining Ownership

Determining who owns the mineral rights to a property in Virginia can be a complex process, as it involves researching historical documents, property records, and legal transactions. The first step toward knowing if you own the mineral rights to your property is to review the property deeds. The deed should indicate whether the mineral rights were reserved or conveyed separately from the surface rights. If there is ambiguity in the deed or if you are still unsure of the ownership rights, check historical property records, land grants, and title abstracts. These records can reveal past transactions and ownership of mineral rights associated with your property. Visit or contact the county recorder's office where your property is located. They maintain official records of property transactions,

including mineral rights transfers. They might be able to provide information on past transactions related to mineral rights on your property. If your property is under lease for mineral exploration or extraction, review the lease agreements. These agreements will outline the rights² and obligations of all parties involved, including the owner of the mineral rights. Note that title insurance typically does not cover losses listed under your policy's exclusions and exceptions, which often include subsurface materials tied to mineral rights². Be sure to discuss these exclusions and exceptions with your settlement agent or attorney before your closing.

If you are uncertain about the status of your mineral rights, consider consulting a title abstractor, real estate attorney, or a mineral rights expert, who can perform a thorough title search and provide guidance on mineral rights ownership based on historical records and legal expertise. A title abstractor is a trained individual who can review county land records and examine documents at the county court clerk's office. Title abstractors pull all available records relating to the ownership of a property, including deeds, leases, royalty leases, mortgages and other documents that affect the title or ownership of the property. To ensure that a deed conveys mineral rights and that they were not previously severed, research the chain of title to confirm the mineral rights are still a part of the fee simple estate.

Severed Surface and Mineral Rights

If you don't own the mineral rights to your property, per the code of Virginia § 45.2-40³, Actions to extinguish certain claims, the owner(s) of land subject to a claim may request to have the claim extinguished in court. The owner of the mineral rights will be granted at least 6 months to explore and discover any commercial coal, mineral, ore, oil, or other subsurface resource. If no commercial geologic resource exists in or on the land, then the court can eliminate the claim or right. If the owner of the mineral rights can prove that a commercial resource and geologic reserve exists in or on the land, then these will become subject to taxes.

-MINERAL RIGHTS, continued on page 3.

Events Calendar For a complete listing of natural resource education events, visit the online events calendar at https://forestupdate.frec.vt.edu. Online registration is events calendar at https://forestupdate.frec.vt.edu. Online registration is available at https://forestupdate.frec.vt.edu/onlineregistration.html

SCHEDULED EVENTS - OCTOBER - DECEMBER 2023

DATE	LOCATION / DETAILS	EVENT DESCRIPTION	CONTACT
October 6	Bland County 8:00 - 5:00 \$25*/person; \$45*/couple	Fall Forestry & Wildlife Field Tour & Virginia Tree Farm Foundation Tour Bland is the only county in the United States that is both entered and exited via two of the longest Interstate tunnels in the country. Travel under the mountains to join woodland owners and natural resource professionals to learn more about active woodland management in Virginia's 4th least populated county.	Bill Worrell bworrell@vt.edu 276-889-8056
October 11	Essex and King & Queen Counties 12:30 – 7:00 \$25*/person; \$45*/couple	Fall Forestry & Wildlife Field Tour & Virginia Tree Farm Foundation Tour Examples of active forest management for both timber production and wildlife abound in these rural counties. Join woodland owners and natural resource professionals for a day in the woods.	Neil Clark neclark@vt.edu 757-653-2572
October 12	Mecklenburg County 8:00 - 5:00 \$45*/person; \$80*/couple	Fall Forestry & Wildlife Field Tour This rural county grows a lot of trees. In fact, Mecklenburg is one of the top ten producers of timber (by volume) in Virginia. Timber harvesting creates habitat, and as such, wildlife thrives here. Join woodland owners and natural resource professionals for a day in the woods.	Jason Fisher jasonf@vt.edu 434-476-2147
October 20	Warren County 8:30 - 4:30 \$45*/person; \$80*/couple	Fall Forestry & Wildlife Field Tour While every county in Virginia is historic, only Warren can boast having the oldest known permanent habitations in the eastern United States, along the South Fork of the Shenandoah River. Join woodland owners and natural resource professionals for a day learning about sustainable woodland and wildlife management practices occurring in Warren County.	Adam Downing adowning@vt.edu 540-948-6881
October 20-21	Chatham Fri. 5:30 – 8:15 Sat. 9 – 3:00 \$90* for up to 2 family members; \$45* each extra family member	Generation NEXT Legacy Planning Workshop Join legal, financial, and conservation experts for in- depth discussions that will help you plan for a future that keeps your land intact, in forest, and in family own- ership.	Jason Fisher jasonf@vt.edu 434-476-2147
November 9	Richmond 6:00-9:00 \$40/family	Generation NEXT Legacy Planning Workshop Join legal, financial, and conservation experts for an overview that will help get started planning for a future that keeps your land intact, in forest, and in family ownership.	Neil Clark neclark@vt.edu 757-653-2572

*fee includes meal(s)

ONGOING EDUCATIONAL PROGRAMS

Virginia Master Naturalist Volunteer Basic Training

Available statewide. Dates, times, and fees vary. People who are curious about nature, enjoy the outdoors, and want to be a part of natural resource management and conservation in Virginia are perfect candidates to become Virginia Master Naturalists. Visit www.virginiamasternaturalist. org to find a chapter near you. Michelle Prysby, Statewide Coordinator, 434-872-4580.

Fifteen Minutes in the Forest

Online video series. Every other Friday at 12:15 pm. Join Virginia Cooperative Extension's Forestry Team for videos about natural resource-related topics. Connect/find past videos:

- YouTube: https://www.youtube.com/c/VirginiaForest LandownerEducationProgram
- Facebook live: www.facebook.com/VFLEP

MINERAL RIGHTS, continued from page 1.

Mineral rights can be leased to a mining company for a set amount of time. A landowner may receive a one-time payment for signing a lease, however, if the resource is never developed then the landowner will not receive royalty payments. Once a lease expires, the surface and subsurface rights are reunited, and the landowner can sign a new deal for subsurface rights. If the mineral rights are developed before the lease term expires, the lease remains in effect and royalties are paid until production ceases.

The owner of the mineral rights or a company to which the rights have been leased or sold can explore and extract the minerals beneath your property. They may set up drilling rigs, or develop a mine or other facilities on your land. You might have limited control over these activities, depending on any lease agreements and regulations. If your property contains valuable minerals, you might receive financial compensation in the form of royalties or lease payments from the mineral rights owner or the company engaged in extraction.

Conservation Land

A conservation easement is a legal agreement between a property owner and a qualified organization or government agency that restricts certain activities on the property to protect its intrinsic values. These restrictions typically aim to preserve natural resources, wildlife habitat, scenic views, agricultural lands, or historical features. In Virginia, prohibition of surface and subsurface mining is a common restriction for easements⁴. However, each easement is different, and it might not directly protect you from someone else holding mineral rights on your property. If mineral exploration or extraction is not desired, you may need to negotiate directly with the mineral rights holder or reach an agreement regarding surface use and conservation objectives. Additionally, you should consult with a real estate attorney or conservation specialist to understand the implications of mineral rights ownership and how it may interact with a conservation easement on your property. This will ensure that you have a comprehensive understanding of your property rights and can make informed decisions to protect your conservation goals effectively.

Selling Mineral Rights

Selling mineral rights involves transferring ownership of the subsurface resources while retaining the surface rights to the property. If you want to sell your mineral rights in Virginia, there are several steps you can take to initiate the process. It's essential to approach selling mineral rights with careful consideration and seek professional advice. Additionally, stay informed about the current market conditions and trends related to mineral rights in Virginia to make informed decisions about the sale.

Before proceeding with the sale, ensure that you have clear ownership of the mineral rights by reviewing your property deed and historical records to confirm that you are the rightful owner of the mineral rights. Assess the potential value of your mineral rights. The value of mineral rights can vary significantly based on factors such as the type and quantity of the resource, market demand, extraction requirements/costs, and prevailing economic conditions. Mineral rights brokers and real estate attorneys experienced in mineral rights transactions can help you navigate the legal complexities, ensure a fair deal, and find a suitable buyer. During negotiations, buyers may conduct due diligence to assess the quality and quantity of minerals on the property. This could involve site visits, geological studies, and other evaluations. Once both parties agree on the terms, a formal sale agreement or mineral rights lease is executed that specifies the rights and obligations of both parties. After the agreement is signed, the transfer of ownership will occur. This may involve recording the sale with the appropriate county office to make it part of the public record. Consult with a tax professional to understand potential tax liabilities resulting from the sale of mineral rights.

Mining Operations in Virginia

The Virginia Department of Energy, Mineral Mining Program issues permits and licenses for all commercial mineral mining operations. Title 45.2 of the Code of Virginia² states that it is unlawful for any operator to engage in any mining operation in Virginia without having first obtained a permit and license from the Mineral Mining Program⁵. Before a permit can be issued, applicants must provide suitable operations, drainage, and reclamation plans. For mineral extraction in Virginia, all permit applications by law require proof of ownership, a minerals lease agreement for the commodity to be extracted, a right of entry to the property and use of the surface land to facilitate or support mining. A reclamation performance bond must be provided by the permittee to ensure that funds are available to contract final reclamation of the mine if the permittee is unable to complete the reclamation.

Any operator engaging in mining and disturbing less than one acre of land and removing less than 500 tons of minerals at any site is exempt from all mining permit fees and renewal fees and bond requirements but is still required to obtain a permit and license. A general permit governs the mining of sand and gravel that affect a total disturbed area of less than 10 acres in size. This does not apply to dredging operations or those that otherwise intend to mine below the groundwater table⁵. Virginia has a Gas and Oil Act⁶ that is in place to foster, encourage, and promote the safe and efficient exploration for and development, production, utilization, and conservation of the Commonwealth's gas and oil resources.

It's important to note that different resources require different mining methods, which can affect the degree of environmental impact. A post-mining reclamation plan should include land use that is compatible to the surrounding environment and achievable long-term success. Landowners and permit holders should be in total agreement on what the post-mining land use will be, and generally how the permit holder will complete the required reclamation. These are issues that can be covered in the lease agreement. An approved reclamation plan to meet this post-mining land use is a requirement of the permit. Regulations require that the post-mining land use is met and that all disturbed areas of the mine are adequately stabilized with vegetation or other means before the bond is released, and the area is removed from the permit.

New Name, Same Pest - Spongy Moth in Virginia

by Katlin Mooneyham, Virginia Department of Forestry

Shakespeare once wrote, "What's in a name?" In the case of the spongy moth, the insect formerly known as gypsy moth, the new name refers to the spongy texture of this insect's egg masses. The common name for *Lymantria dispar* was formally changed by The Entomological Society of America in February 2022. The name change also references the common name for this insect in other countries. In France the common name is "*spongieuse*" translating to squishy or spongy. The pest's common name in Germany and Turkey also references sponges in moth nomenclature. Now that we have mixed some etymology in with our entomology, let's talk about this pest in Virginia.

History:

The spongy moth is an introduced species originating from Europe. It was accidentally introduced to the United States in the late 1800s where it established and started defoliating trees in New England. It was first detected in Virginia in the late 1960s but was not documented causing widespread defoliation until the mid-1980s. Damage from this insect peaked in the 1990s with close to 900,000 acres of damage in 1995. Following this, the population crashed and was relatively low until the early to mid-2000s when two more outbreaks occurred. Spongy moth activity was quiet for many years following this and for a number of years, virtually no noticeable activity was documented in Virginia.

Biology:

The spongy moth is an early-season defoliator, meaning the caterpillars emerge in spring once the trees begin to leaf out. The caterpillars create "shot holes" in the tender foliage as they feed, and will eventually consume the entire leaf as they develop and grow. This life stage is very distinct; caterpillars are hairy and have 5 pairs of blue dots followed by 6 pairs of red dots. Pupation occurs in late June and early July and lasts for 1-2 weeks. The adults emerge shortly after and do not feed. Mature spongy moth are nondescript in their appearance; the females are white with brown markings and the males are brown. Females are unable to fly, but release a pheromone that attracts males for reproduction. Each female produces one egg mass, but each egg mass has between 600-1000 eggs inside. The eggs persist through the winter and hatch the following spring, starting the process over again.

This species has an extensive host list, documented on over 300 species of trees, but oaks tend to be a preferred host. In Virginia, the majority of the damage has been along ridgetops, in areas dominated by chestnut, black, scarlet, and white oaks on sites that often have poor, shallow soils. Healthy trees can survive one to two defoliation events, but consecutive defoliation events can lead to tree mortality, especially if trees are already stressed.

Present-day damage:

Since the population crash in the mid-2000s, spongy moth activity was practically nonexistent until 2017 when localized defoliation was recorded in Giles and Bland counties along the state line with West Virginia. In 2018, defoliation was reported in these counties again as well as Rockbridge,



Spongy moth caterpillar feeding (left), adult spongy moths and egg masses (right). Photos by Katlin Mooneyham, VDOF.

Augusta, and Harrisonburg. This damage was moderate, spotty, and localized in these areas. In June 2022, damage in Shenandoah National Park and the Massanutten mountain range was observed. In total, over 24,000 acres with heavy to moderate defoliation were mapped in this area. Beginning in late May of this year, reports of spongy moth activity from the Shenandoah Valley started coming to DOF foresters and DOF Forest Health program staff. These reports were from many of the same locations as the previous year, with an increase of activity also reported along the West Virginia state line west of Woodstock and Strasburg. An aerial survey was conducted by DOF staff which mapped over 37,000 acres with defoliation. Some of this defoliation was much heavier than in 2022, and ground surveys done in late June showed all spongy moth life stages present and all preferred host trees completely defoliated.

Control:

There are various options for spongy moth control available for single tree or landscape-level management. For the protection of yard trees, egg masses can be squished or scraped, or barrier bands can be placed around the tree trunk to catch caterpillars as they move up the tree. Insecticides are generally used for larger defoliation events. Several contact insecticides are labeled for spongy moth, but their application poses a risk for nontarget insects. Biopesticides created from naturally occurring viruses or bacteria that are specific to spongy moths have minimal non-target effects. There is also a mating disruption (a synthetic mimic of the female moth's pheromone), that overwhelms the male moths and prevents them from locating the females.

There are additional forms of population control that exist in the environment: *Entomophaga maimaiga* (Em) and *Nucleopolyhedrosis* virus (NPV). The NPV is a naturally occurring virus that is ingested by caterpillars and impacts their internal organs. Infected caterpillars

SPONGY MOTH, continued from page 4

are easily spotted because they hang in an upsidedown "V" where spores of the virus will be released and spread to surrounding caterpillars. NPV is frequently seen in areas with high populations of spongy moths. Commercial formulations of NPV are available and used as a biopesticide. Em is an introduced fungus that was released in the early 1900s. It requires cool, wet springs to proliferate and infect caterpillars. Infected spongy moths hang vertically and appear desiccated.



Spongy moth defoliation mapped in 2023. Virginia Department of Forestry.

What next?

The spongy moth is a federally regulated pest with a quarantine in place from New England to Minnesota and down to Virginia. Because of this, control efforts are done in coordination between federal and state partners. In Virginia, these partnerships exist between the US Forest Service and the Virginia Department of Agriculture and Consumer Services (VDACS). The Slow the Spread Foundation established the framework of partners to survey and trap for spongy moth. These data are used to determine suppression needs and treatment schedules. VDACS cooperates with the U.S. Forest Service to protect contiguously forested areas with priority to residential, forested, and high-use public recreational areas. The Virginia Cooperative Spongy Moth Suppression needs.

Katlin Mooneyham is a Forest Health Specialist; katlin.mooneyham@dof.virginia.gov; 434-326-2670.

MINERAL RIGHTS, continued from page 3

Reclamation

The requirements for the mineral rights owner to restore your property after mining activities are specified in the specific terms and conditions of the mineral lease or agreement, as well as applicable state and federal regulations. The specifics of the reclamation plan and the financial assurance required for reclamation (such as performance bonds or reclamation funds) may vary depending on the jurisdiction and the scale of the mining operation. The specific characteristics of the post-mining landscape, such as the number and location of ponds left on the property should be covered by a well written lease agreement prior to the start of mining. This is important since post-mining land use and reclamation plans can be amended by the operator without input from a landowner.

The reclamation process typically involves filling and regrading the land to its approximate original contour or an approved post-mining land use plan. Reestablishing vegetation, including native plants and trees, is done to stabilize the soil and restore the ecosystem. Measures to control erosion and manage water runoff are implemented along with the safe closure of mining pits, tailings ponds, or other facilities used during mining operations. Unused or abandoned infrastructure associated with mining are removed and a long-term monitoring plan is put in place to ensure the success of reclamation efforts and address potential environmental issues.

The ownership of mineral rights can be complex, especially if they have been severed from surface rights or have been subject to various transactions over time. Multiple parties might own different portions of the mineral rights beneath a single property. Due to the potential complexities, consulting with a professional or attorney with expertise in Virginia real estate and mineral rights law is essential for a comprehensive understanding of your property's mineral rights ownership.

References

- 1. https://law.lis.virginia.gov/vacode/title55.1/chapter1/ section55.1-110/
- 2. https://www.virtualunderwriter.com/en/bulletins/2013-5/ BL136784523300000019.html
- 3. https://law.lis.virginia.gov/vacode/title45.2/
- 4. https://www.dcr.virginia.gov/land-conservation/easement-restrictions
- 5. https://energy.virginia.gov/mineral-mining/mineralmining.shtml
- 6. https://law.lis.virginia.gov/vacodefull/title45.2/chapter16/

Disclaimer: Michelle Nelson is a certified professional geologist at the Virginia Department of Energy, Geology and Mineral Resources Program. She works on geologic projects related to critical minerals in Virginia and is not a real estate attorney or mineral rights lawyer.

Michelle Nelson; michelle.nelson@energy.virginia.gov; 434-951-6361.

VIRGINIA FOREST LANDOWNER UPDATE

FALL 2023



Virginia Cooperative Extension Department of Forest Resources & Environmental Conservation (0324) Virginia Tech Blacksburg, VA 24061

Return Service Requested

Connect with Virginia's Natural Resource Agencies and Sponsors of the Virginia Forest Landowner Education Program:



This publication is supported by matching grant funds from the Virginia Forest Stewardship Program administered by the Virginia Department of Forestry in cooperation with the USDA Forest Service.



Virginia Cooperative Extension is a partnership of Virginia Tech, Virginia State University, the U.S. Department of Agriculture, and local governments. Its programs and employment are open to all, regardless of age, color, disability, gender, gender identity, gender expression, national origin, political affiliation, race, religion, sexual orientation, genetic information, military status, or any other basis protected by law.

EWARDS