CODE OF VIRGINIA

Title 45.1

Mines and Mining

Title 45.1 - MINES AND MINING

Chapter 1 - GENERAL AND ADMINISTRATIVE PROVISIONS [Repealed]

§§ 45.1-1 through 45.1-33. Repealed
Repealed by Acts 1994, c. 28.

Chapter 1.1 - MINE RESCUE AND FIRST-AID STATIONS [Repealed]

§§ 45.1-33.1 through 45.1-33.6. Repealed
Repealed by Acts 1994, c. 28.

Chapter 1.2 - COAL MINE HEALTH AND SAFETY ADVISORY COMMITTEE [Repealed]

§§ 45.1-33.7 through 45.1-33.12. Repealed
Repealed by Acts 1990, c. 963 .

Chapter 2 - SURFACE STRUCTURES AND CONDITIONS [Repealed]

§§ 45.1-34 through 45.1-39. Repealed
Repealed by Acts 1994, c. 28.

Chapter 3 - ROOF, FACE AND RIBS [Repealed]

§§ 45.1-40 through 45.1-43. Repealed
Repealed by Acts 1994, c. 28.

Chapter 4 - EXPLOSIVES AND BLASTING [Repealed]

§§ 45.1-44 through 45.1-53.1. Repealed
Repealed by Acts 1994, c. 28.

Chapter 5 - VENTILATION AND MINE GASES [Repealed]

§§ 45.1-54 through 45.1-67. Repealed
Repealed by Acts 1994, c. 28.

Chapter 6 - TRANSPORTATION [Repealed]

§§ 45.1-68 through 45.1-74. Repealed
Repealed by Acts 1994, c. 28.

Chapter 7 - ELECTRICITY [Repealed]

§§ 45.1-75 through 45.1-86. Repealed
Repealed by Acts 1994, c. 28.

Chapter 8 - MECHANICAL EQUIPMENT [Repealed]

§§ 45.1-87 through 45.1-88.1. Repealed
Repealed by Acts 1994, c. 28.

Chapter 9 - FIRE PREVENTION, FIRE CONTROL AND MINE DISASTERS [Repealed]

§§ 45.1-89 through 45.1-101.2. Repealed
Repealed by Acts 1994, c. 28.

Chapter 10 - RIGHTS OF ADJACENT OWNERS [Repealed]

§§ 45.1-102, 45.1-103. Repealed
Repealed by Acts 1994, c. 28.

Chapter 11 - ENFORCEMENT; VIOLATIONS AND PENALTIES [Repealed]

§§ 45.1-104, 45.1-105. Repealed
Repealed by Acts 1994, c. 28.

Chapter 12 - OIL AND GAS [Repealed]

§§ 45.1-106 through 45.1-144. Repealed
Repealed by Acts 1982, c. 347.

Chapter 13 - EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH [Repealed]

§§ 45.1-145 through 45.1-157. Repealed
Repealed by Acts 1994, c. 28.

Chapter 14 - TRANSITION PROVISIONS [Repealed]

§§ 45.1-158 through 45.1-161. Repealed
Repealed by Acts 1994, c. 28.

Chapter 14.1 - ADMINISTRATION

§ 45.1-161.1. Definitions
As used in this title, unless the context requires a different meaning:

"Chief" means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy.

1984, c. 590, § 45.1-1.2; 1994, c. 28.

§ 45.1-161.1:1. Certified mail; subsequent mail or notices may be sent by regular mail
Whenever in this title the Chief, the Director, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Chief, the Director, or the Department may be sent by regular mail.

2011, c. 566.

§ 45.1-161.2. Department continued; appointment of Director
The Department of Mines, Minerals and Energy is continued as an agency within the Secretariat of Commerce and Trade. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at his pleasure for a term coincident with his own.

1984, c. 590, § 45.1-1.1; 1994, c. 28.

§ 45.1-161.3. Powers of Department
The Department shall have the following powers, all of which, with the approval of the Director, may be exercised by any division of the Department with respect to matters assigned to that division:

1. To employ the personnel required to carry out the purposes of this title;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this title, including, but not limited to, reciprocal agreements with responsible officers of other states and contracts with the private sector, the United States, other state agencies, and governmental subdivisions of the Commonwealth;

3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with any conditions and execute any agreements that are necessary, convenient or desirable;

4. To promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title and other relevant chapters, which regulations shall be promulgated by the Department, the Chief, or the Director, as appropriate, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; and

5. To do all acts necessary or convenient to carry out the purposes of this title.

1984, c. 590, § 45.1-1.3; 1994, c. 28; 2014, c. 145.

§ 45.1-161.4. Powers and duties of Director
The Director, under the direction and control of the Governor, shall exercise the powers and perform the duties conferred or imposed upon him by law, and shall perform any other duties required of him by the Governor.

1984, c. 590, § 45.1-1.4; 1994, c. 28.

§ 45.1-161.5. Establishment of divisions; division heads

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Reclamation, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, and a Division of Energy. The Director may establish other divisions as he deems necessary. Except as provided in § 45.1-161.15 with respect to the Chief of the Division of Mines, the Director shall appoint persons to direct the various functions and programs of the divisions, and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

1984, c. 590, § 45.1-1.5; 1990, c. 92; 1994, c. 28; 2008, c. 369.

§ 45.1-161.6. Department to serve as lead agency for inspections undertaken subsequent to the issuance of a permit

Following the issuance of any permit under Chapter 16 (§ 45.1-180 et seq.) or 19 (§ 45.1-226 et seq.) of this title, the Department shall serve as the lead agency for enforcement of the provisions of the permit. Any other agency which has reviewed and approved, or not disapproved, a permit application prior to its approval by the Director shall contact the Director or his designee prior to making any routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be made, to schedule the inspection and shall accompany any employee of any agency other than the Department during any inspection by such other agency. However, nothing in this section shall apply in the event of a blackwater discharge, a failure of waste treatment facilities, or other situation that in the judgment of the State Water Control Board requires an inspection on an emergency or expedited basis.

1984, c. 188, § 45.1-1.9; 1994, c. 28.

Chapter 14.2 - COAL MINE SAFETY ACT

Article 1 - GENERAL PROVISIONS

§ 45.1-161.7. Short title

This chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title shall be known as the "Coal Mine Safety Act."

1984, c. 590, § 45.1-1.10; 1994, c. 28; 1997, c. 390.

§ 45.1-161.8. Definitions

As used in this chapter and in Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title, unless the context requires a different meaning:

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting

agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile or culm bank; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than 30 minutes; (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs; and (xiii) the unintentional fall of highwall that entraps equipment for more than 30 minutes.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Chief or Director.

"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is trained and has demonstrated the ability to perform such duty or duties safely and effectively.

"Auxiliary fan" means a supplemental underground fan installed to increase the volume of air to a specified location for the purpose of controlling dust, methane, or air quality.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the Board of Coal Mining Examiners authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Coal mine" means a surface coal mine or an underground coal mine.

"Coal Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title, and shall include any regulations promulgated thereunder, where applicable.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed at an underground mine for a period of 30 days, or at a surface mine for a period of 60 days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

"Inexperienced underground miner" means a person with less than six months of underground mining experience.

"Intake air" means air that has not passed through the last active working place of the split of any working section or any worked-out area whether pillared or nonpillared, and by analysis contains not less than nineteen and one-half percent oxygen nor more than one-half of one percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this Act, any other person.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground coal mine or surface coal mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the coal extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes. The area in which coal is excavated under an exemption to the permitting requirements of § 45.1-234 shall not be a mine.

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman duly issued by action of the Board of Coal Mining Examiners.

"Mine inspector" means a public employee assigned by the Chief or the Director to make mine inspections as required by this Act, and other applicable laws.

"Miner" means any individual working in a mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Monthly" means, unless otherwise stated, to have occurred any time during the period of the first through the last day of a calendar month.

"Operator" means any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Chief or the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

"Return air" means air that has passed through the last active working place on each split, or air that has passed through worked-out areas, whether pillared or nonpillared.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or an injury other than a sprain or strain which requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

"Surface coal mine" means (i) the pit and other active and inactive areas of surface extraction of coal; (ii) on-site preparation plants, shops, tipples and related facilities appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment, machinery, tools, and other property used in, or to be used in, the extraction of coal from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used to prepare a site for surface coal extraction activities. A site shall commence being a surface coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity that does not disturb the surface, and shall cease to be a surface coal mine upon completion of initial reclamation activities.

"Travel way" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Underground coal mine" means (i) the working face and other active and inactive areas of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines, and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples and related facilities appurtenant to the excavation and processing of coal; (iv) on-site surface areas for the transportation and storage of coal excavated at the site; (v) impoundments, retention dams, and tailing ponds appurtenant to the excavation of coal from the site; (vi) equipment, machinery, tools, and other property, on the surface and underground, used in, or to be used in, the excavation of coal from the site; (vii) private ways and roads appurtenant to such area; (viii) the areas used to prepare a site for underground coal excavation activities; and (ix) areas used for the drilling of vertical ventilation holes. A site shall commence being an underground coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground coal mine upon completion of initial reclamation activities.

"Weekly" means, unless otherwise stated, to have occurred any time during the period of Sunday through Saturday of a calendar week.

"Work area," as used in Chapter 14.4 (§ 45.1-161.253 et seq.) of this title, means those areas of a surface coal mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Worked-out area" means an area where underground coal mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses and intake air courses.

"Working face" means any place in a mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine inby the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

Code 1950, § 45-0.2; 1954, c. 191; 1966, c. 594, § 45.1-2; 1975, c. 520; 1978, cc. 120, 489; 1980, c. 442; 1984, c. 590; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3.

§ 45.1-161.9. Safety and health

In safety and health, all miners are to be governed by this Act and Chapter 18 (§ 45.1-221 et seq.) of this title, and any other sections of the Code relating to safety and health of miners and rules and regulations promulgated by the Department.

1984, c. 590, § 45.1-1.7; 1994, c. 28.

§ 45.1-161.10. Special safety rules

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this Act. Such rules, when established, shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners at such mines, or in lieu thereof the operator shall furnish a printed copy of such rules to each of his miners.

Code 1950, § 45-87; 1966, c. 594, § 45.1-31; 1984, c. 590; 1994, c. 28; 1996, c. 774.

§ 45.1-161.11. Persons not permitted to work in mines

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent or mine foreman shall obtain a birth certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

B. No operator, agent or mine foreman shall make a false statement as to the age of any person under eighteen years of age applying for work in or around any mine.

Code 1950, § 45-16; 1954, c. 191; 1966, c. 594, § 45.1-32; 1972, c. 154; 1994, c. 28.

§ 45.1-161.12. Prohibited acts by miners or other persons; miners to comply with law

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued pursuant to the provisions of this Act.

B. Each miner at any mine shall comply fully with the provisions of this Act and other mining laws of the Commonwealth that pertain to his duties.

C. Any individual shall, upon the order of the Chief, complete training that addresses the subject of any violation issued to the individual as a condition for abatement of the violation.

Code 1950, § 45-72; 1954, c. 191; 1966, c. 594, § 45.1-26; 1978, cc. 489, 729; 1994, c. 28; 2005, c. 3.

§ 45.1-161.13. Safety materials and supplies

It shall be the duty of every operator or agent to keep on hand, at or within convenient distance, of each mine at all times a sufficient quantity of all materials and supplies required to preserve the safety of the miners, as required by this Act. If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28.

§ 45.1-161.14. Notifying miners of violations; compliance with Act

A. The operator and his agent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by this Act, and shall direct that the mine foreman and all other miners employed at the mine comply with all provisions of this Act, especially when his attention is called to any violation of this Act by the Chief, the Director, or a mine inspector.

B. The operator of any mine or his agent shall operate his mines in full conformity with this Act and any other mining law of the Commonwealth at all times. This requirement shall not relieve any other person subject to the provisions of this Act from his duty to comply with the requirements of this Act.

C. Nothing in this Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of their employees.

D. No operator, agent, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this Act.

E. The operator or his agent shall fully comply with any action plan required by the Chief to address hazardous conditions or practices.

Code 1950, §§ 45-7, 45-8, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83 to 45-85; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-21, 45.1-30, 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 320; 1976, c. 598; 1978, cc. 120, 222, 489, 729; 1982, cc. 118, 255; 1984, cc. 178, 590; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. 28; 2005, c. 3.

Article 2 - CHIEF, DIRECTOR AND MINE INSPECTORS

§ 45.1-161.15. Appointment of Chief

The Chief shall be appointed by the Governor. The Chief shall be the head of the Division of Mines, and shall be under the direction of and shall report to the Director.

Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. 28.

§ 45.1-161.16. Qualification of Chief

The Chief shall have a thorough knowledge of the various systems of working and ventilating coal mines, nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and mine haulage. The Chief shall possess such experience or educational background in management as determined necessary by the Governor and shall be not less than thirty years of age.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28.

§ 45.1-161.17. Affiliations of Department personnel with labor union, coal company, etc.; interest in coal mine; inspections of mines where inspector previously employed

A. In addition to compliance with the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), neither the Chief nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating coal company, operators' association, or labor union. Neither the Chief nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any coal mine, nor shall the Chief, or any other officer while in office, own any stock in a corporation owning a coal mine either directly or through a subsidiary.

B. Neither the Chief nor any mine inspector shall perform an inspection at any mine site at which that individual was last employed for a period of two years following termination of his employment.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1999, c. 256.

§ 45.1-161.18. Appointment of mine inspectors

Mine inspectors shall be appointed by the Director.

Code 1950, §§ 45-1 through 45-3; 1954, c. 191; 1966, c. 594, § 45.1-3; 1984, c. 590; 1994, c. 28.

§ 45.1-161.19. Qualifications of mine inspectors generally

Each mine inspector shall (i) be not less than twenty-five years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1997, c. 390.

§ 45.1-161.20. Qualifications of inspectors of coal mines

A. Each mine inspector conducting inspections of underground coal mines shall have a thorough knowledge of the various systems of working and ventilating underground coal mines; the nature and properties of mine gases and methods for their detection and control; the control of mine roof and ground control; methods of rescue and recovery work in mine disasters; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in mines; and mine haulage.

B. Each mine inspector conducting inspections of surface coal mines shall have a thorough knowledge of the various systems of working surface coal mines; the nature and properties of mine gases and methods of their detection and control; ground control; methods of rescue and recovery work in surface mine disasters; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in surface facilities on mine property; and mine haulage.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 1997, c. 390; 2005, c. 3.

§ 45.1-161.21. Duties of the Chief

A. The Chief shall supervise execution and enforcement of all laws pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this Act.

B. The Chief shall keep a record of all inspections of coal mines made by him and the mine inspectors. The Chief shall make a comprehensive report to the Director. The Chief shall also keep a permanent record thereof properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

C. The Chief is authorized to compel individuals to complete training that addresses the subject of a violation issued to the individual as a condition for abatement of the violation.

D. The Chief is authorized to require operators to submit for approval action plans to address hazardous conditions or practices.

E. For the purpose of investigating (i) an accident or (ii) a willful act resulting in a notice of violation or closure order, the Chief shall have the power to compel the attendance of witnesses and to administer oaths or affirmations. Any person who knowingly provides any false statement, representation or certification during investigations is guilty of a Class 1 misdemeanor.

F. The Chief shall supervise execution and enforcement of all reciprocal agreements made with responsible officers of other states that implicate any part of the Coal Mine Safety Act, Chapters 14.2 (§ 45.1-161.7 et seq.), 14.3 (§ 45.1-161.105 et seq.), and 14.4 (§ 45.1-161.253 et seq.) of Title 45.1.

Code 1950, §§ 45-1 to 45-6; 1954, c. 191; 1966, c. 594, §§ 45.1-3, 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28; 2005, c. 3; 2011, cc. 826, 862; 2014, c. 145.

§ 45.1-161.22. Repealed

Repealed by Acts 1997, c. 390.

§ 45.1-161.23. Technical specialists

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation and other mine specialties. Technical specialists shall have all the qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

Code 1950, §§ 45-4, 45-5, 45-6; 1954, c. 191; 1966, c. 594, § 45.1-4; 1972, c. 784; 1978, cc. 120, 727; 1981, c. 32; 1984, cc. 184, 337, 590; 1987, Sp. Sess., c. 1; 1994, c. 28.

Article 3 - CERTIFICATION OF COAL MINE WORKERS

§ 45.1-161.24. Board of Coal Mining Examiners

A. There is hereby created the Board of Coal Mining Examiners which shall consist of five members. One member shall be the Chief, and four members shall be appointed by the Governor. One appointed member shall be a miner holding a first class mine foreman's certificate with at least five years of experience in underground coal mining and who is employed at an underground coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be a miner with at least five years of experience in surface coal mining and who is employed at a surface coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be an individual holding a first class mine foreman's certificate with at least five years of experience in the operation of underground coal mines, who is (i) an operator of an underground coal mine, (ii) an officer or director of a corporation operating an underground coal mine, (iii) a general partner of a partnership operating an underground coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of an underground coal mine in the Commonwealth at the time of appointment. One appointed member shall be an individual with at least five years of experience in the operation of surface coal mines, who is (i) an operator of a surface coal mine, (ii) an officer or director of a corporation operating a surface coal mine, (iii) a general partner of a partnership operating a surface coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth at the time of appointment. All appointed members shall be residents of the Commonwealth.

B. The terms of office of the appointed members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an initial term of two years; one shall be appointed for an initial term of three years; and one shall be appointed for an initial

term of four years. Thereafter, the members shall be appointed for terms of four years. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term.

C. The Chief shall serve as chairman of the Board.

Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. 28.

§ 45.1-161.25. Meetings of Board of Coal Mining Examiners; compensation

The Board of Coal Mining Examiners shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at such place or places and at such times as may be designated by the Chief, and the Board shall remain in session until its work is completed; but no one session of the Board shall continue more than three days. Out of the Coal Mining Examiners' Fund, there shall be paid to each member of the Board, except the Chief who shall serve without extra pay, reimbursement for expenses and compensation as is provided by § 2.2-2813.

Code 1950, § 45-26; 1954, c. 191; 1960, c. 61; 1966, c. 594, § 45.1-10; 1978, c. 120; 1980, c. 728; 1994, c. 28.

§ 45.1-161.26. Records of Board of Coal Mining Examiners

The Chief shall preserve in his office a record of the meetings and transactions of the Board of Coal Mining Examiners and of all certificates issued by the Board.

Code 1950, § 45-27; 1954, c. 191; 1966, c. 594, § 45.1-11; 1994, c. 28.

§ 45.1-161.27. Nominations for Board of Coal Mining Examiners

Nominations for appointments to the Board of Coal Mining Examiners may be submitted to the Governor by the Director and each organization of coal miners and coal industry interests in the Commonwealth. Nominations are to be made to the Governor by June 1 of the year in which the terms of appointments of members expire. In no case shall the Governor be bound to make any appointment from the nominations submitted.

Code 1950, §§ 45-18 to 45-21; 1954, c. 191; 1966, c. 594, § 45.1-7; 1978, c. 729; 1984, c. 590, § 45.1-7; 1994, c. 28.

§ 45.1-161.28. Certification of certain persons employed in coal mines; powers of Board of Coal Mining Examiners

A. The Board of Coal Mining Examiners may require certification of persons who work in coal mines and persons whose duties and responsibilities in relation to coal mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the Board, and a person holding such certification shall be authorized to perform the tasks which this Act or any regulation promulgated by the Board or by the Department requires to be performed by such a certified person:

1. First class mine foreman;

2. First class shaft or slope foreman;

3. Surface foreman;

4. Preparation plant foreman;

5. Electrical maintenance foreman;

6. Dock foreman;

7. Top person;

8. Underground shot firer;

9. Surface blaster;

10. Hoisting engineer;

11. Electrical repairman;

12. Automatic elevator operator;

13. Mine inspector;

14. Qualified gas detector;

15. Diesel engine mechanic;

16. Diesel engine mechanic instructor;

17. First aid instructor;

18. Advanced first aid;

19. Chief electrician; and

20. General coal miner.

B. Certification shall also be required for such additional tasks as the Board may require by regulation.

C. The Board shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

D. The Board is authorized to promulgate regulations establishing guidelines for on-site examinations of mine foremen conducted by mine inspectors pursuant to § 45.1-161.35.

Code 1950, §§ 45-23, 45-28, 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, §§ 45.1-12, 45.1-14; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1993, c. 442; 1994, c. 28.

§ 45.1-161.29. Examinations required for Coal Mining Certifications

A. The Board of Coal Mining Examiners may require examination of applicants for certification; however, the Board shall require examination of applicants for the mine inspector certification. The Board may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as specifically provided by this Act, the Board shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Board shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Board, shall periodically be published and shall be of uniform application to all applicants.

B. Any certificate issued by the Board shall be valid from the date of issuance unless and until it has been suspended pursuant to § 45.1-161.34, or has been revoked by the Board pursuant to § 45.1-161.35.

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28.

§ 45.1-161.30. Performance of certain tasks by uncertified persons; penalty

A. It shall be unlawful for any person to perform any task requiring certification by the Board of Coal Mining Examiners until he has been certified. It shall also be unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this subsection shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense.

B. A certificate issued by the Board of Examiners prior to July 1, 1994, shall be acceptable as a certificate issued by the Board of Coal Mining Examiners until the Board of Coal Mining Examiners shall provide otherwise by appropriate regulations.

1972, c. 784, § 45.1-12.1; 1994, c. 28.

§ 45.1-161.31. Examination fees; Coal Mining Examiners' Fund

A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed $50, shall be paid to the Chief by each person examined before the commencement of examination. All such fees collected, together with moneys collected pursuant to §§ 45.1-161.32 and 45.1-161.34, shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute the Coal Mining Examiners' Fund. The fund shall be administered by the Chief to cover the costs of administering the miner certification, for which purposes such moneys are hereby appropriated.

B. The cost of printing certificates and other necessary forms and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining Examiners' Fund. The Chief shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

Code 1950, §§ 45-24, 45-25; 1954, c. 191; 1966, c. 594, §§ 45.1-8, 45.1-9; 1972, c. 440; 1978, c. 120; 1984, c. 590; 1994, c. 28; 1996, c. 774; 2007, cc. 894, 914.

§ 45.1-161.32. Replacement of lost or destroyed certificates

If any certificate issued by the Board of Coal Mining Examiners is lost or destroyed, the Chief may supply a copy thereof to the person to whom it was issued, upon the payment of a reasonable fee in an amount set by the Board not to exceed $10, provided that it has been established to his satisfaction that the loss or destruction actually occurred and that the person seeking such copy was the holder of such certificate.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28; 1999, c. 256; 2007, cc. 894, 914.

§ 45.1-161.33. Reciprocal acceptances of other certifications

A. In lieu of an examination prescribed by law or regulation, the Board of Coal Mining Examiners may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in the Commonwealth, provided that (i) the Board finds that the requirements for certification in such state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the Board are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Board and without additional testing, training, or other requirements not directly related to program administration.

B. If the issuing authority in another state has revoked or suspended a certificate of a person who holds a similar Virginia certificate issued pursuant to this section, the person shall notify the Chief of such action by the other state within 10 days of such action. The Chief shall schedule a hearing of the Board of Coal Mining Examiners to determine whether his Virginia certificate should be revoked or suspended.

Code 1950, §§ 45-31, 45-33.1; 1954, c. 191; 1966, c. 594, § 45.1-14; 1972, c. 784; 1993, c. 442; 1994, c. 28; 2005, c. 3.

§ 45.1-161.34. Continuing education requirements

A. The Board of Coal Mining Examiners shall promulgate regulations establishing requirements for programs of continuing education for holders of certifications. The Board shall establish (i) the content and amount of continuing education to be required for maintaining certification; (ii) guidelines for the content of continuing education programs; (iii) procedures for approving continuing education programs and sponsors; (iv) distribution to holders of certificates of appropriate information regarding continuing education requirements; (v) provisions allowing surplus hours of continuing education to be carried forward from one period to meet the requirements for the next period; (vi) procedures for determining compliance with continuing education requirements; (vii) requirements for a certificate holder to provide the Board with his current address and such further administrative information as may be reasonable; and (viii) the length of time a certificate may be

suspended for failure to comply with continuing education requirements before such certificate shall be revoked. The Board may also establish by regulation a fee to recover the reasonable costs of reissuing certificates or otherwise ascertaining that the requirements of this section have been satisfied.

B. A certification issued by the Board of Coal Mining Examiners shall be suspended if the holder fails to comply with the continuing education requirements established by the Board. The suspension shall be vacated upon compliance with the continuing education requirements. However, if the holder of a certificate does not comply with the continuing education requirements within the period of time established by the Board, the certificate shall be revoked.

1994, c. 28.

§ 45.1-161.35. Revocation of certificates

A. The Board of Coal Mining Examiners may suspend, revoke, or take other action regarding any certificate upon finding that the holder has (i) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in § 45.1-161.34; (ii) been intoxicated while in duty status; (iii) neglected his duties; (iv) violated any provision of this Act or any other coal mining law of the Commonwealth; (v) used any controlled substance without the prescription of a licensed prescriber; or (vi) other sufficient cause. The Board shall also suspend, revoke, or take other action regarding the first class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible for implementing, when examined on-site by a mine inspector in accordance with guidelines promulgated by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

B. The Board may act to suspend, revoke, or take other action regarding any certificate upon the presentation of written charges alleging prohibited conduct set forth in subsection A by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such person is employed; or (iii) ten persons employed at the mine at which such person is employed, or, if less than ten persons are employed at the mine, a majority of the employees at the mine. The Board may act on its own initiative to suspend, revoke, or take other action on any certificate for grounds set forth in item (i) of subsection A.

C. Any person holding a certification issued by the Board shall report to the Chief, within 30 days of any criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber. This conviction shall result in the immediate temporary suspension of all certificates held by such person pending hearing before the Board.

D. Any miner present at any mine shall be deemed to have given consent to reasonable search, at the direction of the Chief by employees of the Department, of his person and his personal property located at the mine. This search shall be limited to the investigation of potential violations of the Coal Mine Safety Act (§ 45.1-161.7 et seq.).

E. All information regarding substance abuse test results of certified persons, written or otherwise received by the Department or Board, shall be confidential. Any hearing of the Board in which this information is presented shall be conducted as a closed session in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. An affirmative vote of a majority of members of the Board who are qualified to vote shall be required for any action to suspend, revoke, or take other action regarding a certificate.

G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as provided in § 2.2-4025 et seq.

H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to § 45.1-161.78, (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to § 45.1-161.87, shall be conducted within 60 days of the temporary suspension. The Board shall make every effort to hold the hearing within 40 days of the temporary suspension.

I. Any person who has been aggrieved by a decision of the Board shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28; 2004, c. 855; 2007, cc. 894, 914.

§ 45.1-161.36. Reexamination

The holder of a certificate revoked pursuant to § 45.1-161.35 shall be entitled to examination by the Board of Coal Mining Examiners after three months have elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist. However, no person convicted of violating subsection A of § 45.1-161.177 or §§ 45.1-161.178, 45.1-161.232, or § 45.1-161.233 shall be eligible for examination for

a period of not less than one year nor more than three years following such conviction, such period to be set by the Board in its discretion at the time of revocation of the certificate.

Code 1950, §§ 45-29, 45-31; 1954, c. 191; 1966, c. 594, § 45.1-13; 1978, c. 729; 1994, c. 28.

§ 45.1-161.37. General coal miner certification

A. Every person working in a coal mine in Virginia shall hold a general coal miner certificate issued by the Board of Coal Mining Examiners. Any person who has been employed to work in a coal mine in Virginia prior to January 1, 1996, shall submit a complete application for certification as a general coal miner by September 30, 2007. The Board of Coal Mining Examiners shall issue a general coal miner certification upon submittal of a complete application.

B. Each applicant for a general coal miner certificate who has not been employed to work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has knowledge of first aid practices and has a general working knowledge of the provisions of this Act, and applicable regulations, pertaining to coal mining health and safety. Each applicant shall have completed the new miner training requirements of 30 CFR Part 48 or submit proof of at least one year of experience in a coal mine prior to issuance of the General Coal Miner certification.

1994, c. 28; 2005, c. 3; 2007, cc. 894, 914.

§ 45.1-161.38. First-class mine foreman certification

A. The operator of any coal mine where three or more persons work during any part of a twenty-four-hour period shall employ a mine foreman. The operator shall employ as a mine foreman only persons holding a first-class mine foreman certificate. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. The holder of a first-class mine foreman certificate shall be authorized to act as foreman for all underground coal mines.

C. Applicants for a first-class mine foreman certificate shall be not less than twenty-three years of age and have had at least five years of experience in a coal mine (at least three years shall have been in an underground coal mine). A graduate of an approved four-year college course in mining engineering shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes eighty-five percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; nature and properties of noxious, poisonous, and explosive gases, and methods for their detection and control; requirements of the coal mining laws of this Commonwealth; and responsibilities and duties of a mine foreman under state law.

D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § 45.1-161.101 and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

Code 1950, §§ 45-7, 45-12, 45-29, 45-30, 45-31, 45-33.1, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-13 to 45.1-15, 45.1-21, 45.1-101.2; 1972, c. 784; 1974, c. 686; 1976, c. 598; 1977, c. 679; 1978, cc. 94, 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1997, c. 274.

§ 45.1-161.39. Surface foreman certification

A. Applicants for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience in a coal mine with at least three years of such experience in a surface coal mine. A graduate of an approved four-year college course in mining engineering shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of required practical experience. Applicants shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making eighty-five percent or more on the written examination. In addition, each applicant shall pass the examination in gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

B. Each candidate for certification as a surface foreman shall complete, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § 45.1-161.101, and pass an examination relating thereto approved by the Board of Coal Mining Examiners. No course or examination shall be required of candidates holding a current higher level of emergency medical certification from the Virginia Department of Health.

C. All holders of a surface foreman certification issued prior to July 1, 2010, except those holding a current higher level of emergency medical certification from the Virginia Department of Health, shall complete by December 31, 2011, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § 45.1-161.101.

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28; 2007, cc. 894, 914; 2010, cc. 809, 857.

§ 45.1-161.40. Chief electrician certification

Each applicant for a chief electrician certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of electricity that pertains to coal mining. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a chief electrician certificate issued by the Board shall be authorized to act as chief electrician in any coal mine.

Code 1950, §§ 45-23, 45-28; 1954, c. 191; 1966, c. 594, § 45.1-12; 1972, c. 784; 1978, c. 729; 1980, c. 442; 1984, c. 237; 1994, c. 28.

§ 45.1-161.41. Top person certificate

Each applicant for a top person certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of shaft and slope mine construction. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a top person certificate issued by the Board shall be authorized to act as top person in any coal mine.

1980, c. 442, § 45.1-20.1; 1994, c. 28.

Article 4 - CERTIFICATION OF MINERAL MINE WORKERS

§§ 45.1-161.42 through 45.1-161.56. Repealed

Repealed by Acts 1997, c. 390.

Article 5 - LICENSING OF MINES

§ 45.1-161.57. License required for operation of coal mines; term

A. No person shall engage in the operation of any coal mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The license shall not be transferable and every change in ownership of a mine shall be reported to the Department as provided in subsection B of § 45.1-161.62.

B. Licenses for coal mines shall be valid for a period of no more than one year following the date of issuance and shall be renewed annually within fifteen days following the anniversary of the date the mine began operations.

Code 1950, § 45-17.1; 1958, c. 306; 1966, c. 594, § 45.1-22; 1978, c. 489; 1984, c. 590; 1988, c. 577; 1994, c. 28; 1996, c. 774; 1997, c. 390.

§ 45.1-161.58. Fee to accompany application for license; fund; disposition of fees

Each application for a license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of $180. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mining industry. All expenditures from this fund must be approved by the Director.

Code 1950, § 45-17.2; 1958, c. 306; 1966, c. 594, § 45.1-23; 1972, c. 235; 1978, c. 489; 1983, c. 356; 1984, c. 590; 1994, c. 28; 1999, c. 256; 2003, cc. 542, 550.

§ 45.1-161.59. Application for license

A. An application for a license shall be submitted by the person who will be the operator of the mine. No application for a license or a renewal thereof shall be complete unless it contains the following:

1. Identity regarding the operator of the mine. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record and telephone number of the proprietorship. If the operator is a partnership, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership interest; (v) the full name and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a twenty percent or greater ownership interest. If the operator is a corporation, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest; (v) the full name, address of record and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) if the corporation is a subsidiary corporation, the operator shall state the full name, address, and state of incorporation of the parent corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a twenty percent or greater ownership interest. If the operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest; (vi) the full name, address of record

and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the name and address of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a twenty percent or greater ownership interest;

2. The names and addresses of any agent of the operator with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the coal to be mined;

3. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

4. Such information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

5, 6. [Repealed.]

7. For any license renewal, the annual report required pursuant to § 45.1-161.62. When no change has occurred to the information required by subdivision 1, 2, or 3 of this subsection, the operator of the mine shall only be required to certify that such information on the current license application is accurate and complete.

B. The application shall be certified as being complete and accurate by the applicant, if an individual, by the agent of a corporate applicant, or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the operator shall notify the Department, in writing, of such change.

Code 1950, §§ 45-7, 45-12, 45-17.3, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1958, c. 306; 1966, c. 594, §§ 45.1-21, 45.1-24; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256.

§ 45.1-161.60. Denial or revocation of license

A. The Chief may deny an application for, or may revoke a license for the operation of a coal mine upon determining that the applicant, the operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.1-161.233.

C. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of violating subsection A of § 45.1-161.177 or § 45.1-161.178.

D. Any person whose license is denied or revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action the court shall receive the records of the Department with respect to the determination, and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

1993, c. 247, § 45.1-22.1, c. 389, § 45.1-98.4; 1994, c. 28; 1997, c. 390.

§ 45.1-161.61. Operating without license; penalty

A. In addition to any other power conferred by law, the Chief, or his designated representative, shall have the authority to issue an order closing any coal mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.1-161.91.

B. Any person operating an unlicensed mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a separate offense.

Code 1950, § 45-17.4; 1958, c. 306; 1966, c. 594, § 45.1-25; 1978, c. 489; 1994, c. 28; 1997, c. 390.

§ 45.1-161.62. Annual reports; condition to issuance of license following transfer of ownership

A. The operator or his agent of every mine shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and their officers, of the mine; (ii) the quantity of coal mined; and (iii) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Whenever the owner of a mine shall transfer the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of coal produced since the January 1 previous to the date of such sale or transfer of such mine. A license will not be issued covering such transfer of ownership until the report is furnished.

C. The operator or his agent of every coal mine shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner of Revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, 58.1-3713, and 58.1-3741 due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which

the coal mining operations are conducted, stating that all personal property, real estate and mineral land taxes due with respect to coal mining operations have been paid.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 2013, cc. 305, 618.

§ 45.1-161.63. Notices to Department; resumption of mining following discontinuance

A. The operator or his agent shall send notice of intent to discontinue the working of an underground mine for a period of 30 days or a surface mine for a period of 60 days to the Department at least 10 days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine. Unless examinations of the mine are being conducted during the period of discontinued use, all surface openings to the discontinued underground mine shall be secured against unauthorized entrance when the activities are discontinued for 30 days or longer. Danger signs shall be posted at each secured entrance.

B. The operator, or his agent, shall send to the Department 10 days' prior notice of intent to resume the working of an inactive mine. The production of coal at such mine shall not resume until a mine inspector has inspected and approved it for resumption of production activities.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The operator, or his agent, shall send to the Department 10 days' prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The operator, or his agent, shall send to the Department 10 days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the operator, and the operator's mailing address.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3.

§ 45.1-161.64. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map

A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine. Such map shall be

submitted to the Chief prior to producing coal at the mine. All maps shall be presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise approved by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the operator shall submit to the Chief copies of an up-to-date map of the entire mine in an electronic format approved by the Chief. The operator shall also submit to the Chief revisions that show directional changes whenever mine projections deviate more than 600 feet from the approved mine map. Only maps in an electronic format will be accepted unless otherwise approved by the Chief. If there are no changes in the information required to be submitted under this section at the time an updated map is due, the operator may submit a notice that there are no changes to the map in lieu of submitting an updated map to the Department.

B. Underground coal mine maps shall show:

1. The active workings;

2. All pillared, worked out, and abandoned areas, except as provided in this section;

3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by arrows, and ventilation controls;

4. Contour lines of all elevations;

5. Dip of the coalbed;

6. Escapeways;

7. The locations that are known or should be known of (i) adjacent mine workings within 1,000 feet, (ii) mines above or below, and (iii) water pools above;

8. Either producing or abandoned oil and gas wells located within 500 feet of such mine and in any underground area of such mine; and

9. Such other information as the Chief may require.

Such map shall identify those areas of the mine which have been pillared, worked out, or abandoned, which are inaccessible, or cannot be entered safely.

C. Additional information required to be shown on underground coal mine maps shall include:

1. Mine name, company name, mine index number, and name of the person responsible for information on the map;

2. The scale and orientation of the map and symbols used on the map;

3. The property or boundary lines of the mine;

4. All known drill holes that penetrate the coalbed being mined;

5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the coalbed being mined;

6. The location of all surface mine ventilation fans; the location may be designated on the mine map by symbols;

7. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

8. The location and description of a least two permanent base line points coordinated with the underground and surface mine traverses, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

9. The location and elevation of any body of water dammed or held back in any portion of the mine; provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines as provided under subdivision 12;

10. The elevations of tops and bottoms of shafts and slopes, and the floor at the entrance to drift and tunnel openings;

11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one entry of each working section and main and cross entries; (ii) the last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or boundary lines or adjacent mines; and

12. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 10-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply-pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps.

D. Underground coal mine maps submitted to the Chief shall be on a scale of not less than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be completed by a closed loop survey method of traversing or other equally accurate methods of traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in 5,000. Elevations shall be tied to either the United States Geological Survey or the United States Coast and Geodetic Survey benchmark system. A registered engineer or licensed land surveyor shall certify that the map of the mine workings is accurate.

E. Underground coal mine maps shall be kept up-to-date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working face of each working place;

2. Pillars mined or other such second mining;

3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators, and permanent stoppings, and the direction of air currents indicated; and

4. Escapeways designated by means of symbols.

F. At underground coal mines, an accurate map of the mine showing clearly all avenues of ingress and egress in case of fire shall be posted in a place accessible to all miners.

G. Surface coal mine maps shall show:

1. Name and address of the mine;

2. The property or boundary lines of the active areas of the mine;

3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may approve alternate means of delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;

4. The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

5. Either producing or abandoned oil and gas wells and gas transmission lines located on the mine property;

6. The location and elevation of any body of water dammed or held back in any portion of the mine: provided, however, such bodies of water may be shown on overlays or tracings attached to the mine maps;

7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;

8. All auger and surface mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;

9. All worked out and abandoned areas;

10. The location of railroad tracks and public highways leading to the mine, and mine buildings of a permanent nature with identifying names shown;

11. Underground mine workings underlying and within 1,000 feet of the active areas of the mine;

12. The location and description of at least two permanent baseline points, and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

13. The scale of the map; and

14. Such other information required by the Chief.

H. Surface coal mine maps shall be kept up to date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working pit or pits;

2. Auger or highwall miner workings; and

3. Other information that may affect the safety of miners including, but not limited to, updates of gas well or gas line locations.

I. Surface surveys shall originate from at least two permanent survey monuments on the mine property located with a minimum accuracy standard of one part in 10,000. The monuments shall be clearly referenced on the mine map. Elevations shall be tied to either the United States Geological Survey or the United States Coast and Geodetic benchmark system.

J. The original map, or a true copy thereof, shall be left by the operator at the active mine, open at all reasonable times for the examinations and use of the mine inspector.

K. Such maps may be used by the Department for the evaluation of the coal resources of the Commonwealth.

L. The map shall be filed and preserved among the records of the Department and copies of such maps shall be made available at a reasonable cost.

M. Any person who has conducted mining operations or prepared mine maps and who has a map or surveying data of any worked out or abandoned underground coal mine shall on request make such map or data available to the Department to copy or reproduce such material.

Code 1950, § 45-10; 1954, c. 191; 1966, c. 594, §§ 45.1-27, 45.1-91; 1978, c. 118; 1980, c. 5; 1984, c. 590; 1986, c. 222; 1994, c. 28; 1995, c. 265; 1996, c. 774; 1997, c. 390; 1999, c. 256; 2005, c. 3; 2007, cc. 894, 914; 2011, cc. 826, 862; 2012, cc. 109, 241.

§ 45.1-161.65. When the Chief may cause maps to be made; payment of expense

If the operator, or his agent, of any mine shall neglect or fail to furnish to the Chief a copy of any map or extension thereof, as provided in § 45.1-161.64, the Chief is authorized to cause a correct survey and map of said mine, or extension thereof, to be made at the expense of the operator of such mine, the cost of which shall be recovered from the operator as other debts are recoverable by a civil action at law. If at any time the Chief has reason to believe that such map, or extensions thereof, furnished pursuant to § 45.1-161.64 is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the operator. The expense shall be recovered from the operator as other debts are recoverable by a civil action at law. However, if the map filed by the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

Code 1950, § 45-11; 1954, c. 191; 1966, c. 594, § 45.1-28; 1994, c. 28; 1999, c. 256.

§ 45.1-161.66. Making false statements; penalty

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this Act to fail to correctly show, within the limits of error, the data required.

B. Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this Act shall, upon conviction, be guilty of a Class 1 misdemeanor.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28; 1999, c. 256.

Article 6 - RESCUE CREWS; RESCUE TEAMS

§ 45.1-161.67. Mine rescue and first aid stations

The Director is hereby authorized to purchase, equip and operate for the use of the Department, such mine rescue and first aid stations as he may determine necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. 28.

§ 45.1-161.68. Mine rescue crews

The Director is hereby authorized to have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth mine rescue crews as he may determine necessary. Each member of a mine rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such crew members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such crew members have performed the required service. Upon such certification the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any crew member at any time.

1975, c. 432, § 45.1-33.1; 1984, c. 590; 1994, c. 28; 1996, c. 774.

§ 45.1-161.69. Duty to train crew

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who have a certificate of training from the Department or the Mine Safety and Health Administration.

1975, c. 432, § 45.1-33.2; 1984, c. 590; 1994, c. 28.

§ 45.1-161.70. Qualification for crew membership; direction of crews

A. To qualify for membership in mine rescue crews an applicant shall be an experienced miner and shall pass a physical examination by a licensed physician, physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the Mine Safety and Health Administration and representatives of the miners, and all should be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Chief in his discretion may take full responsibility in directing such work. Procedures for use of apparatus or equipment shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

1975, c. 432, § 45.1-33.3; 1984, c. 590; 1994, c. 28; 1999, c. 256; 2004, c. 855; 2006, c. 396.

§ 45.1-161.71. Crew members to be considered employees of the mine where emergency exists; compensation; workers' compensation

When engaged in rescue or recovery work during an emergency at a mine, all crew members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the operator at the rate established in the area for such work. In no event shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all crew members shall be deemed to be within the employment of the operator of the mine for the purpose of workers' compensation coverage.

1975, c. 432, § 45.1-33.4; 1994, c. 28.

§ 45.1-161.72. Requirements of recovery work

A. During recovery work and prior to entering any mine, all mine rescue crews conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue crew performing rescue or recovery work with breathing apparatus shall be provided with a backup crew of equal strength, stationed at each fresh air base.

C. For every two crews performing work underground, one six-member crew shall be stationed at the mine portal.

D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to all crews and no crew member shall be permitted to advance beyond such communication system.

E. A mine rescue crew shall immediately return to the fresh air base should any crew member's breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty atmospheres.

F. The Director may also assign rescue and recovery work to inspectors, instructors or other qualified employees of the Department as the Director may determine desirable.

1975, c. 432, § 45.1-33.5; 1984, c. 590; 1994, c. 28.

§ 45.1-161.73. State-designated mine rescue teams

The Director may, upon the request of an operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team which is certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49 shall be eligible to be a state-designated team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated teams to the operator. An operator who has paid the rescue fee shall be entitled to the rescue services of a state-designated rescue team at no additional charge.

1985, c. 496, § 45.1-33.5:1; 1994, c. 28; 1996, c. 774.

§ 45.1-161.74. Mine Rescue Fund

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the Mine Rescue Fund. Moneys in the Mine Rescue Fund shall be used only for mine rescue services under such agreements. No moneys in the Mine Rescue Fund shall revert to the general fund.

1985, c. 496, § 45.1-33.5:2; 1994, c. 28; 2011, cc. 826, 862.

§ 45.1-161.75. Inspections; Mine Rescue Coordinator

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

1985, c. 496, § 45.1-33.5:3; 1994, c. 28.

§ 45.1-161.76. Workers' compensation; liability

A. For the purpose of workers' compensation coverage, during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article or during any training exercise for a state-designated mine rescue team, members of the state-designated team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is conducted. Additionally, for purposes of workers' compensation coverage, travel by members of a state-designated mine rescue team to and from the mine disaster or training exercise shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is to be or was conducted.

B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

1985, c. 496, § 45.1-33.5:4; 1994, c. 28; 2007, cc. 894, 914.

Article 7 - MINE EXPLOSIONS; MINE FIRES; ACCIDENTS

§ 45.1-161.77. Reports of explosions and mine fires; procedure

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. All facilities of the mine shall be made available for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting may be attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on any persons who may have survived the explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any coal mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plan shall be reviewed annually. Any changes in the plan shall be published promptly and made available to all operators of mines.

Code 1950, § 45-14; 1954, c. 191; 1966, c. 594, § 45.1-6; 1984, c. 590; 1994, c. 28; 1997, c. 390; 1999, c. 256; 2011, cc. 826, 862.

§ 45.1-161.78. Operators' reports of accidents; investigations; reports by Department

A. Each operator will report promptly to the Department the occurrence at any mine of any accident. The scene of the accident shall not be disturbed pending an investigation, except to the extent necessary to rescue or recover a person, prevent or eliminate an imminent danger, prevent destruction of mining equipment, or prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator will secure prior approval from the Department before any changes are made.

B. The Chief will go personally or dispatch one or more mine inspectors to the scene of such a coal mine accident, investigate causes, and issue such orders as may be needed to ensure safety of other persons.

C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

D. The Chief shall require substance abuse testing as part of an inspection or complaint investigation if there is reasonable cause to suspect a miner's impairment, due to the presence of intoxicants or any controlled substance not used in accordance with the prescription of a licensed prescriber, or has been a contributing factor to any accident in which a serious personal injury or death occurs at a mine. The Chief shall require substance abuse testing of any miner killed or seriously injured and of any other person who may have contributed to the accident. Any substance abuse testing required by the Chief will be paid for by the Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass such a test, shall result in the immediate temporary suspension of all certificates, pending hearing before the Board of Coal Mining Examiners.

E. The Department will render a complete report of circumstances and causes of each accident investigated, and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the operator, and one copy to the employee representative when he has been present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines, and shall give such further publicity as may be ordered by the Director in an effort to prevent mine accidents.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1997, c. 390; 1999, c. 256; 2007, cc. 894, 914.

§ 45.1-161.79. Reports of other accidents and injuries

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident including any accident which does not result in a lost-time injury. Copies of such report shall be given to the person injured or to his designated representative to review the accident report and verify its accuracy prior to filing such report for the review of state or federal mine inspectors.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28.

§ 45.1-161.80. Duties of mine inspectors

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable; and

3. Provide assistance to mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall monitor the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause in accordance with a plan approved by the Chief.

Code 1950, §§ 45-4.1, 45-7, 45-9, 45-12, 45-68.4, 45-69, 45-73, 45-74, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-5, 45.1-21; 1976, c. 598; 1978, cc. 120, 222, 489; 1982, c. 255; 1984, cc. 178, 236, 590; 1985, c. 448; 1987, c. 470; 1988, c. 577; 1990, c. 963; 1993, cc. 171, 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

Article 8 - MINE INSPECTIONS

§ 45.1-161.81. Frequency of mine inspections

The Chief shall conduct a complete inspection of every underground coal mine not less frequently than every 180 days, and of every surface coal mine not less frequently than once per year. Additional inspections of coal mines shall be made when deemed appropriate by the Chief based on an evaluation of risks at each mine, or if requested by miners employed at a mine or the operator of a mine.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1997, c. 390.

§ 45.1-161.82. Evaluation of risks at mines

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made not less frequently than annually, of the comparative risks at each underground and surface coal mine. The Department's procedural policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of

issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost.

B. The Chief shall schedule additional inspections at underground and surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines.

1994, c. 28; 1997, c. 390.

§ 45.1-161.83. Review of inspection reports and records

Prior to commencing an inspection of a coal mine, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. During the course of a complete inspection of a coal mine, the mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, and weekly examinations which are required to be maintained pursuant to this Act, for the 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent. The inspector shall review other records relating to safety and health conditions in the mine which are required to be maintained pursuant to this Act during the course of the inspection.

1994, c. 28; 1997, c. 390; 1999, c. 256; 2005, c. 3.

§ 45.1-161.84. Advance notice of inspections; confidentiality of trade secrets

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Director.

B. All information reported to or otherwise obtained by the Chief or the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Chief or the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court, the Chief or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

1973, c. 425, § 40.1-51.3:1; 1976, c. 607, § 40.1-51.4:1; 1994, c. 28.

§ 45.1-161.85. Scheduling of mine inspections

A. The Chief and the Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the Mine Safety and Health Administration.

B. The Chief, Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

1994, c. 28; 2011, cc. 826, 862.

§ 45.1-161.86. Denial of entry

No person shall deny the Chief or the Director, as applicable, or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or any office at the site where maps or records relating to the mine are located, pursuant to this Act.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.

§ 45.1-161.87. Duties of operator

A. The operator, or his agent, of every mine shall furnish the Chief and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector.

B. The operator of an underground mine, or his agent, shall provide a mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector during the course of his inspection, promptly clear the mine or section thereof of all persons.

D. The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include:

1. A pre-employment, 10-panel urine test for the following and any other substances as set out in regulation adopted by the Board of Coal Mining Examiners:

a. Amphetamines,

b. Cannabinoids/THC,

c. Cocaine,

d. Opiates,

e. Phencyclidine (PCP),

f. Benzodiazepines,

g. Propoxyphene,

h. Methadone,

i. Barbiturates, and

j. Synthetic narcotics.

Samples shall be collected by providers who are certified as complying with standards and procedures set out in the United States Department of Transportation's rule, 49 CFR Part 40. Collected samples shall be tested by laboratories certified by the United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) for

collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program; and

2. Review of the substance abuse screening program with all miners at the time of employment and annually thereafter.

E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test and provide a record of the test showing such failure or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.

F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of (i) discharging a miner due to violation of the company's substance or alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator having a substance abuse program shall not be required to notify the Chief under subdivision (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. The notification shall be accompanied by a record of the test showing such positive results or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending hearing before the Board of Coal Mining Examiners.

G. The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1999, c. 256; 2007, cc. 894, 914; 2010, cc. 809, 857.

§ 45.1-161.88. Duties of inspectors

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second

and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine, and of the outside of the mine where any danger may exist to the miners.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.89. Certificates of inspection

A. Upon completing a mine inspection, a mine inspector shall complete a certificate regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of this Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the operator, agent or mine foreman, and one copy to the employees' safety committee where applicable; and shall post one copy at a prominent place on the premises where it can be read conveniently by the miners.

C. With respect to coal mines, the Department shall provide access to certificates of inspection to the Mine Safety and Health Administration.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774; 1997, c. 390.

Article 9 - ENFORCEMENT AND PENALTIES; REPORTS OF VIOLATIONS

§ 45.1-161.90. Notices of violations

A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provision of this Act or the appropriate regulations violated, and shall include an order of abatement and fix a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the operator, his agent, or mine foreman.

C. Upon a finding by the mine inspector of completion of the action required to abate the violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

E. If it shall be finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated, and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1997, c. 390.

§ 45.1-161.91. Closure orders

A. The Director, the Chief, or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of this Act has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § 45.1-161.57; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.1-161.90. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to the operator of the mine or his agent or the mine foreman.

C. Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director, the Chief, or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action the court shall receive the records of the Department with respect to the issuance of the order, and shall receive additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. If it shall be finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated, and the improperly issued closure order shall not be used to the detriment of the owner or operator of the mine for which it was issued.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-74; 1954, c. 191; 1966, c. 594, § 45.1-5; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1994, c. 28; 1996, c. 774.

§ 45.1-161.92. Tolling of time for abating violations

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or until the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that the appeal was undertaken in good faith and not solely for delay or avoidance of penalties.

1994, c. 28.

§ 45.1-161.93. Injunctive relief

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this Act which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine or mines in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance at the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act or (ii) a history of the issuance of closure orders for the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.

§ 45.1-161.94. Violations; penalties

Any person convicted of willfully violating any provisions of this Act or any regulation promulgated pursuant to this Act, unless otherwise specified in this Act, shall be guilty of a Class 1 misdemeanor.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.

§ 45.1-161.95. Prosecution of violations

A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this Act or on his own initiative to cause proceedings to be prosecuted in such cases.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such cases, the Director or the Chief may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth; however, such action shall not preclude the Director or the Chief from pursuing other applicable statutory procedures. Upon receiving such a request from the Director or the Chief, the Attorney General shall have the authority to institute actions and proceedings for violations described in the request.

Code 1950, § 45-17; 1954, c. 191; 1966, c. 594, § 45.1-105; 1975, c. 520; 1978, c. 118; 1980, c. 388; 1994, c. 28.

§ 45.1-161.96. Fees and costs

No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

1994, c. 28.

§ 45.1-161.97. Reports of violations

A. Any person aware of a violation of this Act may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department or at the mine inspector's residence.

B. The operator of every mine, or his agent, shall deliver a copy of this Act to every miner upon the commencement of his employment at the mine, unless the miner is already in possession of a copy.

C. The operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this Act.

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this Act which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report, and any individuals identified in the alleged violation being omitted or deleted, to the operator of the mine or his agent. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1994, c. 28; 2005, c. 3.

Article 10 - VIRGINIA COAL MINE SAFETY BOARD

§ 45.1-161.98. Virginia Coal Mine Safety Board continued; membership; appointments; expenses

A. The Virginia Mine Safety Board is continued as the Virginia Coal Mine Safety Board. The Board shall be composed of nine members appointed by the Governor, subject to the confirmation of the General Assembly, as follows: three shall be appointed from a list of individuals nominated by the Virginia Coal and Energy Alliance, three shall be appointed from a list of individuals nominated by the United Mine Workers of America, and three shall be appointed from the Commonwealth at large. All members of the Board shall serve at the pleasure of the Governor and shall be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall receive reimbursement for actual expenses.

1990, c. 963, § 45.1-5.2; 1994, c. 28; 2014, c. 438.

§ 45.1-161.99. Meetings of the Virginia Coal Mine Safety Board; notices; quorum
The Virginia Coal Mine Safety Board shall hold meetings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the Board at any time and shall call a meeting of the Board within twenty days of receipt by the chairman of a written request by another member of the Board. Notification of each meeting of the Board shall be given in writing to each member by the chairman at least five days in advance of the meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.

1990, c. 963, § 45.1-5.3; 1994, c. 28.

§ 45.1-161.100. Powers and duties of the Virginia Coal Mine Safety Board
The Virginia Coal Mine Safety Board shall have the power to advise and make recommendations to the Chief on matters relating to the health and safety of persons working in the Virginia coal industry. The Board shall serve as the regulatory work committee for the Department on all coal mine health and safety regulations not under the jurisdiction of the Board of Coal Mining Examiners.

1990, c. 963, § 45.1-5.3; 1994, c. 28.

Article 11 - MINER TRAINING

§ 45.1-161.101. First aid training of coal miners
A. The Chief shall establish specifications for first aid and refresher training programs for miners at coal mines. Such specifications shall be no less than, but may exceed, the minimum requirements of such training programs which underground and surface operators are required to provide for their employees by the federal mine safety law. The Chief is authorized to utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of operators in making such programs available to their employees.

B. Each operator of a coal mine, upon request, shall make available to every miner employed in such mine the course of first aid training, including refresher training, as is required by subsection A.

1977, c. 679, § 45.1-101.2; 1978, c. 94; 1984, c. 590; 1994, c. 28.

§ 45.1-161.102. Training programs
A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Board of Coal Mining Examiners. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons

from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this article. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

1994, c. 28; 1997, c. 390.

§ 45.1-161.103. Additional coal mining training programs

The Chief is authorized to implement a voluntary on-site safety awareness training program for coal mines. Such training may be conducted by a mine inspector in conjunction with his inspection of a coal mine or other Department personnel. Safety awareness training for coal miners may include such methods as job safety analysis and topical talks on safety issues to reduce accidents.

1994, c. 28.

§ 45.1-161.104. Repealed

Repealed by Acts 1997, c. 390.

Chapter 14.3 - REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES

Article 1 - GENERAL PROVISIONS

§ 45.1-161.105. Scope of chapter

This chapter shall be applicable to the operation of any underground coal mine in the Commonwealth, and shall supplement the provisions of Chapter 14.2 (§ 45.1-161.7 et seq.).

1994, c. 28.

§ 45.1-161.106. Regulations governing conditions and practices at underground coal mines

A. The Chief shall have authority, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, to promulgate rules and regulations necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth. Such rules and regulations governing underground coal mines shall relate to:

1. The maintenance, operation, storage, and transportation of any mechanical or electrical equipment, device or machinery used for any purpose in the underground mining of coal;

2. Safety and health standards for the protection of the life, health and property of, and the prevention of injuries to, persons involved in or likely to be affected by any underground coal mining operations which shall include but not be limited to the control of dust concentration levels; use of respiratory equipment and ventilating systems; development and maintenance of roof control systems; handling of combustible materials and rock dusting; installation, maintenance and use of

electrical devices, equipment, cables and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, and communication facilities; the use and storage of explosives; and the establishment and maintenance of barriers in underground mines around gas and oil wells. The Chief is authorized to promulgate regulations setting forth specific occupations and conditions for which a miner will be prohibited from working alone underground; and

3. The storage or disposal of any matter or materials extracted or disturbed as the result of an underground coal mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation so that such matter or material does not threaten the health or safety of the miners or the general public.

B. The Chief shall not promulgate any regulation establishing requirements for the operation of, or conditions at, an underground coal mine which are inconsistent with requirements established by the Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.

§ 45.1-161.107. Standards for regulations

In promulgating rules and regulations pursuant to § 45.1-161.106, the Chief shall consider:

1. Standards utilized and generally recognized by the coal mining industry;

2. Standards established by recognized professional coal mining organizations and groups;

3. The federal mine safety law;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and

5. Such other criteria as shall be necessary for the protection of safety and health of miners and other persons or property likely to be endangered by underground coal mines or related operations.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.

Article 2 - ROOF, RIB AND FACE CONTROL

§ 45.1-161.108. Roof, ribs and faces to be secure

A. All underground active workings and travel ways shall be secured and controlled to protect miners from falls of roof, face or ribs. Loose roof and loose or overhanging ribs and faces shall be taken down or supported.

B. The method of mining followed shall not expose miners to hazardous conditions caused by excessive widths of rooms and entries, faulty pillar-recovery methods, or other hazardous mining methods or working conditions.

Code 1950, §§ 45-68.1 to 45-68.3; 1954, c. 191; 1966, c. 594, §§ 45.1-40, 45.1-41; 1975, c. 520; 1978, cc. 118, 729; 1980, c. 338; 1982, c. 234; 1984, c. 590; 1988, c. 577; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.109. Roof control plans

A. Each underground coal mine shall have a roof control plan approved by the Chief. Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib support materials; (iv) instruction for the installation of temporary and permanent roof supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that demonstrate width of openings, roof support installation sequences, and pillar recovery sequences; and (vii) any additional requirements deemed necessary by the Chief. The initial submission of any roof control plan shall include maps of mine projections, overlying and underlying mine workings, coal contours, and surface contours. If changes are to be made in the mining system that necessitate any change in the roof control plan, the plan shall be revised and approved by the Chief prior to implementing the new mining system.

B. The Chief shall, where he deems necessary, prescribe adequate minimum standards for systematic support of mine roof, suitable to the roof conditions and mining system of each mine. Such standards shall be incorporated into an approved roof control plan for the mine. This section shall not apply to roof control systems installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face and ribs.

C. Failure to comply with the approved roof control plan for the mine shall constitute a violation of this section.

D. The approved roof control plan shall be posted conspicuously at the mine and a copy shall be available at each working section of the mine.

E. The minimum standards and plan shall provide for temporary support at all active workings, without regard to natural condition.

F. If the minimum standards do not afford adequate protection, such additional supports as shall be necessary shall be installed. Such additional supports shall be described in the plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. 28; 1999, c. 256; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.110. Instruction of miners

The operator, or his agent, shall instruct all miners in the removal and installation of temporary and permanent roof supports as may be required by the roof control plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. 28.

§ 45.1-161.111. Copies of plan

The operator, or his agent, shall furnish to any miner engaged in removing or installing temporary or permanent roof supports, upon request, a copy of the roof control plan.

Code 1950, § 45-68.2; 1954, c. 191; 1966, c. 594, § 45.1-40; 1975, c. 520; 1978, c. 729; 1984, c. 590; 1994, c. 28.

§§ 45.1-161.112, 45.1-161.113. Repealed

Repealed by Acts 1996, c. 774, effective April 6, 1996.

§ 45.1-161.114. Automated temporary roof support systems

The Chief shall promulgate regulations requiring automated temporary roof support systems for the installation of roof bolts.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. 28; 1999, c. 256.

§ 45.1-161.115. Supplies of materials for supports

A. The operator, or his agent, shall provide at or near the working places an ample supply of suitable materials of proper size with which to secure all roofs, ribs and faces of working places in a safe manner. Suitable supply materials shall be provided for variations in seam height. If the operator, or his agent, fails to provide such suitable materials, the mine foreman shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

B. Safety posts, jacks or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter, if miners go in by the last permanent roof support.

C. Unless an automated temporary roof support system is used, safety posts or jacks shall be used to protect the miners when roof material is being taken down, crossbars are being installed, roof bolt holes are being drilled, roof bolts are being installed, or when any other work is being performed that would reasonably require roof support to protect the miners involved.

D. The operator, or his agent, shall make immediately available for emergency use at each mine site at least two lifting devices with a combined total of at least 80 tons lifting capacity. Each individual lifting device shall have 20 tons or greater lifting capacity.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.116. Examination and testing of roof, face, and ribs

A. The operator, or his agent, shall instruct all miners how to make visual examinations and sound and vibration testing of roof, face and ribs.

B. Miners exposed to danger from falls of roof, face, and ribs shall visually examine and, if conditions permit, test the roof, face, and ribs by sounding the roof before starting work or before starting a machine and as frequently thereafter as may be necessary to ensure safety. When hazardous conditions are found, miners discovering them shall correct such conditions immediately by taking down the loose material, by proper timbering, or installation of proper roof support before work is continued or any other work is done, or shall vacate the place.

C. At least once each shift, or more often if necessary, the mine foreman or other certified person shall examine and test the roof, face and ribs of all active working sections where coal is being produced while miners are working therein. Any place in which a hazardous condition is found by the mine foreman shall be made safe in his presence or under his direction, or the miners shall be withdrawn from such place. Such hazardous conditions and corrective actions taken shall be recorded in the on-shift record book at the mine.

Code 1950, §§ 45-61, 45-68.1; 1954, c. 191; 1966, c. 594, § 45.1-42; 1976, c. 598; 1978, c. 118; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.117. Mapping of roof falls

Unplanned roof falls that are required to be reported in accordance with § 45.1-161.78 shall be marked on a map maintained at the mine to indicate the specific location of the fall.

Code 1950, §§ 45-61, 45-68.1; 1954, c. 191; 1966, c. 594, § 45.1-42; 1976, c. 598; 1978, c. 118; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.118. Unsafe conditions

A. No person shall work or travel under unsupported roof except to install temporary supports in accordance with the approved roof control plan. Areas inby the breaker line where second mining has been or is being conducted shall be considered unsupported.

B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other work until the conditions have been corrected by taking down loose material or securely supporting the roof, face, or ribs.

C. A bar of proper length shall be used to pull down any loose material discovered.

Code 1950, §§ 45-61, 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, §§ 45.1-41, 45.1-42; 1975, c. 520; 1976, c. 598; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.119. Removal of supports

A. No person shall deliberately remove any support in active areas unless equivalent protection is provided.

B. Any person who accidentally knocks out or dislodges a support shall promptly replace the support.

Code 1950, §§ 45-68.1, 45-68.3; 1954, c. 191; 1966, c. 594, § 45.1-41; 1975, c. 520; 1978, c. 118; 1980, c. 338; 1982, c. 234; 1988, c. 577; 1994, c. 28.

§ 45.1-161.120. Repealed

Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.

Article 3 - PROXIMITY OF MINING TO GAS AND OIL WELLS, AND ABANDONED AREAS

§ 45.1-161.121. Mining in proximity to gas and oil wells

A. Except as provided in subsection D, an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine, within 500 feet of any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings shall file with the Chief a notice that mining is taking place or will take place. The notice shall include a copy of parts of the maps and plans required under § 45.1-161.64 which show the mine workings and projected mine workings which are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the operator that he has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A, the operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings.

C. The Chief shall promulgate regulations which prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the process of being drilled into the projected mine workings. Each operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

D. Procedures for safely mining in proximity to or through coalbed methane wells or vertical ventilation holes developed for methane drainage in a mine shall be addressed in the bleeder system plan for that mine required by § 45.1-161.220.

1990, c. 92, § 45.1-92.1; 1994, c. 28; 1999, c. 256.

§ 45.1-161.122. Mining in proximity to abandoned areas

A. The mine foreman shall ensure that boreholes are drilled in each advancing working place that is (i) within 50 feet of abandoned areas in the mine as shown by surveys made and certified by a

registered engineer or surveyor, (ii) within 200 feet of abandoned areas in the mine which have not been certified as surveyed or, (iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed unless the adjacent area of the mine has been pre-shift examined. The boreholes shall be at least 20 feet in depth and always maintained not less than 10 feet in advance of the face, and not more than eight feet apart unless approved by the Chief. One borehole shall also be drilled for each cut on sides of the active workings that are being driven toward, and in proximity to, an abandoned mine or part of a mine which may contain flammable gas or which is filled with water.

B. Sufficient holes shall be drilled through to accurately determine whether hazardous quantities of methane, carbon dioxide and other gases or water are present in the abandoned area. Materials shall be available to plug such holes to prevent an inundation of hazardous quantities of gases or water if detected.

C. Mining shall not advance into any abandoned area penetrated by boreholes drilled in accordance with subsection A until a plan has been submitted and approved by the Chief. The plan will include at a minimum: (i) procedures for testing the atmosphere at the back of boreholes drilled into the abandoned area; (ii) the method of ventilation, ventilation controls, and the air quantities and velocities in the affected working section and working place; (iii) procedures for mining-through when hazardous quantities of methane, carbon dioxide, or other hazardous gases cannot be removed; (iv) dewatering procedures to be used if a penetrated area contains hazardous water accumulation; and (v) the procedures and precautions to be followed during mining-through operation. A copy of the plan shall be made available near the site of the penetration operation and the operator shall review the plan with all miners involved in the operation. Failure to comply with the approved plan shall constitute a violation of this section.

D. Any operator, his agent, mine foreman or miner engaged in drilling or mining into inaccessible abandoned areas shall have upon his person a self-contained self-rescuer.

E. Whenever a mine or section of a mine advances under any body of water that is sufficiently large or in close proximity as to constitute a hazard to miners, the operator shall submit to the Chief a plan meeting the requirements of 30 C.F.R. § 75.1716 . The operator shall obtain approval for the submitted plan from the Chief prior to advancing the mine or any section of the mine under the body of water.

F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole, or other hole drilled from the surface or overlying or underlying mines or drilling from the active mine, the operator shall submit a plan to the Chief addressing: (i) the purpose of the hole, (ii) information about abandoned mines that the hole may penetrate, (iii) procedures for withdrawal or limiting the number of miners from the mine or affected area during penetration, (iv) casing details and procedures to prevent water inflow and air transfer from the hole into the active mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such other information

as the Chief may require. The drilling of such hole shall not begin until the plan is approved by the Chief. The provisions of this section shall not apply to gas wells, coalbed methane wells, or vertical ventilation holes.

Code 1950, § 45-38; 1954, c. 191; 1966, c. 594, § 45.1-93; 1979, c. 56; 1994, c. 28; 1996, c. 774; 2005, c. 3; 2011, cc. 826, 862.

Article 4 - MECHANICAL EQUIPMENT

§ 45.1-161.123. Face and other equipment

A. The cutter chains of mining machines shall be locked securely by mechanical means or electrical interlocks, while such machines are parked or being trammed.

B. Drilling in rock shall be conducted wet or by other means of dust control.

C. Electric drills or other electrically operated rotating tools intended to be held in the hands shall have the electric switch constructed so as to break the circuit when the hand releases the switch, or shall be equipped with properly adjusted friction or safety clutches.

D. While equipment is in operation or is being trammed, no miner shall position himself or be placed in a pinch point between such equipment and the face or ribs of the mine or another piece of equipment in the mine.

E. All equipment raised for repairs or other work shall be securely blocked prior to persons positioning themselves where the falling of such equipment could create a hazardous condition.

Code 1950, § 45-85.1; 1954, c. 191; 1966, c. 594, § 45.1-87; 1979, c. 315; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.124. Shop and other equipment

A. The following items of shop and other equipment shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices and couplings with protruding bolts or nuts;

2. Shafting and projecting shaft ends that are within seven feet of floor or platform level;

3. Belt, chain or rope drives that are within seven feet of the floor or platform;

4. Fly wheels, provided that fly wheels extending more than seven feet above the floor shall be guarded to a height of at least seven feet;

5. Circular and band saws and planers;

6. Repair pits, provided that guards shall be kept in place when the pits are not in use;

7. Counterweights; and

8. The approach to mine fans shall be guarded.

B. Machinery shall not be repaired or serviced while the machinery is in motion; however, this shall not apply where safe remote devices are used.

C. A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

D. Mechanically operated grinding wheels shall be equipped with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel; and (iii) eyeshields, unless goggles are worn by the miners. Retaining hoods shall include either a device to control and collect excess rock, metal or dust particles, or a device providing equivalent protection to the miners operating such machinery.

E. The operator or his agent shall develop procedures for examining for potential hazards, completing proper maintenance, and properly operating each type of centrifugal pump. The procedures shall, at a minimum, address the manufacturer's recommendations for start-up and shutdown of the pumps, proper actions to be taken when a pump is suspected of overheating, safe location of start and stop switches, and actions to be taken when signs of structural metal fatigue such as cracks in the frame, damaged cover mounting brackets, or missing bolts or other components are detected. All miners who repair, maintain, or operate such pumps shall be trained in these procedures.

Code 1950, § 45-85.3; 1954, c. 191; 1966, c. 594, § 45.1-88; 1978, c. 118; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.125. Hydraulic hoses

All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and installed on automatic displacement hydraulic systems shall have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system (such as a relief valve) or shall meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

1985, c. 612, § 45.1-88.1; 1988, c. 301; 1994, c. 28.

Article 5 - EXPLOSIVES AND BLASTING

§ 45.1-161.126. Surface storage of explosives

A. Separate surface magazines shall be provided for the storage of explosives and detonators.

B. Surface magazines for storing and distributing explosives in amounts exceeding 150 pounds shall be:

1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods;

2. Provided with doors constructed of three-eighth inch steel plate lined with a two-inch thickness of wood, or the equivalent;

3. Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;

4. Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;

5. Provided with properly screened ventilators;

6. Equipped with no openings except for entrance and ventilation;

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded if constructed of metal.

C. Surface magazines for storing detonators need not be bulletproof, but they shall conform to the other provisions of subsection B regarding the storage of explosives.

D. Explosives in amounts of 150 pounds or less or 5,000 detonators or less shall be stored in accordance with preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper or other highly flammable material; nor shall a magazine be placed within 20 feet of a stove, furnace, open fire or flame.

E. Magazines shall be located not less than 300 feet from any mine opening. However, in the event that a magazine cannot be practicably located at such a distance, a magazine may be located less than 300 feet from any mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief, magazines shall not be located closer to occupied buildings, public roads, or passenger railways than allowed in the "American Table of Distances for Storage of Explosive Materials."

F. The supply kept in distribution magazines shall be limited to approximately a 48-hour supply, and such supplies of explosives and detonators may be distributed from the same magazine, if separated by at least a four-inch substantially fastened hardwood partition or equivalent barrier.

G. The area surrounding magazines for not less than 25 feet in all directions shall be kept free of rubbish, dry grass or other materials of a combustible nature.

H. If the explosives magazine is illuminated electrically, vapor-proof lamps shall be installed and wired so as to present minimum fire and contact hazards.

I. Only nonmetallic tools shall be used for opening wooden explosives containers. Extraneous materials shall not be stored with explosives or detonators in an explosives magazine.

Code 1950, § 45-53.2; 1954, c. 191; 1966, c. 594, § 45.1-44; 1978, c. 729; 1994, c. 28; 2005, c. 3.

§ 45.1-161.127. Underground transportation of explosives

A. Explosives or detonators carried anywhere underground by any person shall be in individual containers. Such containers shall be constructed substantially of nonconductive material, maintained in good condition, and kept closed.

B. Explosives or detonators transported underground in cars moved by means of a locomotive or rope, or in shuttle cars, shall be in substantially covered cars or in special substantially covered containers used specifically for transporting detonators or explosives, and only under the following conditions:

1. The bodies and covers of such cars and containers shall be constructed or lined with nonconductive material;

2. If explosives and detonators are hauled in the same explosive car or in the same special container, they shall be separated by at least a four-inch substantially fastened hardwood partition or equivalent barrier;

3. Explosives, detonators, or other blasting devices shall not be transported on the same trip with miners;

4. When explosives or detonators are transported in special cars or containers in cars, they shall be hauled in special trips not connected to any other trip; however, this shall not prohibit the use of such additional cars as needed to lower a rope trip, or to haul supplies including timbers. Materials so transported shall not project above the top of the car. In no case shall flammable materials such as oil or grease be hauled on the same trip with explosives; and

5. Explosives or detonators shall not be hauled into or out of a mine within five minutes preceding or following a man-trip or any other trip. If traveling against the air current, the man-trip shall precede the explosives trip; if traveling with the air current, the man-trip shall follow the explosives trip.

C. In low coal seams where it is impractical to comply with subsection B, explosives may be transported in the original and unopened case, or in suitable individual containers, to the underground distribution magazine.

D. Explosives and detonators shall be transported underground by belt only under the following conditions:

1. They shall be transported in the original and unopened case, in special closed cases constructed of nonconductive material, or in suitable individual containers;

2. Clearance requirements shall be the same as those for transporting miners on belts;

3. Suitable loading and unloading stations shall be provided; and

4. Stop controls shall be provided at loading and unloading points, and an authorized person shall supervise the loading and unloading of explosives and detonators.

E. Neither explosives nor detonators shall be transported on flight or shaking conveyors, scrapers, mechanical loading machines, locomotives, cutting machines, drill trucks, or any self-propelled mobile equipment; however, this shall not prohibit the transportation of explosives or detonators in special closed containers in shuttle cars or in equipment designed especially to transport such explosives or detonators.

Code 1950, § 45-53.3; 1954, c. 191; 1966, c. 594, § 45.1-46; 1994, c. 28.

§ 45.1-161.128. Underground storage of explosives

A. When supplies of explosives and detonators for use in one or more sections are stored underground, they shall be kept in section boxes or magazines of substantial construction with no metal exposed on the inside. Such boxes or magazines shall be located at least twenty-five feet from roadways and power wires, and in a reasonably dry, well rock-dusted location protected from falls of roof. In pitching beds, where it is not possible to comply with the location requirement, such boxes shall be placed in niches cut into the solid coal or rock.

B. When explosives or detonators are stored in the section, they shall be kept in separate boxes or magazines not less than twelve feet apart if feasible; if kept in the same box or magazine, they shall be separated by at least a four-inch substantially fastened hardwood partition or the equivalent. Not more than a forty-eight-hour supply of explosives or detonators shall be stored underground in such boxes or magazines.

C. Explosives and detonators, kept near the face for the use of workmen, shall be kept in separate individual closed containers, in niches in the rib, not less than twelve feet apart, at least fifty feet from the working place and out of the line of blast. Such containers shall be constructed of substantial material and maintained electrically nonconductive. Where it is physically impracticable to comply with such distance requirements, the explosives and detonator containers shall be stored in the safest available place not less than fifteen feet from any pipe, rail, conveyor, haulage road, or power line, not less than twelve feet apart, and at least fifty feet from the working face and out of line of blast.

D. Explosives and detonators shall be kept in their containers until immediately before use at the working faces.

Code 1950, § 45-53.4; 1954, c. 191; 1966, c. 594, § 45.1-47; 1994, c. 28; 1996, c. 774.

§ 45.1-161.129. Blasting practices; penalty

A. All explosives shall be of the permissible type except where addressed in the plan for shaft and slope development required by § 45.1-161.250 B.

B. All explosives shall be used as follows:

1. Explosives shall be fired only with electric detonators of proper strength;

2. Explosives shall be fired with permissible shot-firing units, unless firing is done from the surface when all persons are out of the mine, or in accordance with a plan approved by the Chief;

3. Boreholes in coal shall not be drilled beyond the limits of the cut where the coal is cut nor into the roof or floor;

4. Boreholes shall be cleaned, and shall be checked to see that they are placed properly and are of correct depth in relation to the cut, before being charged;

5. All blasting charges in coal shall have a burden of at least eighteen inches in all directions if the height of the coal permits;

6. Boreholes shall be stemmed with at least twenty-four inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may approve the use of other stemming devices;

7. Examinations for gas shall be made immediately before firing each shot or group of multiple shots, and after blasting is completed;

8. Shots shall not be fired in any place where a methane level of one percent or greater can be detected with a permissible methane detector;

9. Without approval, charges exceeding one and one-half pounds, but not exceeding three pounds, shall be used only if (i) boreholes are six feet or more in depth; (ii) the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; (iii) all cartridges are in contact with each other, with the end cartridges touching the back of the hole and the stemming, respectively; and (iv) permissible explosives are used; however, the three-pound limit shall not apply to solid rock work;

10. Any solid shooting shall be done in compliance with conditions prescribed by the Chief;

11. Shots shall be fired by a certified underground shot firer;

12. Boreholes shall not be charged while any other work is being done at the face, and the shot or shots shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the miners;

13. Only nonmetallic tamping bars, including a nonmetallic tamping bar with a nonsparking metallic scraper on one end, shall be used for charging and tamping boreholes;

14. The leg wires of electric detonators shall be kept shunted until ready to connect to the firing cable;

15. The roof and faces of working places shall be tested before and after firing each shot or group of multiple shots;

16. Ample warning shall be given before shots are fired, and care shall be taken to ascertain that all miners are in the clear;

17. All miners shall be removed from the working place and the immediately adjoining working place or places to a distance of at least 100 feet and accounted for before shots are fired;

18. Mixed types or brands of explosives shall not be charged or fired in any borehole;

19. Adobe (mudcap) or other open, unconfined shots shall not be fired in any mine except those types approved by the Mine Safety and Health Administration and the Chief;

20. Power wires and cables that could contact blasting cables or leg wires shall be de-energized during charging and firing;

21. Firing shots from a properly installed and protected blasting circuit may be permitted by the Chief;

22. No miner shall return, or shall be allowed to return, to the working place after the firing of any shot or shots until the smoke has reasonably cleared away;

23. Before returning to work and beginning to load coal, slate or refuse, a miner shall make a careful examination of the condition of the roof and do what is necessary to make the working place safe; and

24. An examination for fire shall be made of the working area after any blasting.

C. It shall be unlawful for an operator, his agent, or mine foreman to cause or permit any solid shooting to be done without first having obtained a written permit from the Chief. It shall be unlawful for any miner to shoot coal from the solid without first obtaining permission to do so from the operator, his agent, or mine foreman. A violation of this subsection is a Class 1 misdemeanor.

Code 1950, §§ 45-53.1, 45-53.5; 1954, c. 191; 1966, c. 594, § 45.1-48; 1978, c. 729; 1981, c. 179; 1984, c. 229; 1993, c. 442; 1994, c. 28; 1999, c. 256.

§ 45.1-161.130. Blasting cables

Blasting cables shall be:

1. Well insulated and as long as may be necessary to permit the shot firer to get in a safe place around a corner;

2. Short-circuited at the battery end until ready to attach to the blasting unit;

3. Staggered as to length or the ends kept well separated when attached to the detonator leg wires; and

4. Kept clear of power wires and all other possible sources of active or stray electric currents.

Code 1950, § 45-53.6; 1954, c. 191; 1966, c. 594, § 45.1-49; 1994, c. 28.

§ 45.1-161.131. Misfires

A. Where misfires occur with electric detonators, a waiting period of at least fifteen minutes shall elapse before a miner shall be allowed to return to the shot area. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

B. Explosives shall be removed by firing a separate charge at least two feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

C. A very careful search of the working place, and, if necessary, of the coal shall be conducted after the coal reaches the tipple after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall be directly supervised by the mine foreman or a certified person designated by him.

Code 1950, § 45-53.7; 1954, c. 191; 1966, c. 594, § 45.1-50; 1994, c. 28.

§ 45.1-161.132. Explosives and blasting practices in shaft and slope operations

A. Blasting areas in shaft or slope operations shall be covered with mats or materials when the excavations are too shallow to retain the blasted material.

B. If explosives are in the shaft or slope when an electrical storm approaches, all miners shall be removed from such working places until the storm has passed.

1978, c. 729, § 45.1-53.1; 1994, c. 28.

Article 6 - TRANSPORTATION

§ 45.1-161.133. Haulage roads

A. The roadbed, rails, joints, switches, frogs and other elements of the track of all haulage roads shall be constructed, installed and maintained in a manner that ensures their safe operation. In determining their safety, consideration shall be given to the speed of equipment, and type of haulage operations conducted on the haulage roads.

B. Haulage tracks shall be kept free of accumulations of coal spillage and debris and water shall not be allowed to accumulate over the top of the rail.

C. Off-track haulage equipment operators shall observe haulage roads for hazardous conditions during the course of travel and shall promptly correct or report to the mine foreman any hazardous condition observed.

D. Off-track haulage roads shall be maintained reasonably free of bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling off-track equipment difficult, and accumulations of water over such areas of haulage roads and in such depths that water could enter electrical panels and create potentially hazardous conditions.

E. Uninsulated trolley lines shall not be used or installed in underground coal mines without approval of the Chief.

Code 1950, § 45-69.4; 1954, c. 191; 1966, c. 594, § 45.1-70; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2011, cc. 826, 862.

§ 45.1-161.134. Track switches and rails

A. All track switches shall be provided with properly installed throws, latches, and bridle bars.

B. All track switches, other than those in rooms and in entry development, shall be equipped with properly installed guardrails.

C. All switch throws and stands shall be installed on the side of the track where clearance is provided.

D. Rails shall be secured at all joints by plates or welds.

Code 1950, §§ 45-69.1, 45-69.4; 1954, c. 191; 1966, c. 594, §§ 45.1-70, 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1999, c. 256.

§ 45.1-161.135. Clearance on haulage roads

A. Track haulage roads in entries, rooms, and crosscuts shall have a continuous clearance on one side of at least 24 inches from the farthest projection of moving traffic. The clearance shall be kept free of any obstruction to a height permitted by the height of the coal seam. When not possible to maintain such clearance, close clearance signs shall be posted inby and outby the affected area.

B. Track haulage roads in entries, rooms, and crosscuts shall have a continuous clearance, on the side opposite the clearance required by subsection A, of at least six inches from the farthest projection of moving traffic. When not possible to maintain such clearance, close clearance signs shall be posted inby and outby the affected area.

C. Haulage roads where trolley lines are used shall have the clearance required by subsection A on the side of the track opposite the trolley lines. This requirement shall not apply where the trolley lines are 6 1/2 feet or more above the rail.

D. The clearance space on all track haulage roads shall be kept free of loose rock, loose coal, supplies, and other loose materials. If the clearance space exceeds 24 inches, not more than 24 inches of the clearance space shall be required to be kept free of such materials.

E. All parallel tracks shall be installed so as to provide a clearance of at least 24 inches between the outermost projections of passing traffic.

F. Ample clearance shall be provided (i) at conveyor loading heads, (ii) at conveyor control panels, and (iii) along conveyor lines.

G. Belt conveyors shall be equipped with control switches to automatically stop the driving motor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

Code 1950, §§ 45-14.1, 45-69.5; 1954, c. 191; 1966, c. 594, §§ 45.1-71, 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.136. Conveyor crossings

Suitable facilities for crossing conveyors shall be provided where it is necessary for miners to cross conveyors regularly.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. 28.

§ 45.1-161.137. Shelter holes

A. Track haulage roads shall have shelter holes at intervals not to exceed the interval permitted for crosscuts. Except at points where more than six feet of side clearance, measured from the rail, is maintained and at room switches, shelter holes shall be provided at manually operated doors and at switch throws.

B. Except for shelter holes at underground slope landings where men pass and cars are handled, (i) the depth of shelter holes shall not be less than five feet, (ii) the width of shelter holes shall not be greater than four feet unless a room neck or crosscut width exceeding four feet is used as a shelter hole, and (iii) height of shelter holes shall not be less than six feet or, if the height of the traveling space is less than six feet, as high as the traveling space.

C. Shelter holes at underground slope landings where men pass and cars are handled shall be at least (i) ten feet in depth, (ii) four feet in width, and (iii) six feet in height.

D. Shelter holes shall be kept free of refuse, loose roof, and other obstructions.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. 28.

§ 45.1-161.138. Refuge from moving traffic

Upon the approach of moving traffic, miners not engaged in haulage operations shall take refuge in shelter holes or other places of safety.

Code 1950, § 45-69.5; 1954, c. 191; 1966, c. 594, § 45.1-71; 1994, c. 28.

§ 45.1-161.139. Inspection of underground equipment

Once a week or more often if necessary, the mine foreman or a certified person shall inspect electrical and diesel transportation equipment to assure its safe operating condition. Such equipment located on the surface shall be inspected as often as necessary but at least monthly. Such person shall correct any defect found during the inspection. A record of such examination shall be maintained.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. 28; 1996, c. 774.

§ 45.1-161.140. Maintenance of equipment

Locomotives, mine cars, shuttle cars, supply cars, conveyors, self-propelled mobile equipment, and all other equipment shall be maintained in a safe operating condition.

Code 1950, § 45-69.3; 1954, c. 191; 1966, c. 594, § 45.1-72; 1994, c. 28; 1999, c. 256.

§ 45.1-161.141. Self-propelled equipment

A. All self-propelled mobile transportation and haulage equipment for use underground shall be equipped with safe seating facilities for the person operating the equipment unless equipped for remote control operation. Where seating facilities are provided on self-propelled mobile equipment, the person operating such equipment shall be seated before the equipment is put into motion.

B. All track-mounted equipment shall be equipped with proper lifting devices, for the rerailing of such equipment.

C. An audible warning device and headlights shall be provided on each locomotive, shuttle car and any other self-propelled mobile transportation and haulage equipment.

D. A trip light capable of being seen for at least 300 feet underground shall be used on the rear of trips pulled and on the front of pushed trips and trips lowered in slopes; however, trip lights need not be used where locomotives are used on each end of a trip.

E. Effective means, including but not limited to trailing locomotives, slides, skids or drags shall be used during track haulage to ensure safe control is maintained when grades create a potential hazard.

F. Where block signals are used, procedures shall be established in writing to safely control traffic movement within the system and shall be posted and reviewed with all mine personnel.

Code 1950, §§ 45-69.1, 45-69.3; 1954, c. 191; 1966, c. 594, §§ 45.1-72, 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.142. Pushing cars

Pushing cars on main haulage roads shall be prohibited except (i) where necessary to push cars from sidetracks located near the working section to the producing entries and rooms, (ii) where necessary to clear switches and sidetracks, and (iii) on the approach to cages, slopes and surface inclines. However, where rail transportation systems are utilized and it becomes necessary to routinely push cars, the operator shall develop procedures for coordination and control of rail traffic, such as provisions of effective trip lights or other warning devices, and other safety precautions specific to the mine. These procedures shall be subject to approval of the Chief.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774.

§ 45.1-161.143. Transportation of material

A. Equipment or material being transported shall be loaded in a manner to protect the operator and other personnel from sliding equipment or material.

B. Materials and supplies not necessary for the operation of self-propelled mobile equipment shall not be transported on such equipment, except for when the mobile equipment is designed to carry such materials or supplies and a hazard is not created. Only small hand tools and supplies which

do not create hazards may be transported in the same compartment of personnel carriers where miners are seated.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1999, c. 256.

§ 45.1-161.144. Securing cars

A. Standing cars on any track, unless held effectively by brakes, shall be properly blocked or spragged.

B. Positive-acting stopblocks or derails shall be used where necessary to protect miners from danger of runaway rail equipment. Derails shall be located where grades at the entrance and other locations in the mine create potential collision hazards.

C. Safety chains, steel ropes, or other effective devices capable of holding the load shall be used to prevent runaway man-trip or other supply cars.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.145. Riding on cars

A. No person other than the motorman and trip rider shall ride on a locomotive, unless authorized by the mine foreman.

B. No person shall ride on loaded cars or between cars of any trip.

C. No person shall get on or off moving locomotives or cars being moved by locomotives.

D. No person shall be allowed to ride on top of self-propelled mobile equipment.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774.

§ 45.1-161.146. Back-poling

Back-poling shall be prohibited except (i) at places where the trolley pole cannot be reversed or (ii) when going up extremely steep grades. In all circumstances, back-poling shall occur only at very slow speed.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28.

§ 45.1-161.147. Operation of equipment

A. Operators of self-propelled haulage equipment shall face in the direction of travel except when the equipment is being loaded and is under the boom of the loading equipment.

B. Track haulage cars which require coupling and uncoupling shall be equipped with automatic couplers or devices designed to allow coupling and uncoupling without exposing miners between equipment. Specialty cars designed with safe clearance when connecting to other cars are excluded from the provisions of this subsection.

C. Persons operating self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching curves, sidetracks, doors, curtains, manway crossings, or any other place where persons are or are likely to be.

D. All rail equipment shall be operated at speeds which are safe for the condition of the rail installation, grades and clearances encountered. When rail equipment is being operated at normal safe speeds, a distance of 300 feet shall be maintained from the rear of other rail equipment in operation except trailing locomotives that are an integral part of the trip.

E. All persons shall stand in the clear during switching operations.

F. No two pieces of self-propelled mobile mining equipment traveling in opposite directions inside a coal mine shall be allowed to pass each other while both are in motion on the same haulage road unless a minimum of 24 inches is maintained between the vehicles.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.148. Dispatchers

Where a dispatcher is employed to control trips, traffic under his jurisdiction shall be moved only at his direction. The dispatcher shall be stationed on the surface at the mine.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28.

§ 45.1-161.149. Availability of man-trips

The operator or his agent shall maintain a man-trip or other equipment suitable for providing reasonable access within a reasonable time to areas of the mine where miners are working and where transportation is ordinarily provided. The suitability of the equipment, and the reasonableness of the time required to reach such areas of the mine, shall be determined by the Chief.

1994, c. 28.

§ 45.1-161.150. Man-trips

A. Man-trips operated by means of locomotives shall be pulled and at safe speeds consistent with the condition of roads and type of equipment used, and shall be so controlled that they can be stopped within the limits of visibility.

B. Each man-trip shall be under the charge of an authorized person and shall be operated independently of any loaded trip.

C. Man-trips shall be maintained in safe operating condition, and in sufficient number to prevent becoming overloaded.

D. No person shall ride under a trolley wire other than in suitably covered man-cars. Covered man-cars shall not be required under trolley wires that are guarded or positioned in accordance with subsection F of § 45.1-161.187.

E. Other than small hand tools carried on the person, supplies or tools shall not be transported in the same car or cage with miners on any man-trip, except in special compartments in such cars.

F. Miners shall not board or leave moving man-trip cars. Miners shall remain seated while in moving cars, and shall proceed in an orderly manner to and from man-trips.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.151. Man-trip loading and unloading areas

A. Areas used regularly for loading or unloading man-trips or man-cages shall be kept clear, free of obstructions, and with ample clearance for moving equipment. Miners shall remain in such area until the man-trip or man-cage is ready to load.

B. Trolley and power wires shall be guarded effectively at areas where persons regularly load or unload from man-trips or man-cages where there is a possibility of any person coming in contact with energized electric wiring while boarding or leaving the man-trip.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.152. Transporting miners by belts

A. When belts are used for transporting miners, such belts shall be free of loose materials, and a minimum clearance of at least eighteen inches shall be maintained between the belt and the roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring, and other objects. Belts used for transporting miners shall be equipped with emergency stop cords for their entire length.

B. The belt speed shall not exceed (i) 250 feet per minute while miners are being transported where the clearance between the belt and overhead roof or projections is between eighteen inches and twenty-four inches and (ii) 300 feet per minute where the overhead clearance is twenty-four inches or more. The use of conveyor belts to transport miners shall be prohibited if the clearance between the belt and overhead is less than eighteen inches. Such belt shall be stopped while miners are boarding or leaving.

C. The space between miners riding on a belt line shall be not less than five feet.

D. Adequate clearance and proper illumination shall be provided where miners board or leave conveyor belts.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. 28; 1996, c. 774; 1999, c. 256.

Article 7 - HOISTING

§ 45.1-161.153. Hoisting equipment

A. All hoists used for handling men shall be equipped with overspeed, overwind, and automatic stop controls.

B. All suspended work decks and platforms (i) shall operate automatically, (ii) shall be equipped with guardrails capable of protecting men and materials from accidental overturning, and (iii) shall be equipped with safety belts and such other protective devices as the Chief shall require by regulation.

C. Any platform or work deck used for transporting miners or materials shall be equipped with leveling indicators and such conveyance shall be maintained and operated in a reasonably level position at all times.

D. Slope, shaft, or surface incline hoists shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft or slope or on the incline.

E. An accurate and reliable indicator showing the position of the cage or trip shall be placed so as to be in clear view of the hoisting engineer, unless the position of the car or trip is clearly visible to the hoisting engineer or other person operating the equipment at all times.

F. Any conveyance used to haul miners or materials within a shaft or slope (i) shall be designed to prevent materials from falling back into the shaft or slope and (ii) shall be equipped with a retaining edge of not less than six inches to prevent objects from falling into the shaft or slope.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. 28.

§ 45.1-161.154. Hoisting ropes

A. Hoisting ropes on all cages or trips shall be adequate in size to handle the load and have a proper factor of safety. Ropes used to hoist or lower coal and other materials shall have a factor of safety of not less than five to one; ropes used to hoist or lower miners shall have a factor of safety of not less than 10 to one.

B. The hoisting rope shall have at least three full turns on the drum when extended to its maximum working length. The rope shall make at least one full turn on the drum shaft or around the spoke of the drum, in case of a free drum, and be fastened securely by means of clamps.

C. The hoisting rope shall be fastened to its load by a spelter-filled socket or by a thimble and adequate number of clamps properly spaced and installed.

D. Any cage, man-car, or trip used for hoisting or lowering men with a single rope shall be provided with two bridle chains or wire ropes connected securely to the rope at least three feet above the socket or thimble and to the crosspiece of the cage or to the man-car or trip. Multiple hoisting ropes installed according to subsection C may be used in lieu of two bridle chains.

E. When equipment or supplies are being hoisted or lowered in the slope, safety chains or wire ropes shall be provided and connected securely to the hoist rope. In addition, visible or audible warning devices shall be installed in the slope where they may be seen or heard by persons approaching the slope track entry from any access.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-89.1; 1972, c. 784; 1978, c. 729; 1983, c. 111; 1994, c. 28; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.155. Hoisting cages

A. Cages used for hoisting miners shall be of substantial construction and shall have (i) adequate steel bonnets, with enclosed sides; (ii) gates, safety chains, or bars across the ends of the cage when men are being hoisted or lowered; and (iii) sufficient handholds or chains for all men on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when miners are transported thereon.

B. The floor of the cage shall be constructed so that it will be adequate to carry the load and so that it will be impossible for a miner's foot or body to enter any opening in the bottom of the cage.

C. Cages used for hoisting miners shall be equipped with safety catches that act quickly and effectively in case of an emergency. The provisions of this subsection shall not apply to capsules or buckets used for emergency escape or used during slope or shaft sinking.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, § 45.1-69; 1978, c. 729; 1994, c. 28; 1997, c. 293.

§ 45.1-161.156. Slope and shaft conditions

A. All shafts shall be equipped with safety gates at the top and at each landing. Safety gates shall be kept closed except when the cage is being loaded or unloaded.

B. Positive-acting stopblocks or derails shall be installed near the top and at intermediate landings of slopes and surface inclines and at the approaches to all shaft landings.

C. Positive-acting stopblocks or derails shall be installed on the haulage track in the slope near the top of the slope. The stopblocks or derails shall be in a position to hold or stop any load, including heavy mining equipment, to be lowered into the mine until such time as the equipment is to be lowered into the mine by the hoist.

D. At the bottom of each hoisting shaft and at intermediate landings, a runaround shall be provided for safe passage from one side of the shaft to the other. This passageway shall be not less than five feet in height and three feet in width.

E. Ice shall not be permitted to accumulate excessively in any shaft where miners are hoisted or lowered.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-69, 45.1-89.1; 1978, c. 729; 1983, c. 111; 1994, c. 28; 1996, c. 774; 2005, c. 3.

§ 45.1-161.157. Signaling; signal code

A. Two independent means of signaling shall be provided between the top, bottom, and all intermediate landings of shafts, slopes, and surface inclines and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer or other person operating the

equipment. Bell cords shall be installed in shafts in such a manner as to prevent unnecessary movement of such cords within the shaft.

B. A uniform signal code approved by the Chief shall be in use at each mine and shall be at the cage station designated by the mine foreman.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, § 45.1-69; 1978, c. 729; 1994, c. 28.

§ 45.1-161.158. Inspections of hoisting equipment

A. Before hoisting or lowering miners in a shaft, the hoisting engineer shall operate empty cages up and down each shaft at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more.

B. Before hoisting or lowering miners in slope and surface incline hoisting, the hoisting engineer shall operate empty cages at least one round trip at the beginning of each shift and after the hoist has been idle for one hour or more.

C. The hoisting engineer, at the time the inspections required by subsections A and B are performed, shall (i) inspect all cable or rope fastenings at all cages, buckets, or slope cars; (ii) inspect hammer locks and pins, thimbles, and clamps; (iii) inspect safety chains on buckets, cage or slope cars; (iv) inspect the braking system for malfunctions; (v) clean all excess oil and extraneous materials from the hoist housing construction; (vi) inspect the overwind, overtravel, and lilly switch or control from stopping at the collar and within 100 feet of the work deck; and (vii) check communications between the top house, work deck and work deck tugger house.

D. Hoisting rope on all cages or trips shall be inspected at the beginning of each shift by the hoisting engineer.

E. A test of safety catches on cages shall be made at least once each month. A written record shall be kept of such tests, and such record shall be available for inspection by interested persons.

F. Hoisting equipment including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities shall be inspected daily by an authorized person designated by the operator. Such person shall also inspect all bull wheels and lighting systems on the head frame. Such person shall report immediately to the operator, or his agent, any defects found, and any such defect shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be available for inspection by interested persons. If a hoist is used only during a weekly examination of an escapeway, then the inspection required by this subsection shall only be required to be completed weekly before the examination occurs.

G. Subsections A, B, C, and D shall not apply to automatically operated elevators.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. 28; 1999, c. 256.

§ 45.1-161.159. Hoisting engineers

A. A certified hoisting engineer shall be either on duty continuously, or available within a reasonable time as determined by the Chief, to provide immediate transportation while any person is underground, where miners are transported into or out of underground areas of a mine by hoists or on surface inclines.

B. When miners are being hoisted or lowered in shafts, slopes, or on surface inclines, the loading and unloading of miners and movement of the cage, car, or trip shall be under the direction of an authorized person.

C. Subsections A and B shall not apply to automatically operated elevators that can be safely operated by any miner; however, a person qualified as an automatic elevator operator shall be available at such elevators within a reasonable time as determined by the Chief.

D. No operator, or his agent, of any mine worked by shaft, slope or incline shall place in charge of any engine or drum used for lowering or hoisting miners any but competent and sober hoisting engineers. No hoisting engineer in charge of such machinery shall allow any person, except such as may be designated for such purpose by the operator, or his agent, to interfere with any part of the machinery. No person shall interfere with or intimidate the hoisting engineer or automatic elevator operator in the discharge of his duties.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-21, 45.1-68, 45.1-69; 1972, c. 784; 1976, c. 598; 1978, cc. 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 1999, c. 256.

§ 45.1-161.160. Operations of hoisting equipment

A. The speed of the cage, car, or trip in shafts, slopes, or on surface inclines shall not exceed 1,000 feet per minute when miners are being hoisted or lowered.

B. When moving the platform or work deck, all miners traveling thereon shall have safety belts secured.

C. No person shall ride on a loaded cage.

D. The number of persons riding in any cage or car at one time shall not exceed the maximum prescribed by the manufacturer. The Chief may prescribe a lesser number when necessary to ensure the safety of miners being transported.

E. Conveyances being lowered into a shaft in which miners are working shall be stopped at least twenty feet above the area where such miners are working.

F. Whenever miners are working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least twenty feet in length.

G. All chokers and slings used to transport materials within a shaft or slope shall meet specifications established by the United States of America Standards Institute.

Code 1950, § 45-68.4; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-69; 1972, c. 784; 1978, c. 729; 1994, c. 28; 1996, c. 774.

§ 45.1-161.161. Maintenance of hoisting equipment

Hoists, ropes, cages, and other hoisting equipment shall be maintained in a safe operating condition. Hoisting ropes shall be replaced as soon as there is evidence of possible failure.

Code 1950, §§ 45-68.4, 45-69.3; 1954, c. 191; 1966, c. 594, §§ 45.1-68, 45.1-72; 1972, c. 784; 1978, c. 729; 1994, c. 28.

Article 8 - MINE OPENINGS AND ESCAPEWAYS

§ 45.1-161.162. Mine openings

A. Except as provided in § 45.1-161.164, there shall be at least two travel ways, entries, or openings to the surface from each section of a mine worked. All longwall panels shall be developed with at least three entries; however, if new technology becomes available pursuant to which two-entry systems may be safely developed, such technology may be used, with the approval of the Chief.

B. One of the required travel ways may be the haulage road.

C. The first opening shall not be made through an adjoining mine. The second opening may be made through an adjoining mine.

D. One of the required travel ways shall be designated as the primary escapeway and shall be in intake air.

E. After July 1, 1999, new surface structures where miners congregate or where the mine map or other official records are kept at the mine shall be offset not less than fifteen feet from the nearest side of any mine opening, or otherwise located to be out of the direct line of possible forces coming out of the mine should an explosion occur, unless otherwise approved by the Chief.

Code 1950, §§ 45-71, 45-71.1; 1954, c. 191; 1966, c. 594, §§ 45.1-94, 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.163. Separation of openings

A. In drift or slope mines, openings shall be separated by not less than 50 feet of natural strata, unless specifically approved in the roof control plan. All connections between openings not used for the coursing of air, travel, or haulage shall be closed with stoppings of fireproof material.

B. In shaft mines, openings shall be separated by not less than 200 feet of natural strata.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. 28; 2005, c. 3.

§ 45.1-161.164. Number of miners in openings

Until the two travel ways are made as required by § 45.1-161.162, not more than twenty miners shall work underground in the mine at one time. No additional development shall be permitted until the connection is made to the second opening. In mines where final pillar removal operations necessitate closing the second opening, not more than twenty miners shall be permitted to work in the mine.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. 28; 1996, c. 774.

§ 45.1-161.165. Maintenance of mine openings

Mine openings that are used for entering and leaving the mine and other required travelways shall be kept in good condition and shall at all times be maintained in a safe condition.

Code 1950, § 45-71; 1954, c. 191; 1966, c. 594, § 45.1-94; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.166. Signs, life lines, and equipment

A. Direction signs shall be posted conspicuously at all points where the travel way to the mine opening, escapeway, or escapement shaft is intercepted by other travel ways. The signs shall indicate the direction of the place of exit, manways, and escapeways.

B. Continuous life lines shall be installed and maintained in accordance with the approved emergency response plan pursuant to subsection A of § 45.1-161.202.

C. Escapeways shall be equipped with all necessary stairways, ladders, cleated walkways, or other equipment approved by the Chief. All equipment shall be installed in such manner that persons using it in emergencies may do so quickly and without undue hazard.

Code 1950, §§ 45-71, 45-71.1; 1954, c. 191; 1966, c. 594, §§ 45.1-94, 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. 28; 1996, c. 774; 2011, cc. 826, 862.

§ 45.1-161.167. Examination of escapeways

The mine foreman shall examine all escapeways for hazardous conditions at least once per week. The mine foreman shall mark his initials and the date at the places examined, and if hazardous conditions are found they shall be reported promptly. A record of these examinations and tests shall be kept at the mine.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-65; 1978, c. 120; 1994, c. 28; 1996, c. 774.

§ 45.1-161.168. Longwall escape routes and plan

A. The operator of any mine which uses longwalls as a method of mining shall maintain an accessible travel route off the tailgate end of the longwall working face. He shall familiarize all miners working on the longwall section with the procedures to follow for escape from the section, and shall also inform these miners at any time during which the travel route is impassable.

B. The operator shall develop a plan for use if the travel route becomes impassable. The plan shall address (i) notification of miners that the travel way is blocked and of the method and timetable for reestablishment of the travel way, (ii) re-instruction of miners regarding escapeways and

escape procedures in the event of an emergency, (iii) re-instruction of miners on the availability and use of self-contained self-rescue devices, (iv) monitoring and evaluation of the air entering the longwall section, (v) location and effectiveness of the two-way communication systems, and (vi) a means of transportation from the longwall section to the main line. The plan provisions shall remain in effect until a travel way is reestablished on the tailgate side of a longwall section. Such an operation shall include provisions for such protective devices as fire extinguishers and respirators for miners working on the longwall section.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. 28; 1996, c. 774.

§ 45.1-161.169. Fire protection

A. Shafts and partitions therein shall be as nearly fireproof as is practicable.

B. Where there is danger of fire entering the mine, openings shall have adequate protection against surface fires or hazardous volumes of smoke entering the mine.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. 28; 1996, c. 774.

§ 45.1-161.170. Unused openings

All unused and abandoned surface openings shall be effectively closed or fenced against unauthorized entrance.

Code 1950, § 45-71.1; 1954, c. 191; 1966, c. 594, § 45.1-95; 1984, c. 228; 1985, c. 395; 1990, c. 372; 1992, c. 360; 1994, c. 28; 1999, c. 256.

Article 9 - ILLUMINATION

§ 45.1-161.171. Portable illumination

A. All miners underground shall use only permissible electric cap lamps that are worn on the person for portable illumination.

B. Light bulbs on extension cables shall be guarded adequately.

C. The requirement of subsection A shall not preclude the use of other type of permissible electric lamps, permissible flashlights, permissible safety lamps, or any other permissible portable illumination device.

Code 1950, § 45-33; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-96; 1978, c. 120; 1982, c. 385; 1994, c. 28.

§ 45.1-161.172. Underground illumination

A. Electric-light wires shall be supported by suitable insulators or installed in conduit, fastened securely to the power conductors and shall not contact combustible materials.

B. Electric lights shall be guarded and installed so that they do not contact combustible materials.

Code 1950, § 45-82.6; 1954, c. 191; 1966, c. 594, § 45.1-86; 1994, c. 28; 2005, c. 3.

§ 45.1-161.173. Inspection of electric illumination equipment

All lamps, extension lights and permissible portable illumination such as cap lamps and flashlights that are used for personal illumination underground shall be inspected by an authorized person at least once per week, and more often if necessary, to ensure safe operating conditions. Such equipment located at the surface shall be inspected by an authorized person at least once per month, and more often if necessary, to ensure safe operating conditions. Any defect found shall be corrected.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. 28; 1999, c. 256.

Article 10 - PERSONAL SAFETY; SMOKING

§ 45.1-161.174. Checking system; tracking system

A. Each mine shall have a personnel checking system containing the following:

1. Every person underground shall have on his person means of positive identification bearing a number recorded by the operator;

2. An accurate record of the persons in the mine shall be kept on the surface in a place that will not be affected by an explosion;

3. The record shall consist of a written record, check board, lamp check, or time-clock record; and

4. The record shall bear a number identical to that carried by the person underground.

B. Mine-wide tracking systems shall be maintained in useable and operative conditions.

Code 1950, § 45-70; 1954, c. 191; 1966, c. 594, § 45.1-97; 1994, c. 28; 2015, cc. 103, 397.

§ 45.1-161.175. Protective clothing

A. All miners shall wear protective hats while underground and while in those areas on the surface where there is a danger of injury from falling objects.

B. Every person assigned to or performing duties on the surface of an underground mine, or any person entering the underground portion of the mine, shall wear reflective materials adequate to be visible from all sides. The reflective material shall be placed on hard hats and at least one other item of outer clothing such as belts, suspenders, jackets, coats, coveralls, shirts, pants, or vests.

C. Protective footwear shall be worn by miners while on duty in and around a mine where falling objects may cause injury.

D. All employees inside or outside of mines shall wear approved-type goggles or shields where there is a hazard from flying particles.

E. Welders and helpers shall use proper shields or goggles to protect their eyes.

F. Miners engaged in haulage operations and miners employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

G. Gloves shall be worn when material which may injure the hands is handled. Gloves with gauntlet cuffs shall not be worn around moving equipment. Gloves shall be worn when handling energized cables.

H. Miners exposed for short periods to hazards from inhalation of gas, dust, fumes, and mist shall wear approved respiratory equipment. When the exposure is for prolonged periods, adequate approved measures to protect miners or to reduce the hazard shall be taken.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. 28; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.176. Noise levels and ear protection

Approved hearing protection shall be provided to miners by the mine operator. Miners shall wear approved hearing protection in areas of excess noise levels in accordance with the mine's hearing conservation program approved under 30 CFR Part 62.

1978, c. 729, § 45.1-99.1; 1994, c. 28; 2005, c. 3.

§ 45.1-161.177. Smoking materials prohibited; penalty

A. No miner or other person shall smoke or carry or possess underground any smoker's articles or matches, lighters, or similar materials generally used for igniting smoker's articles. Any person convicted of a violation of this subsection shall be guilty of a Class 6 felony.

B. The operator shall institute a smoker search program, approved by the Chief, to ensure that any person entering the underground area of the mine does not carry smoking materials, matches, or lighters.

C. Any person entering or present in any underground area of a coal mine shall, by his entry into the underground area of the mine, be subject to a search of his person, such of his personal property as may be in any underground area of the mine at any time he is underground, or both. Such search shall be conducted at the direction of the Chief by employees of the Department. It shall be limited in scope to the person and property of the persons present underground at the time of the search and shall be for the purpose of enforcing the provisions of this section.

D. This section shall not prohibit the possession of equipment used solely for the operation of flame safety lamps or for welding or cutting.

1993, c. 389, § 45.1-98.1; 1994, c. 28; 1995, c. 569.

§ 45.1-161.178. Allowing persons to work in a mine with smoker's articles; penalty

A. No operator, agent, or mine foreman shall knowingly permit any person in an underground coal mine to smoke, carry or possess any smoker's articles or materials used for igniting smoker's articles.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 389, § 45.1-98.3; 1994, c. 28.

§ 45.1-161.179. Posting of notice

The operator, or his agent, shall display, in bold-faced type, on a sign placed at the mine office, bath house, and on a bulletin board at the mine site, the following notice:

NOTICE

IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR PRESENT IN THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT OF MINES, MINERALS AND ENERGY FOR SUCH PROHIBITED SMOKER MATERIALS AT ANY TIME WHILE UNDERGROUND.

1993, c. 389, § 45.1-98.2; 1994, c. 28; 1995, c. 569.

§ 45.1-161.180. Smoking in surface and other areas

A. No miner or other person shall smoke, carry or possess any smoker's articles, or carry an open flame in or near any magazine for the storage of explosive materials.

B. No miner or other person shall smoke in or around oil houses, tipples, and other surface areas where such practice may cause a fire or explosion.

Code 1950, §§ 45-53.2, 45-85.9; 1954, c. 191; 1966, c. 594, §§ 45.1-39, 45.1-44; 1978, c. 729; 1994, c. 28.

Article 11 - ELECTRICITY

§ 45.1-161.181. Surface electrical installations

A. Overhead high-potential power lines shall be placed at least fifteen feet above the ground and twenty feet above driveways, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

B. Surface transmission lines including trolley circuits shall be protected against short circuits and lightning. Each power circuit that leads underground shall be equipped with lightning arrestors within 100 feet of where the circuit enters the mine.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

Code 1950, §§ 45-82, 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-75; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.182. Surface transformers

A. Surface transformers which are not isolated by elevation of eight feet or more above the ground shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The door to the enclosure or the

gate to the fence shall be kept locked at all times unless persons authorized to enter the gate or enclosure are present.

B. Surface transformers containing flammable oil and installed near mine openings, in or near combustible buildings, or at other places where they present a fire hazard shall be provided with means to drain or to confine the oil in the event of rupture of the transformer casing.

Code 1950, § 45-82.2; 1954, c. 191; 1966, c. 594, § 45.1-76; 1994, c. 28.

§ 45.1-161.183. Underground transformers

All transformers used underground shall be air-cooled or filled with nonflammable liquid or inert gas.

Code 1950, § 45-82.2; 1954, c. 191; 1966, c. 594, § 45.1-76; 1994, c. 28.

§ 45.1-161.184. Stations and substations

A. Suitable danger signs shall be posted conspicuously at all transformer stations.

B. All transformer stations, substations, battery-charging stations, pump stations, and compressor stations shall be kept free of nonessential combustible materials and refuse.

C. Reverse-current protection shall be provided at storage-battery-charging stations to prevent the storage batteries from energizing the power circuits in the event of power failure.

Code 1950, §§ 45-60.4, 45-82.2; 1954, c. 191; 1966, c. 594, §§ 45.1-76, 45.1-77; 1994, c. 28.

§ 45.1-161.185. Repealed

Repealed by Acts 1999, c. 256.

§ 45.1-161.186. Power circuits

A. All underground power wires and cables shall have adequate current-carrying capacity, shall be guarded from mechanical injury, and shall be installed in a permanent manner.

B. Wires and cables not encased in armor shall be supported by well installed insulators and shall not touch combustible materials, roof, or ribs; however, this shall not apply to ground wires, grounded power conductors, and trailing cables.

C. Power wires and cables installed in belt-haulage slopes shall be insulated adequately and buried in a trench not less than 12 inches below combustible material, unless encased in armor or otherwise fully protected against mechanical injury.

D. Splices and repairs in power cables shall be made in accordance with the following:

1. Mechanically strong with adequate electrical conductivity;

2. Effectively insulated and sealed so as to exclude moisture;

3. If the cable has metallic armor, mechanical protection and electrical conductivity equivalent to that of the original armor; and

4. If the cable has metallic shielding around each conductor, then the new shielding shall be equivalent to that of the original shielding.

E. All underground high-voltage transmission cables shall be:

1. Installed only in regularly inspected airways;

2. Covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if installed along the haulage road;

3. Guarded where miners regularly work or pass under them unless they are 6 1/2 feet or more above the floor or rail;

4. Securely anchored, properly insulated, and guarded at ends; and

5. Covered, insulated or placed to prevent contact with trolley circuits and other low-voltage circuits.

F. New high-voltage disconnects installed on all underground electrical equipment shall automatically ground all three power leads when in the open position. All high-voltage disconnects that are rebuilt or remanufactured after July 1, 2011, shall meet this standard.

G. All power wires and cables shall be insulated adequately where they pass into or out of electrical compartments and where they pass through doors and stoppings.

H. Where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet;

2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet; and

3. Track switches on entries shall be well bonded.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.187. Trolley wires and feeder wires

A. Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and shelter holes, except where the wires are guarded or 6 1/2 feet or more above the top of the rail.

B. Trolley-wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.

C. Trolley wires shall be aligned properly and installed on insulated hangers at least six inches outside the rail.

D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at intervals of not more than 1,500 feet and near the beginning of all branch lines.

E. Trolley wires and trolley feeder wires shall be kept taut and not permitted to touch the roof, ribs, timbers or any combustible material.

F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of doors and at all places where it is necessary to work or pass under them, unless they are more than six and one-half feet above the top of the rail.

G. Trolley wires and trolley feeder wires shall not extend beyond any open crosscut between intake and return airways, and shall be kept at least 150 feet from any active, open pillar workings.

H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

I. Trolley wires and trolley feeder wires shall be installed only in intake air.

J. Trolley wires or other exposed conductors shall not carry more than 300 volts.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.188. Grounding

A. All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded effectively.

B. Metallic frames, casing, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. Three-phase alternating current circuits used underground shall contain either a direct or derived neutral which shall be grounded through a suitable resistor at the power center, and a grounding circuit, originating at the grounded side of the grounding resistor, shall extend with the power conductors and serve as the grounding conductor for the frames of all the electrical equipment supplied power from that circuit. Grounding resistors that are manufactured to meet the extended time rating as set forth in IEEE Standard 32-1972, formerly AIEE Standard 32, are deemed to meet the requirements of this section. High-voltage circuits extending underground shall be supplied with a grounding resistor of a proper Ohmic value located on the surface to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. The grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system. All resistance-grounded alternating circuits used underground shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure the continuity of the ground conductor.

1966, c. 594, § 45.1-79; 1994, c. 28; 1999, c. 256; 2011, cc. 826, 862.

§ 45.1-161.189. Circuit breakers and switches

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and power circuits against excessive overload; however, this shall not apply to locomotives operated regularly on grades exceeding five percent. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and circuit breaking devices shall be maintained in safe operating condition.

B. An automatic circuit breaker of correct type and capacity shall be installed on each resistance grounded circuit used underground. Such circuit breaker shall be located at the power source and equipped with devices to provide protection against under-voltage, grounded phase, short circuit and overcurrent.

C. Operating controls, such as switches, starters, and switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

D. Disconnecting switches shall be installed underground in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and at other places where main power circuits enter the mine.

E. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction and installation.

F. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at stationary machinery where shock hazards exist.

G. Circuit breakers, disconnecting devices and switches shall be marked for identification.

Code 1950, § 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-80; 1994, c. 28; 1999, c. 256.

§ 45.1-161.190. Repealed

Repealed by Acts 1996, c. 774, effective April 6, 1996.

§ 45.1-161.191. Communication systems

A. Telephone service or equivalent two-way communication facilities shall be provided between the top and each landing of main shafts and slopes. A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of all main portals, and shall be installed either in a building or in a box-like structure designed to protect the facilities from damage by inclement weather. At least one of these communication facilities shall be at a location where an authorized person who is always on duty when miners are underground can see or hear the facility and respond immediately in the event of an emergency.

B. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and where they cross power or trolley wires, they shall be insulated adequately.

C. Lightning arrestors shall be provided at the points where telephone circuits enter the mine and at each telephone on the surface. Where the telephone circuit enters a building or structure, the lightning arrestor is only required where the circuit enters such building or structure.

D. If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, means shall be provided to permit continued communication in the event the mine electric power fails or is cut off.

E. Communication systems equipped with audible and visual signals that become operative when telephone communication is being established between the phones of the communication station on the surface and the underground working sections shall be provided.

F. The Chief shall promulgate regulations governing any disruption of communication in mines.

Code 1950, § 45-82.4; 1954, c. 191; 1966, c. 594, § 45.1-81; 1978, c. 118; 1979, c. 315; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.192. Repealed

Repealed by Acts 1999, c. 256.

§ 45.1-161.193. Electric equipment

A. Electric equipment taken into or used inby the last open crosscut or in other than intake air shall be permissible equipment.

B. Permissible equipment used in areas specified in subsection A shall be maintained in permissible condition.

C. Electric equipment shall not be taken into or operated in any place where a methane level of one percent or more is detected.

D. Voltage limitations for underground installations of electric equipment using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

E. Electric equipment must be permissible and maintained in a permissible condition when such equipment is located within 150 feet of pillar workings or longwall faces.

F. Electric conductors and cables installed in or by the last open crosscut, or within 150 feet of pillar workings or longwall faces, shall be:

1. Shielded high-voltage cables supplying power to permissible longwall and other equipment;

2. Interconnecting conductors and cables of permissible longwall equipment;

3. Conductors and cables of intrinsically safe circuits; or

4. Cables and conductors supplying power to low and medium voltage permissible equipment.

G. Electric equipment shall be maintained in safe operating condition at all times while it is being used, and any unsafe condition shall be corrected promptly or the equipment shall be removed from service.

Code 1950, § 45-83; 1954, c. 191; 1966, c. 594, § 45.1-83; 1993, c. 442; 1994, c. 28; 1999, c. 256; 2011, cc. 826, 862; 2015, cc. 103, 397.

§ 45.1-161.194. Trailing cables

A. Trailing cables used underground shall be flame-resistant cables.

B. Trailing cables shall be provided with suitable short-circuit protection and means of disconnecting power from the cable. Power connections made in other than intake air shall be by means of permissible connectors.

C. Temporary splices in trailing cables shall be made in a workmanlike manner, mechanically strong, and well insulated.

D. No more than one temporary, unvulcanized splice shall be allowed in a trailing cable.

E. Permanent splices or repairs in trailing cables shall be made as follows:

1. They shall be mechanically strong with adequate electrical conductivity and flexibility;

2. They shall be effectively insulated and sealed so as to exclude moisture;

3. The finished splice or repair shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket; and

4. If the cable has metallic shielding around each conductor, then the new shielding shall be equivalent to that of the original shielding.

F. Trailing cables shall be protected against mechanical damage. Trailing cables damaged in a manner that exposes the insulated inner power conductors shall be repaired promptly or removed from service.

Code 1950, § 45-82.5; 1954, c. 191; 1966, c. 594, § 45.1-84; 1978, c. 118; 1993, c. 442; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.195. Inspection of electric equipment and wiring; checking and testing methane monitors

A. Electric equipment and wiring shall be inspected by a certified person at least weekly if located underground, and at least monthly if located on the surface, and more often if necessary to assure safe operating conditions, and any hazardous condition found shall be promptly corrected or the equipment or wiring shall be removed from service. Records of such examination shall be maintained at the mine for a period of one year.

B. A functional check of methane monitors on electrical face equipment shall be conducted to determine that such monitors are de-energizing the electrical face equipment properly. Such check shall be made on each production shift and shall be conducted by the equipment operator in the presence of a mine foreman, and shall be recorded in the on-shift report of the mine foreman.

C. Weekly calibration tests on methane monitors on electrical face equipment to determine the accuracy and operation of such monitors shall be conducted with a known mixture of methane at

the flow rate recommended by the methane monitor manufacturer. A record of the results shall be maintained.

D. Required methane monitors shall be maintained in permissible and proper operating condition.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.196. Repairs to circuits and electric equipment

No electrical work shall be performed on low-voltage, medium-voltage, or high-voltage distribution circuits or equipment, except by a certified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a certified person. All high-voltage circuits shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons who perform electrical or mechanical work on such circuits or equipment connected to the circuits, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are unavailable, by certified persons authorized by the operator or his agent. However, miners may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves. This section does not prohibit certified electrical repairmen from making checks on or troubleshooting energized circuits or the performance of repairs or maintenance on equipment by authorized persons once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256.

Article 12 - FIRST AID EQUIPMENT; MEDICAL CARE; EMERGENCY MEDICAL SERVICES PERSONNEL

§ 45.1-161.197. First aid equipment

Each mine shall have an adequate supply of first aid equipment as determined by the Chief. Such supplies shall be located on the surface, at the bottom of shafts and slopes, and at other strategic locations near the working faces, as shall be prescribed by the Chief. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof. The supplies shall be available for use of all persons employed in the mine. No first aid material shall be removed or diverted without authorization except in case of injury at the mine.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. 28; 1999, c. 256.

§ 45.1-161.198. Attention to injured persons

A. When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting injured persons to a hospital if necessary.

B. Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the surface of the mine.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. 28; 2005, c. 3.

§ 45.1-161.199. Certified emergency medical services providers

At least one person who is a working coal miner and who holds a valid certificate as an emergency medical services provider issued by the Commissioner of the Department of Health shall be located so as to be available for duty at each mine when miners are working at that mine. Such emergency medical services providers shall be utilized in sufficient numbers to assure that workers in any mine location can be reached by them within such reasonable time as is determined by the Chief. Emergency medical services providers shall have available to them at all times the necessary equipment, as specified by the Chief, for prompt response to emergencies. In the event that at any time there is at any mine an insufficient number of qualified miners volunteering to serve as emergency medical services providers as provided for in this section, the operator may elect to utilize the services of first aid trainees, in such numbers as the Chief determines to be appropriate. Telephone or equivalent facilities shall be installed to provide two-way voice communication between the emergency medical services providers and medical personnel outside the mine.

1977, c. 679, § 45.1-101.1; 1978, c. 94; 1994, c. 28; 2015, cc. 502, 503.

Article 13 - FIRE PREVENTION AND FIRE CONTROL

§ 45.1-161.200. Firefighting equipment; fire prevention

A. Each mine shall be provided with suitable firefighting equipment, adequate for the size of the mine.

B. The following equipment, at a minimum, shall be immediately available at each mine:

1. A water car filled with water and provided with hose and pump, or waterlines and necessary hoses;

2. At least three 20-pound dry chemical fire extinguishers;

3. Ten 50-pound bags of rock dust, available at doors or other strategic places;

4. Bolt cutters which may be used to cut trolley wire in an emergency;

5. One pair of rubber gloves to be used with bolt cutters when cutting trolley wire;

6. Two sledge hammers; and

7. Five hundred square feet of brattice cloth, nails and hammer.

C. Clean dry sand, rock dust, or fire extinguishers, suitable from a toxic and shock standpoint, shall be provided and placed at each electrical station, such as substations, transformer stations and permanent pump stations, so as to be out of the smoke in case of a fire in the station.

D. Suitable fire extinguishers shall be provided at all (i) electrical stations, such as substations, transformer stations, and permanent pump stations; (ii) self-propelled mobile equipment; (iii) belt heads and at the inby end of belts; (iv) areas used for the storage of flammable materials; (v) fueling stations; and (vi) other areas that may constitute a fire hazard, so as to be on the fresh air side in case of a fire.

E. All firefighting equipment and fire sensor systems shall be maintained in a useable and operative condition. Chemical extinguishers shall be examined every six months and the date of the examination shall be indicated on a tag attached to the extinguishers.

F. A sufficient number of approved one-hour self-contained self-rescuers shall be readily available, not more than 100 feet away, for the persons involved in the moving or transporting of any unit of off-track mining equipment.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 1996, c. 774; 2005, c. 3; 2015, cc. 103, 397.

§ 45.1-161.201. Duties in case of fire

A. In case of a fire, the next inby permanent stopping into the return air course shall be opened, as soon as possible, in order to short circuit the air and permit close access to the fire for extinguishment.

B. When a fire that may endanger persons underground cannot be extinguished immediately, the persons shall be withdrawn promptly from the mine.

C. Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28.

§ 45.1-161.202. Emergency response plans; list of next of kin

A. Operators shall develop an emergency response plan for each mine. The plan shall include (i) a mine emergency communication plan, (ii) an evacuation procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the location of escapeways, and (vi) such other information as the Chief may reasonably require.

B. The operator shall maintain a list of the next of kin of all miners employed at the mine. The list shall be kept at the mine site or at a central facility readily accessible to the mine.

C. An emergency response plan shall be subject to approval by the Chief or mine inspector. The Chief may require periodic updates to an operator's emergency response plan. Operators shall comply with the requirements of the approved plan.

D. The emergency response plan shall be posted in a conspicuous manner and place, readily accessible to all miners, underground and at the surface of the mine.

E. The operator shall train miners in the implementation of the emergency response plan and shall conduct practice drills. Records of dates and times of practice drills shall be maintained in the emergency response plan.

F. Each miner employed by the operator who goes underground and each visitor authorized to enter the mine by the operator shall have available an adequate supply of self-rescue devices, each of which provides one hour or longer protection and is approved by the Mine Safety and Health Administration. The training related to self-rescue devices shall be included in the emergency response plan approved by the Chief.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 1996, c. 774; 2006, c. 291.

§ 45.1-161.203. Reporting fires; response

In case of any unplanned fire at a mine not extinguished within thirty minutes of discovery, the operator shall report to the Chief, by the quickest available means, all information known to him. The Chief, based on the information, shall promptly go in person or dispatch a mine inspector to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or the mine inspector shall be final. The decision of the Chief regarding measures to extinguish the fire and protect persons shall have the force of an order issued pursuant to § 45.1-161.91 if delivered to the operator in writing.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 1999, c. 256.

§ 45.1-161.204. Fire prevention in transportation of mining equipment

A. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

B. A record shall be kept of the examinations and shall be made available, upon request, to the Chief or his authorized representative.

C. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.

D. The frames of off-track mining equipment being moved or transported shall be covered on the top and on the trolley wire side with fire-resistant material.

E. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

F. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.

G. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.

H. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the coal seam does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

1. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;

2. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

3. At all times when the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be (i) in direct communication with persons actually engaged in the moving or transporting operation and (ii) capable of communicating with the authorized person on the surface required to be on duty;

4. Where trolley phones are utilized to satisfy the requirements of subdivision 3 of this subsection, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and

5. No person shall be permitted to be inby the unit of equipment being moved or transported, or in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.

The provisions of this subsection shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28.

§ 45.1-161.205. Storage and use of flammable fluids and materials

A. Underground storage places for oil, grease and flammable hydraulic fluid shall be of fireproof construction.

B. Oil, grease and flammable hydraulic fluid kept underground for current use shall be in closed metal containers.

C. Provisions shall be made to prevent accumulation of spilled oil or grease at the storage places or at the locations where such materials are used.

D. Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until removed for disposal.

E. No gasoline, benzene, kerosene or other flammable oils shall be used underground in powering machinery.

F. All oxygen and acetylene bottles used underground shall be secured while in use. When stored underground, oxygen and acetylene bottles shall be placed in a safe location, protected from physical damage, with caps in place where provided for on the tank, and secured upright or elevated, whichever mine heights allow.

Code 1950, §§ 45-14.1, 45-43; 1954, c. 191; 1966, c. 594, §§ 45.1-89, 45.1-90, 45.1-100; 1974, c. 323; 1978, cc. 118, 729; 1981, c. 131; 1984, c. 590, § 45.1-89, c. 639; 1985, c. 500; 1994, c. 28; 1996, c. 774.

§ 45.1-161.206. Diesel powered equipment

Diesel powered equipment may be utilized underground with the written approval of the Chief. The Chief shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall require that the air in each travel way in which diesel equipment is used, and in any active workings connected thereto, be of a quality necessary for a safe, healthful working

environment. The minimum quantity of ventilating air that must be supplied for a permissible diesel machine in a given time shall conform to that shown on the approval plate attached to the machine. All diesel machines and equipment shall be maintained in such manner that the exhaust emissions meet the same standards to which the machine or equipment was manufactured.

Code 1950, § 45-43; 1954, c. 191; 1966, c. 594, § 45.1-90; 1978, c. 729; 1981, c. 131; 1984, c. 639; 1994, c. 28; 1996, c. 774.

§ 45.1-161.207. Arcs, sparks and flames

A. The intentional creation of any open arc, open spark or open flame, except as provided in subsection B, shall be prohibited.

B. Welding and cutting with arc or flame or soldering underground in other than a fireproof enclosure ventilated with intake air shall be done by or under the direct instruction of a certified foreman or repairman. A person certified in gas detection shall test for methane before and during such operations in underground mines and shall make a diligent search for fire after such operation in all mines. Rock dust or suitable fire extinguishers shall be immediately available during such welding or cutting. Welding operations shall be performed only in well ventilated areas.

Code 1950, §§ 45-72, 45-82.7; 1954, c. 191; 1966, c. 594, § 45.1-98; 1978, c. 729; 1993, cc. 389, 442; 1994, c. 28; 1999, c. 256; 2005, c. 3.

Article 14 - VENTILATION, MINE GASES AND OTHER HAZARDOUS CONDITIONS

§ 45.1-161.208. Pre-shift examinations

A. The operator or his agent shall establish eight-hour intervals of time subject to required pre-shift examinations. Within three hours preceding the beginning of any such eight-hour interval during which any person is scheduled to work or travel underground, mine foremen shall make a pre-shift examination. No person scheduled to enter the mine during the eight-hour interval other than the mine foremen conducting the examination may enter any underground area unless a pre-shift examination has been completed for such established eight-hour interval.

B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split, at the following locations which are underground:

1. Track entries and other areas where persons are scheduled to work or travel during the oncoming shift;

2. Belt conveyors that will be used to transport persons during the oncoming shift and the entries in which these belt conveyors are located;

3. Working sections and areas where mechanized mining equipment is being installed or removed, if anyone is being scheduled to work on the section or in the area during the oncoming shift. This includes working places, approaches to worked-out areas, and ventilation controls on these sections or in these areas;

4. Approaches to worked-out areas along intake air courses if intake air passes by the worked-out area to ventilate working sections where anyone is scheduled to work during the oncoming shift;

5. Seals along intake air courses where intake air passes by a seal to ventilate working sections where anyone is scheduled to work during the oncoming shift;

6. Entries and rooms driven more than 20 feet off an intake air course without a crosscut and without permanent ventilation controls, or more than two crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift; and

7. Where unattended diesel equipment is to operate or areas where trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

C. During the pre-shift examination, the mine foreman shall determine the volume of air entering each of the following areas if a miner is scheduled to work in the areas during the oncoming shift:

1. In the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed;

2. On each longwall or shortwall in the intake entry or entries at the intake end of the longwall or shortwall face immediately outby the face and the velocity of air at each end of the face at the locations specified in the approved ventilation plan required by the federal mine safety law; and

3. At the intake end of any pillar line (i) if a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, or (ii) if a split system is used, in the intake entries of each split immediately inby the split point.

D. A mine foreman shall make a pre-shift examination of surface areas of underground coal mines in accordance with the requirements for pre-shift examinations at surface coal mines as provided in § 45.1-161.256.

E. The Chief may require the mine foreman to examine other areas of the mine or examine for other hazards during the pre-shift examination.

F. Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign where anyone entering the area would pass. Only persons designated by the operator, or his agent, to correct or evaluate the condition may enter this posted area.

G. At each working place examined, the mine foreman shall certify by initials, date, and time, that the examination was made. In areas to be examined outby a working section, the mine foreman shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

H. Idle and worked-out areas underground shall be inspected for gas and other hazardous conditions by a mine foreman, immediately before miners are permitted to enter or work in such places. A certified person shall supervise the correction of conditions that create an imminent danger. The mine operator, or his agent, may pass beyond the danger signal only in cases of necessity.

I. Where persons have not been working underground before an established eight-hour interval, no person other than the mine foremen conducting a pre-shift examination may enter the mine until the examination has been completed and the mine foremen report the mine to be clear of danger; however, miners may enter under the direction of a mine foreman for the purpose of making the mine safe. The Chief shall have the authority in certain mines, in his discretion, to authorize man-trips to proceed to a designated station underground, from which they may not pass until the mine foremen report the remainder of the areas of the mine to be clear of danger.

J. Miners regularly employed on a shift during which a pre-shift examination is being conducted shall be permitted to leave or enter the mine in the performance of their duties.

K. In multiple shift operations, certified persons may be used to make the pre-shift examination for the next or succeeding shift.

L. Areas of inactive underground coal mines shall be examined for gas and other hazardous conditions by a mine foreman immediately before miners are permitted to enter such areas to take emergency actions to preserve a mine.

M. In the performance of his duties under this section, the mine foreman shall have no superior officer, and all miners shall be subordinate to him.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-65; 1978, c. 120; 1982, c. 385; 1994, c. 28; 1996, c. 774; 2005, c. 3.

§ 45.1-161.209. On-shift examinations

A. At least once during each shift, and more often if necessary, a certified person shall examine each underground section where coal is produced and any other area where mechanized mining equipment is being installed or removed during the shift. The certified person shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split. Hazardous conditions shall be corrected immediately or the miners shall be withdrawn and the affected area plainly marked with "danger" signs.

B. During each shift that coal is produced, a certified person shall examine for hazardous conditions along each underground belt conveyor entry where a belt conveyor is operated. This examination may be conducted at the same time as the pre-shift examination of the belt conveyors and the belt conveyor entries, if the examination is conducted within three hours before the established eight-hour interval. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

C. Persons conducting the on-shift examination shall determine at the following locations which are underground:

1. The volume of air in the last open crosscut, which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses, of each set of entries or rooms on each working section and areas where mechanized mining equipment is being installed or removed;

2. The volume of air on a longwall or shortwall, including areas where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall;

3. The velocity of air at each end of the longwall or shortwall face at the locations specified in the approved ventilation plan required pursuant to the federal mine safety law; and

4. The volume of air at the intake end of any pillar line (i) where a single split of air is used, in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, or (ii) if a split system is used, in the intake entries of each split immediately inby the split point.

D. A test shall be made for methane before any electrically powered equipment is taken inby the last open crosscut, before blasting, and before work is resumed after blasting. When longwall or shortwall mining systems are used, these methane tests shall be made from under permanent roof support at the shearer, the plow, or cutting head. These methane tests shall be made at least once every 20 minutes or more often as necessary for safety while such equipment is in operation. When mining has been stopped for more than 20 minutes, methane tests shall be conducted prior to the start up of equipment.

E. Idle or worked-out areas underground, including section belts that have been idle for a period of 24 hours, shall be examined by a certified person immediately before miners are permitted to enter or work in such areas. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

F. Daily and on-shift examinations of surface areas of underground coal mines shall be made in accordance with the requirements for daily and on-shift examinations at surface coal mines as provided in § 45.1-161.256.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-60.5, 45-68.1, 45-69.7, 45-83; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-62, 45.1-65, 45.1-83; 1978, c. 120; 1982, c. 385; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.210. Weekly examinations

A. At least every seven days, a mine foreman shall examine unsealed worked-out areas where no pillars have been recovered.

B. At least every seven days, a mine foreman shall evaluate the effectiveness of bleeder systems used under § 45.1-161.220.

C. At least every seven days, a mine foreman shall examine the following locations for hazardous conditions:

1. In at least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

2. In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

3. In each longwall or shortwall travel way in its entirety, so that the entire travel way is traveled.

4. At each seal along return and bleeder air courses and at each seal along intake air courses not examined under § 45.1-161.208.

5. In each escapeway so that the entire escapeway is traveled.

6. On each working section not examined under § 45.1-161.208 during the previous seven days.

D. At least every seven days, a certified person shall:

1. Determine the volume of air entering the main intakes and in each intake split;

2. Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms, in the return of each split of air immediately before it enters the main returns and where the air leaves the main returns; and

3. Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

E. Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons necessary to correct the hazardous conditions shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

F. Weekly examination is not required during any seven-day period in which no person enters any underground area of the mine. When a mine is idled or in a nonproducing status with entry only for maintenance of the mine, weekly examinations may be conducted in accordance with a plan approved by the Chief.

G. Except for certified persons required to make examinations, no person shall enter any underground area of a coal mine if the weekly examination has not been completed within the preceding seven days. The weekly examination may be conducted at the same time as the pre-shift examination.

H. The person making the weekly examinations shall certify by initials, date, and the time that the examination was made. Certifications and time shall appear at enough locations to show that the entire area has been examined.

I. Examinations of surface areas of underground coal mines shall be made in accordance with the requirements for weekly examinations at surface coal mines as provided in § 45.1-161.256.

Code 1950, §§ 45-32, 45-33, 45-35, 45-40, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-17, 45.1-56, 45.1-65; 1968, c. 310; 1978, cc. 120, 729; 1993, cc. 170, 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.211. Examinations of fans

A. A daily inspection shall be made of all main fans and machinery connected therewith by an authorized person. The person making the examination shall make a record of the same in a book prescribed for this purpose or by adequate facilities provided to permanently record the performance of the main fan and to give warning of an interruption to a fan. No daily examination is required on any day in which no person goes underground, except that the examination shall be completed prior to any person entering the mine if the previous day's examination has not been made.

B. Places ventilated by means of blower fans shall be examined for methane by a certified person before the fan is started at the beginning of the shift and after any interruption of fan operation for five minutes or more during the shift.

C. The blower fan and tubing shall be inspected at least twice during each working shift by a certified person.

Code 1950, §§ 45-60.1, 45-60.2; 1954, c. 191; 1966, c. 594, §§ 45.1-54, 45.1-55; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. 28; 1999, c. 256.

§ 45.1-161.212. Record of examinations

A. Any hazardous condition found by the mine foreman or other certified persons designated by the operator for the purposes of conducting examinations under Article 14 (§ 45.1-161.208 et seq.) of this chapter shall be corrected immediately, or the affected area shall be dangered off until the condition is corrected. If the hazardous condition creates an imminent danger all persons except those required to perform work to correct the imminent danger shall be withdrawn from the affected area. A record of the hazardous condition found and the corrective actions taken shall be made in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found.

B. Upon completing the pre-shift examination, the mine foreman shall return to the surface or a designated station underground and report in person to an authorized person before other miners enter the mine. Immediately upon reaching the surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in a book kept on the surface for that purpose.

C. At the completion of any shift during which a portion of a weekly examination is made, a record of hazardous conditions, their locations, the corrective action taken, and the results and location of air and methane measurements shall be made. The record shall be made by the person making the examination or by a person designated by the operator. If the record is made by a person other than the examiner, the examiner shall verify the record by initials and date.

D. The actual level of methane detected in any examination shall be recorded in the book.

E. A mine foreman or other certified person conducting a required examination shall record the results of his examination in ink or indelible pencil in a book kept on the surface for that purpose. Similar records may be kept at designated stations or offices underground.

F. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. Where such records do not disclose hazardous conditions, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

G. All records of examination shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-65; 1978, c. 120; 1994, c. 28; 2005, c. 3.

§ 45.1-161.213. Repealed

Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.

§ 45.1-161.214. Notice of hazardous conditions

The mine foreman shall give prompt attention to the removal of all hazardous conditions reported to him by any person working in the mine. If it is impracticable to remove the hazardous condition at once, he shall notify every person whose safety is menaced thereby to remain away from the portion of the mine where the hazardous condition exists.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. 28; 1996, c. 774.

§ 45.1-161.215. Notice of monitor tampering prohibition

The operator or agent, shall display, in bold-faced type, on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, the following notice:

NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR, OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY.

1993, c. 247, § 45.1-65.2; 1994, c. 28.

§ 45.1-161.216. Main fans

A. The active workings of a mine shall be ventilated by means of main fans.

B. Unless otherwise approved by the Chief, fans shall be (i) provided with pressure-recording gauges, (ii) installed on the surface in fireproof housings, and (iii) equipped with fireproof air ducts.

C. In addition to the requirements of subsection B, main fans shall either:

1. Be equipped with ample means of pressure relief, and be offset not less than 15 feet from the nearest side of the mine opening; or

2. Be directly in front of, or over, the mine opening; however, the opening shall not be in direct line with possible forces coming out of the mine should an explosion occur, and there shall be another opening having a weak-wall stopping or explosion doors that would be in direct line with the forces coming out of the mine should an explosion occur, such opening to be not less than 15 feet nor more than 100 feet from the fan opening; and

3. In mines ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

D. Main mine fans shall be provided with an automatic device to give alarm when the fan slows down or stops. Unless otherwise approved by the Chief, this device shall be placed so that it will be seen or heard by an authorized person.

E. Main fans shall be on separate power circuits, independent of the mine circuit.

F. The area surrounding main fan installations shall be kept free of combustible material for at least 100 feet in all directions where physical conditions permit.

G. Mine fans shall be operated continuously, except when intentionally stopped for necessary testing, adjustment, maintenance, or repairs while no miners are underground, or as otherwise approved by the Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs, the mine operator shall comply with the requirements set forth in the approved fan stoppage plan for that mine. If the main fan is stopped after all miners are out of the

mine, the fan shall be operated for a period specified in the approved fan stoppage plan for that mine before any miner is allowed underground.

H. Where electric power is available, main mine fans shall not be powered by means of internal combustion engines; however, where electric power is not available or for emergency use, main mine fans may be powered with internal combustion engines if, unless otherwise approved by the Chief, (i) the fan shall be operated exhausting, and (ii) the engine operating the fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

Code 1950, § 45-60.1; 1954, c. 191; 1966, c. 594, § 45.1-54; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. 28; 1996, c. 774; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.217. Fan stoppage plan

A fan stoppage plan shall be prepared for each mine, which plan shall be subject to approval by the Chief or his designated representative. Failure to comply with requirements set forth in the approved plan will be a violation of this section. Fan stoppage plans shall require the following:

1. When the main fan fails or stops, the power shall be cut off from the mine and miners shall be withdrawn from the face areas.

2. Miners shall be withdrawn from the underground areas if the ventilation is not restored within a reasonable time determined by the Chief, which period of time shall not exceed fifteen minutes. In determining the reasonable time period, the Chief shall consider, among other things, the size and number of fans, and the methane liberation rate of the mine.

3. If ventilation is restored within the time period established in the plan, the face areas and other areas where methane is likely to accumulate shall be examined by a certified person, and if the areas are found to be free of explosive or harmful gases, power may be restored and work resumed.

4. If ventilation is not restored within the time period established in the plan and the miners are evacuated from the mine, the main fan shall be operated for a period of time specified in the plan, which shall not be less than fifteen minutes. Thereafter the mine shall be examined by a certified person before miners shall be permitted underground or energizing power circuits.

Code 1950, § 45-60.1; 1954, c. 191; 1966, c. 594, § 45.1-54; 1978, c. 120; 1988, c. 597; 1993, c. 442; 1994, c. 28.

§ 45.1-161.218. Auxiliary fans

A. The installation or use of auxiliary fans in any mine shall be prohibited, without the prior written approval of the Chief.

B. Machine mounted scrubbers and spray fan systems may be used for control of coal dust and to enhance ventilation. Such installations are not considered auxiliary fans.

Code 1950, § 45-60.2; 1954, c. 191; 1966, c. 594, § 45.1-55; 1993, c. 442; 1994, c. 28; 2005, c. 3.

§ 45.1-161.219. Volume of air

A. The quantity of air passing through the last open crosscut shall be not less than 9,000 cubic feet per minute; provided, however, that the quantity of air reaching the last open crosscut in pillar-recovery sections may be less than 9,000 cubic feet per minute, if at least 9,000 cubic feet of air per minute is being delivered to the intake end of the pillar line.

B. The air current at working faces shall, under all conditions, have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases and dust.

C. In longwall and shortwall mining systems:

1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face unless otherwise approved by the Chief; and

2. The velocity of air provided to control dust at designated locations on the longwall or shortwall face shall be maintained in accordance with the provisions of the mine ventilation plan approved by the Mine Safety and Health Administration.

D. Ventilation shall be maintained during the installation and removal of mechanized mining equipment.

Code 1950, §§ 45-4.1, 45-9, 45-12, 45-60.4, 45-74; 1954, c. 191; 1966, c. 594, §§ 45.1-5, 45.1-56; 1968, c. 310; 1976, c. 598; 1978, c. 120; 1984, c. 236; 1985, c. 448; 1987, c. 470; 1990, c. 963; 1993, c. 442; 1994, c. 28; 1996, c. 774; 2005, c. 3.

§ 45.1-161.220. Bleeder systems

A. All mines shall have a system, which has been approved by the Chief, of bleeder openings of air courses designed to provide positive movement of air through or around worked-out areas which is sufficient to prevent a hazardous accumulation of gas in such areas and to minimize the effect of variations in atmospheric pressure. Operators shall submit bleeder system plans which comply with requirements developed by the Chief. The system requirements developed by the Chief shall, at a minimum, address standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous movement of gases from gob areas, (iv) methane content, (v) the use and operation of degasification systems, (vi) air flow direction, and content, (vii) ventilation controls. The Chief shall not approve a plan which provides for a methane content exceeding four and one-half percent in bleeder air courses. Failure to comply with an approved plan will be a violation of this section. This section shall not prohibit the sealing of worked-out areas in accordance with § 45.1-161.228.

B. The mine map requirements of § 45.1-161.64 may be used to depict bleeder system standards specified in this section.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-56; 1968, c. 310; 1978, c. 120; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.221. Coursing of air

A. The main intake and return air currents of drifts or slope mines shall not be in a single partitioned opening.

B. All entries driven in coal shall be in sets of two or more.

C. Underground transformer stations, battery-charging stations, substations, rectifiers, and water pumps shall be housed in noncombustible structures or areas, or be equipped with an approved fire suppression system. These installations shall be ventilated with intake air that is coursed into a return air course or to the surface, and that is not used to ventilate working places. This requirement does not apply to: (i) rectifiers, power centers with transformers that are either dry-type or contain nonflammable liquid, or battery-charging stations, if they are located at or near the working section and are moved as the working section advances or retreats, (ii) submersible pumps, (iii) permissible pumps and associated permissible switch gear, (iv) pumps located at or near the working section that are moved as the working section advances or retreats, and (v) small portable pumps. Such equipment shall be installed and operated only in well-ventilated locations.

D. Changes in ventilation that materially affect the main air current or any split thereof shall be made when the mine is not in operation and there are no miners in the mine other than those engaged in changing the ventilation.

E. Each section in a mine shall be ventilated by a separate split of air.

F. Air used to ventilate belt haulage entries shall not be used to ventilate any working place unless approved by the Chief.

Code 1950, §§ 45-60.4, 45-71; 1954, c. 191; 1966, c. 594, § 45.1-57; 1978, c. 120; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.222. Actions for excessive methane

A. Tests for methane concentration under this section shall be made by certified or qualified persons trained in the use of an approved detecting device which is properly maintained and calibrated. Tests shall be made at least twelve inches from the roof, face, ribs, and floor.

B. When one percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or in an area where mining equipment is being installed or removed, work shall cease and electrical power shall be de-energized in the affected working place at the equipment except intrinsically safe atmospheric monitoring systems (AMS). Changes or adjustments shall be made to the ventilation system to reduce the concentration to below one percent. Only work to reduce the concentration of methane below one percent shall be permitted. This does not apply to other faces in the entry or slope in which work can be safely continued.

C. When one and one-half percent or more methane is present in a working place or an intake air course, including an air course in which a belt conveyor is located, or an area where mining equipment is being installed or removed, only work necessary to reduce the methane concentration to

less than one and one-half percent will be permitted and all other personnel shall be withdrawn from the affected area. Electrically powered equipment in the affected area shall be de-energized and other mechanized equipment shall be shut off except for intrinsically safe atmospheric monitoring systems (AMS).

D. When one percent or more methane is present in a return or split between the last working place on a working section and where that split of air meets another split of air, or the location at which the split is used to ventilate seals or worked-out areas, changes or adjustments shall be made to the ventilation system to reduce the concentration of methane in the return air to less than one percent.

E. When one and one-half percent or more methane is present in a return air split between the last working place on a working section and where that split of air meets another split of air or the location where the split is used to ventilate seals or worked-out areas, everyone except those persons required to perform necessary work to correct the problem shall be withdrawn from the affected area. Other than intrinsically safe atmospheric monitoring systems (AMS), all equipment in the affected area shall be de-energized at the source. No other work shall be permitted in the affected area until the concentration of methane in the return air is less than one percent.

F. An alternative methane level up to one and one-half percent may be allowed in the return air split where the following precautions are met: (i) the quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut; (ii) the methane content of the air in the split is continuously monitored during mining operations by an intrinsically safe atmospheric monitoring system (AMS) that gives a visual and audible signal on the working section when the methane in the return air reaches one and one-half percent; and (iii) rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course immediately outby the most inby monitoring point or inby such point provided the mechanical duster is maintained in a permissible condition and does not adversely affect the AMS. When one and one-half percent or more methane is present where a return air alternative is applied, all persons shall be withdrawn, except those necessary to improve ventilation, and changes or adjustments shall be made to reduce the concentration of methane in the return air to below one and one-half percent as set forth in subsection E.

G. The concentration of methane in a bleeder split of air immediately before the air in the split joins another split of air, or in a return air course other than described in subsections D and E, shall not exceed two percent.

Code 1950, § 45-60.3; 1954, c. 191; 1966, c. 594, § 45.1-58; 1978, c. 120; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.223. Crosscuts

A. Crosscuts shall be made between entries and between rooms as provided in the approved roof control plan.

B. Crosscuts between intake and return air courses shall be closed, except the one nearest the face. Crosscuts between rooms shall be closed where necessary to provide adequate ventilation at the working face.

C. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

D. Entries or rooms shall not be started off an entry beyond the last open crosscut.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-59; 1978, c. 729; 1994, c. 28; 1996, c. 774.

§ 45.1-161.224. Permanent stoppings

A. Permanent stoppings shall be built and maintained:

1. Between intake and return air courses, except temporary controls may be used in rooms that are 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved by the Chief, these stoppings shall be maintained to and including the third connecting crosscut outby the working face.

2. To separate belt conveyor haulageways from return air courses except where belt entries are used as return air courses.

3. To separate the primary escapeway from belt and trolley haulage entries unless otherwise approved by the Chief.

4. In return air courses to direct air into adjacent worked-out areas.

B. Permanent stoppings shall be built of substantial, incombustible material such as concrete, concrete blocks, brick, tile, or other approved material; however, where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used.

C. The use of an air lock in the permanent intake stopping line near the section loading point shall be permitted to access the belt and transport supplies.

D. Stoppings shall be maintained to serve the purpose for which they were built and shall be reasonably air tight.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-59; 1978, c. 729; 1994, c. 28; 1996, c. 774.

§ 45.1-161.225. Ventilation controls

A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of haulage trips or persons along the entries will not cause interruption of the air current. Air locks shall be ventilated sufficiently to prevent accumulations of methane therein.

B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation within an air course shall be (i) made of noncombustible material or coated on all accessible surfaces with flame-retardant material having a flame spread index of 25 or less as tested under ASTM E 162-

187 and (ii) of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

C. To provide easy access between the return, belt and intake escapeway entries, substantially constructed man-doors properly marked so as to be readily detected shall be installed in at least every fifth crosscut in the stopping lines separating such entries.

D. Doors shall be kept closed except when miners or equipment is passing through the doorways. Motor crews and other miners who open doors shall see that the doors are closed before leaving them.

E. Overcasts, undercasts, and regulators shall be well constructed of incombustible material, such as masonry, concrete, concrete blocks, or prefabricated metal. They shall (i) be of sufficient strength to withstand possible falls from the roof, (ii) be of ample area to pass the required quantity of air, and (iii) be kept clear of obstructions.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-60; 1993, c. 442; 1994, c. 28; 1996, c. 774; 2005, c. 3.

§ 45.1-161.226. Line brattice

A. Substantially constructed line brattice shall be used from the last open crosscut of an entry or room when necessary to provide adequate ventilation for the miners and to remove gases. Any line brattice damaged by falls or otherwise shall be repaired promptly.

B. The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

C. Brattice cloth used underground shall be of flame-resistant material.

D. Accumulations of methane shall be moved only by means of properly installed line brattice, or other approved method.

Code 1950, § 45-60.4; 1954, c. 191; 1966, c. 594, § 45.1-61; 1994, c. 28; 1996, c. 774.

§ 45.1-161.227. Ventilation with air from certain areas

Active face workings shall not be ventilated with air that has passed through worked-out areas or has been used to ventilate pillar lines. This section shall not apply to air which is being used to ventilate an active pillar line and rooms which are necessary to establish and maintain the pillar line.

Code 1950, § 45-60.5; 1954, c. 191; 1966, c. 594, § 45.1-62; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.228. Worked-out areas

A. All worked-out areas shall be either sealed or ventilated.

B. Where practice is to seal worked-out areas, the sealing shall be done in accordance with sealing provisions of the approved bleeder plan.

Code 1950, § 45-60.5; 1954, c. 191; 1966, c. 594, § 45.1-62; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.229. Air quality

A. All active workings shall be ventilated by a current of air containing not less than 19.5 volume percent of oxygen and no harmful quantities of other noxious or poisonous gases.

B. The volume and velocity of the current of air in all active workings shall be sufficient to dilute, render harmless and carry away flammable, explosive, noxious and harmful gases and dust, smoke, and explosive fumes.

Code 1950, § 45-60.3; 1954, c. 191; 1966, c. 594, § 45.1-63; 1968, c. 310; 1993, c. 442; 1994, c. 28; 1996, c. 774; 2005, c. 3.

§ 45.1-161.230. Repealed

Repealed by Acts 1999, c. 256.

§ 45.1-161.231. Examination of mines for explosive gas and other hazardous conditions

A. Certified persons whose regular duties require them to inspect working places in any mine for hazardous conditions shall have in their possession, and shall use, when underground, a permissible methane detector or other permissible device capable of detecting methane and oxygen deficiency.

B. A sufficient number of permissible methane detectors or other permissible devices capable of detecting methane shall be kept at each mine inby the last open crosscut. All miners shall be trained in the operation of the device. Any miners working inby the last open crosscut shall be certified by the Board of Coal Mining Examiners to conduct gas testing. Methane detectors or indicators shall be maintained in permissible condition.

C. Methane detectors or indicators shall be calibrated at least monthly in accordance with manufacturers recommendations. A record of such calibration shall be made in a book for this purpose kept at a surface location at the mine and maintained for one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-68.1, 45-69.7, 45-85.6; 1954, c. 191; 1966, c. 594, §§ 45.1-35, 45.1-65; 1978, cc. 118, 120; 1994, c. 28; 1996, c. 774; 1999, c. 256.

§ 45.1-161.232. Tampering with methane monitoring devices prohibited; penalty

A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise tamper with methane monitors or other devices capable of detecting the presence of explosive gases used in an underground coal mine. If the methane monitor is installed on a face cutting machine, continuous miner, longwall face equipment, loading machine, or other mechanized equipment used to extract or load coal as required pursuant to 30 CFR Part 75.342, and the monitor or the equipment malfunctions, the monitor may be disconnected or bypassed for the purposes of removing the monitor or the equipment in order to make necessary repairs to the monitor or the equipment. Any other methane monitor may be disconnected, bypassed or removed.

B. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 247, § 45.1-65.1; 1994, c. 28.

§ 45.1-161.233. Allowing persons to work in mine where methane monitoring equipment disconnected; penalty

An operator, agent, or mine foreman shall not knowingly permit any miner to work in any area of the underground coal mine where such operator, agent, or mine foreman has knowledge that a methane monitor or other device capable of detecting the presence of explosive gases has been impaired, disturbed, disconnected, or bypassed in violation of § 45.1-161.232. Any person convicted of a violation of this section shall be guilty of a Class 6 felony.

1993, c. 247, § 45.1-30.1; 1994, c. 28.

§ 45.1-161.233:1. Intentionally bypassing safety devices; prohibition

No person shall intentionally bypass, bridge, or otherwise impair an electrical or hydraulic circuit that affects the safe operation of electrical or mechanical equipment. This shall not prohibit (i) a certified electrical repairmen from by-passing energized circuits for troubleshooting; (ii) an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion except where motion is necessary to make adjustment or to move the equipment to a safe location; (iii) an authorized person from bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a safe location in order to make necessary repairs or be taken out of service; or (iv) an authorized person from activating an override feature that is designed by the machine manufacturer to allow the machine to be moved to a safe location in order to make necessary repairs or be taken out of service.

2005, c. 3.

§ 45.1-161.234. Control of coal dust

A. Coal dust shall not be permitted to accumulate excessively in any part of the active areas, including active workings soon to be worked-out.

B. Where mining operations create or raise an excessive amount of coal dust into the air, water or water with an added wetting agent, or other effective method of controlling dust approved by the Chief, or his authorized representative, shall be applied to coal dust on the ribs, roof, and floor to reduce dispersibility and to minimize the hazard of explosion, within forty feet from all active workings or such other areas as the Chief or his authorized representative shall require.

Code 1950, § 45-77.1; 1954, c. 191; 1966, c. 594, § 45.1-66; 1994, c. 28; 1996, c. 774.

§ 45.1-161.235. Rock dusting

A. All underground areas of a mine, except those areas where the coal dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within forty feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Chief, or his authorized representative, permits an exception upon his finding that such exception will not pose

a hazard to the miners. All crosscuts that are less than forty feet from working faces shall also be rock dusted.

B. All other areas of a mine shall be rock dusted if conditions are found to be so dusty as to constitute a hazard after proper inspection. Should such conditions be found to exist, the Chief, or his authorized representative, shall require the necessary rock dusting to make the areas of the mine safe.

C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials shall be cleaned up and not be permitted to accumulate excessively in active workings, or on electric equipment therein.

Code 1950, § 45-77; 1954, c. 191; 1966, c. 594, § 45.1-67; 1978, c. 120; 1994, c. 28; 1999, c. 256.

Article 15 - SURFACE AREAS

§ 45.1-161.236. Housekeeping; noxious fumes

A. Good housekeeping shall be practiced in and around buildings, shafts, slopes, yards and other areas of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass and possible falling and rolling materials.

B. Painting or operations creating noxious fumes shall be performed only in a well ventilated atmosphere.

C. All surface mine structures, enclosures, and other facilities shall be maintained in good repair.

Code 1950, §§ 45-85.5, 45-85.8; 1954, c. 191; 1966, c. 594, §§ 45.1-34, 45.1-37; 1978, c. 729; 1994, c. 28; 2005, c. 3.

§ 45.1-161.237. Lighting

A. Lights shall be provided as needed in or on surface structures.

B. Roads, paths and walks outside of structures shall be kept free from obstructions and shall be well illuminated, if used at night.

1966, c. 594, § 45.1-38; 1994, c. 28.

§ 45.1-161.238. Flammable or combustible materials

A. Oil, grease, and similar flammable materials shall be kept in closed containers, separate from other materials so as not to create a fire hazard to nearby buildings or mines. If oil or grease is stored in a building, the building or room in which it is stored shall be of fireproof construction and well ventilated.

B. Oily rags, oily waste and wastepaper shall be kept in closed metal containers until removed for disposal.

C. The area within 100 feet of all mine openings shall be kept free of combustible material; however, this shall not apply to the temporary storage of not more than a one day's supply of such materials.

D. All oxygen and acetylene bottles shall be stored in racks designated and constructed for the storage of such bottles with caps in place and secured when not in use. Any storage place for such materials shall be posted to prohibit smoking.

Code 1950, § 45-85.9; 1954, c. 191; 1966, c. 594, § 45.1-39; 1978, c. 729; 1994, c. 28.

§ 45.1-161.239. Crane operations

A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in the crane operation.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. 28.

§ 45.1-161.240. Controlling dust at surface

A. In surface structures at excessively dusty mines, electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

B. Surface structures and equipment shall be kept free of coal dust accumulations.

C. Where mining operations raise an excessive amount of dust into the air, water or water with wetting agent added to it or other effective methods shall be used to allay such dust at its sources.

Code 1950, §§ 45-77, 45-85.5; 1954, c. 191; 1966, c. 594, §§ 45.1-34, 45.1-67; 1978, cc. 120, 729; 1994, c. 28.

§ 45.1-161.241. Scaffolding and overhead protection

Where repairs are being made to the plant, or where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. 28.

§ 45.1-161.242. Welding and cutting

Welding or cutting with arc or flame shall not be done in excessively dusty atmospheres or dusty locations. Fire-fighting apparatus shall be readily available when welding or cutting is performed.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. 28.

§ 45.1-161.243. Fire prevention and fire control

The provisions of Article 5 (§ 45.1-161.265 et seq.) of Chapter 14.4 of this title shall apply with respect to requirements for fire-fighting equipment, duties in the event of a fire, and fire precautions at the surface areas of underground coal mines.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28.

§ 45.1-161.244. Surface equipment

The provisions of Article 6 (§ 45.1-161.268 et seq.) of Chapter 14.4 of this title shall apply with respect to equipment at the surface areas of underground coal mines.

1994, c. 28.

§ 45.1-161.245. Travel ways, loading and haulage areas

The provisions of Article 7 (§ 45.1-161.275 et seq.) of Chapter 14.4 of this title shall apply with respect to travel ways, loading, and haulage areas at the surface of underground coal mines.

1994, c. 28; 1996, c. 774.

§ 45.1-161.246. Electricity

The provisions of Article 9 (§ 45.1-161.279 et seq.) of Chapter 14.4 of this title shall apply with respect to power lines, circuits, transformers, and other electric equipment at the surface areas of underground coal mines.

1994, c. 28.

§ 45.1-161.247. Surface blasting

The provisions of Article 10 (§ 45.1-161.284 et seq.) of Chapter 14.4 of this title shall apply with respect to explosives and blasting at the surface areas of underground coal mines.

1994, c. 28.

§ 45.1-161.248. Ground control

The provisions of Article 11 (§ 45.1-161.287) of Chapter 14.4 of this title shall apply with respect to the pits, highwalls, benches, banks, and walls associated with any coal mining activities conducted at the surface areas of underground coal mines.

1994, c. 28.

Article 16 - ADDITIONAL DUTIES OF CERTIFIED PERSONS AND OTHER MINERS

§ 45.1-161.249. Duties of mine foreman

A. The mine foreman shall see that the requirements of this Act that pertain to his duties and to the health and safety of the miners are fully complied with at all times.

B. The mine foreman shall see that every miner employed to work in such mine before beginning work therein, is aware of all hazardous conditions incident to his work in such mine. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2015, cc. 103, 397.

§ 45.1-161.250. Employment and duties of top persons; plan for excavation of shaft or slope

A. During the construction or modification of any shaft or slope mine, the person engaged in the actual construction or modification of such mine shall employ one or more certified top persons. It shall be the duty of such top person to examine for proper and safe practices and materials used during the construction or modification of a shaft or slope mine. Such duties shall at all times be performed in the immediate vicinity of the shaft under construction.

B. Prior to commencing the excavation of any shaft or slope, the operator shall submit to the Department a copy of the plan that includes the following: (i) the name and location of the mine and slope or shaft; (ii) a description of the work and methods to be used in the construction of the slope or shaft; (iii) a description of the methods to be used to ensure wall and roof stability; (iv) a description of the system of ventilation to be used including procedures for evacuation of the slope or shaft should a fan stoppage occur; (v) details of hoisting equipment to be used; and (vi) such other information as may be required by the Chief. The excavation of a shaft or slope shall not begin until the plan is approved by the Chief.

1980, c. 442, § 45.1-20.1; 1994, c. 28; 2011, cc. 826, 862.

§ 45.1-161.251. Employment of inexperienced underground miners

A. Inexperienced underground miners shall be required to work with an experienced underground miner for a total of at least six months following underground employment. However, experienced surface miners shall only be required to work with an experienced underground miner for a total of at least sixty days following underground employment.

B. No inexperienced underground miner shall be assigned, or allowed, or be required to perform work alone in any area where there is the potential to endanger his safety unless he can communicate with others, can be heard, or can be seen.

Code 1950, §§ 45-35, 45-40; 1954, c. 191; 1966, c. 594, § 45.1-17; 1978, c. 729; 1993, c. 170; 1994, c. 28; 1999, c. 256.

§ 45.1-161.252. Employment of authorized persons

No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine who is not an authorized person capable of determining the safety of the roof and ribs of the working places. Such miner shall also be capable of detecting the presence of explosive gas and shall be compelled to undergo examination by a mine inspector or other instructors who are certified by the Board of Coal Mining Examiners and authorized by the Chief to determine his fitness to detect explosive gas before being permitted to have charge of machines in such mines.

Code 1950, §§ 45-7, 45-12, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, § 45.1-21; 1976, c. 598; 1978, cc. 222, 489; 1982, c. 255; 1984, cc. 178, 590; 1988, c. 577; 1993, cc. 171, 442; 1994, c. 28; 2012, cc. 109, 241.

Chapter 14.4 - REQUIREMENTS APPLICABLE TO SURFACE COAL MINES

Article 1 - GENERAL PROVISIONS

§ 45.1-161.253. Scope of chapter

This chapter shall be applicable to the operation of any surface coal mine in the Commonwealth, and shall supplement the provisions of Chapter 14.2 (§ 45.1-161.7 et seq.).

1994, c. 28.

§ 45.1-161.254. Regulations governing conditions and practices at surface coal mines

A. The Chief shall have authority, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), to promulgate rules and regulations necessary to ensure safe and healthy working conditions in surface coal mines in the Commonwealth. Such rules and regulations governing surface coal mines shall relate to:

1. Safety and health standards for the protection of the life, health and property of, and the prevention of injuries to persons involved in or likely to be affected by any surface coal mining operations which shall include but not be limited to the control of dust concentration levels; installation, maintenance and use of electrical devices, equipment, cables and wires; fire protection; the use and storage of explosives; hoistings; drilling; loading and haulage areas; training of surface miners; preparation of responses to emergencies; examinations of conditions at a surface mine site; and reporting requirements;

2. The storage or disposal of any matter or materials extracted or disturbed as the result of a surface coal mining operation or operations or used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation so that such matter or material does not threaten the health or safety of the miners or the general public; and

3. The operation, inspection, operating condition and movement of drilling equipment and machines to protect the health, safety and property of miners and the general public.

B. The Chief shall not promulgate any rule or regulation establishing requirements for the operation of, or conditions at, a surface coal mine which are inconsistent with requirements established by this Act.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.

§ 45.1-161.255. Standards for regulations

In promulgating the rules and regulations pursuant to § 45.1-161.254, the Chief shall consider:

1. Standards utilized and generally recognized by the surface coal mining industry;

2. Standards established by recognized professional coal mining organizations and groups;

3. Standards established by federal mine safety laws;

4. Research, demonstrations, experiments and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and

5. Such other criteria as shall be necessary for the protection of the safety and health of miners and other persons or property likely to be affected by surface coal mines or related operations.

Code 1950, §§ 45-8, 45-84; 1954, c. 191; 1966, c. 594, § 45.1-104; 1972, c. 784; 1974, c. 323; 1975, c. 520; 1978, c. 120; 1982, c. 118; 1990, c. 963; 1994, c. 28.

Article 2 - WORK AREA EXAMINATIONS, RECORD KEEPING AND REPORTING

§ 45.1-161.256. Safety examinations

A. On-shift examinations of the work area including pit, auger, thin seam and highwall operations shall be conducted by certified persons once every production shift and at such other times or frequency as the Chief designates necessary for hazardous conditions.

B. Pre-operational examinations of all mobile equipment shall be conducted by an authorized person.

C. Pre-shift examinations shall be conducted by a certified person for certain hazardous conditions designated by the Chief.

D. Mine refuse piles shall be examined daily by an authorized person on any day on which a person works at such location.

E. The location of all natural gas pipelines on permitted surface mine areas shall be identified and conspicuously marked so that equipment operators can readily see such lines. Pre-shift examinations shall be conducted of the location of pipelines whenever the work area approaches within 500 feet unless otherwise approved by the Chief.

F. Air quality examinations shall be conducted by a certified person when a surface coal mining operation intersects an underground mine, auger hole or other underground workings.

G. Examinations for methane shall be conducted in surface installations, enclosures or other facilities in which coal is handled or stored once each production shift. Such areas shall also be tested for methane before any activity involving welding, cutting or an open flame. Examinations pursuant to this subsection shall be made by an authorized person certified to make gas tests.

H. Electrical equipment and wiring shall be inspected as often as necessary but at least once a month.

I. Fire extinguishers shall be examined at least once every six months.

J. Areas of inactive surface coal mines shall be examined for hazardous conditions by a mine foreman immediately before miners are permitted to enter into such areas to take emergency actions to preserve a mine.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-61, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-42, 45.1-65; 1976, c. 598; 1978, cc. 118, 120; 1982, c. 385; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.257. Records of examinations

A. Documentation of examinations and testing conducted pursuant to § 45.1-161.256 shall be recorded in a mine record book provided for that purpose. Documentation shall include hazardous conditions found in the work area. However, examinations of fire extinguishers shall be conducted by an authorized person and documentation shall be accomplished by recording the date of the examination on a permanent tag attached to the extinguisher.

B. The actual methane readings taken during examinations required under this Act shall be recorded in the mine record book.

C. The surface foreman shall maintain and sign a daily record book. Where such reports disclose hazardous conditions, the surface foreman shall take prompt action to have such conditions corrected, barricaded, or posted with warning signs.

D. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. Where such records do not disclose hazardous conditions, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

E. All records of inspections shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

Code 1950, §§ 45-32, 45-33, 45-60.4, 45-61, 45-68.1, 45-69.7; 1954, c. 191; 1966, c. 594, §§ 45.1-20, 45.1-42, 45.1-65; 1976, c. 598; 1978, cc. 118, 120; 1982, c. 385; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3; 2007, cc. 894, 914.

§ 45.1-161.258. Areas with safety or health hazards; duties of surface mine foreman

A. Any hazardous condition shall be corrected promptly or the affected area shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

B. The surface mine foreman shall see that the requirements of this Act pertaining to his duties and to the health and safety of the miners are fully complied with at all times.

C. The surface mine foreman shall see that every miner employed to work at the mine, before beginning work therein, is aware of all hazardous conditions incident to his work at the mine.

Code 1950, §§ 45-7, 45-12, 45-14.1, 45-35, 45-40, 45-61, 45-68.1, 45-68.4, 45-69, 45-73, 45-75, 45-78, 45-79, 45-81, 45-83; 1950, p. 156; 1954, c. 191; 1966, c. 594, §§ 45.1-17, 45.1-21, 45.1-42, 45.1-89; 1974, c. 323; 1976, c. 598; 1978, cc. 118, 222, 489, 729; 1982, c. 255; 1984, cc. 178, 590; 1985, c. 500; 1988, c. 577; 1993, cc. 170, 171, 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2015, cc. 103, 397.

Article 3 - PERSONAL PROTECTION

§ 45.1-161.259. Personal protection devices and practices

A. All persons at a surface coal mine shall wear the following protection in the specified conditions:

1. Hard hats in and around mines where falling objects may cause injury.

2. Hard-toed footwear in and around mines.

3. Safety goggles or shields where there is a hazard of flying material.

4. Protective shield or goggles when welding.

5. Snug-fitting clothes when working around moving parts or machinery.

6. Gloves where hands could be injured. Gauntlet cuffed gloves are prohibited around moving machinery.

B. Ear protection shall be supplied by the operator to all miners upon request.

C. Every person assigned to or performing duties at a surface mine work area shall wear reflective materials adequate to be visible from all sides. The reflective material shall be placed on hard hats and at least one other item of outer clothing such as belts, suspenders, jackets, coats, coveralls, shirts, pants, or vests.

Code 1950, §§ 45-72, 45-86; 1954, c. 191; 1966, c. 594, §§ 45.1-26, 45.1-99; 1978, cc. 489, 729; 1994, c. 28; 2011, cc. 826, 862.

§ 45.1-161.260. Housekeeping

A. Good housekeeping shall be practiced in and around buildings, shafts, slopes, yards and other areas of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass and material that may potentially fall or roll.

B. All surface mine structures, enclosures, and other facilities shall be maintained in a safe condition.

Code 1950, § 45-85.8; 1954, c. 191; 1966, c. 594, § 45.1-37; 1978, c. 729; 1994, c. 28; 2005, c. 3.

§ 45.1-161.261. Noxious fumes

Painting or operations creating noxious fumes shall be performed only in a well-ventilated atmosphere.

Code 1950, § 45-85.5; 1954, c. 191; 1966, c. 594, § 45.1-34; 1978, c. 729; 1994, c. 28.

Article 4 - FIRST AID EQUIPMENT; MEDICAL CARE; EMERGENCY MEDICAL SERVICES PERSONNEL

§ 45.1-161.262. First aid equipment

Each surface coal mine shall have an adequate supply of first aid equipment as determined by the Chief. Such supplies shall be located at strategic locations at the mine site so as to be available in a reasonable response time. The first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition to the supplies in the cases, blankets, splints and properly constructed stretchers in good conditions shall be provided. The supplies shall be available for use of all persons employed at the mine. No first aid supplies shall be removed or diverted without authorization except in case of injury at the mine.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. 28.

§ 45.1-161.263. First aid training

A. Surface foremen shall have completed and passed a first aid course of study as prescribed by the Chief. The Chief is authorized to utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each operator of a surface coal mine, upon request, shall make available to every miner employed in such mine first aid training, including refresher training.

1977, c. 679, § 45.1-101.2; 1978, c. 94; 1984, c. 590; 1994, c. 28; 1999, c. 256.

§ 45.1-161.264. Attention to injured persons

A. Prompt medical attention shall be provided in the event of an injury, and adequate facilities shall be made available for transporting injured persons to a hospital where necessary.

B. Safe transportation shall be provided to move injured persons from the site where the injury occurred to areas accessible to emergency transportation.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

Code 1950, § 45-69.6; 1954, c. 191; 1966, c. 594, § 45.1-101; 1978, c. 94; 1994, c. 28; 2005, c. 3.

Article 5 - FIRE PREVENTION AND FIRE CONTROL

§ 45.1-161.265. Fire-fighting equipment; duties in case of fire; fire precaution in transportation of mining equipment; fire prevention generally

A. Each mine shall be provided with suitable fire-fighting equipment, adequate for the size of the mine and shall include at least three 20-pound dry chemical fire extinguishers. Equipment and devices used for the detection, warning and extinguishing of fires shall be suitable in type, size and quantity for the type of fire hazard that may be encountered. Such equipment and devices shall be strategically located and plainly identified.

B. Suitable fire extinguishers shall be provided at all (i) electrical stations, such as substations, transformer stations and permanent pump stations, (ii) self-propelled mobile equipment, (iii) belt heads, (iv) areas used for the storage of flammable materials, (v) fueling stations, and (vi) other areas that may constitute a fire hazard, so as to be out of the smoke in case of a fire.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 2005, c. 3.

§ 45.1-161.266. Duties in case of fire

A. Should a fire occur, the person discovering it and any person in the vicinity of the fire shall make a prompt effort to extinguish it. When a fire that may endanger persons at the mine cannot be extinguished immediately, all persons shall be withdrawn promptly from the area of the fire.

B. In case of any unplanned fire at or about a mine not extinguished within thirty minutes of discovery, the operator or agent shall report by the quickest available means to the Chief, giving all information known to him regarding the fire. The Chief shall take prompt action, based on the information, to go in person or dispatch qualified subordinates to the scene of the fire for consultation, and assist in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but must be given to the operator in writing to have the force of an order.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28; 1999, c. 256.

§ 45.1-161.267. Fire precautions

A. An examination for fire shall be made after every blasting operation.

B. No person shall smoke or use an open flame within twenty-five feet of locations used to handle or store flammable or combustible liquids or where an arc or flame may cause a fire or explosion.

C. Areas surrounding flammable liquid storage tanks, electrical substations and transformers shall be kept free of combustible material for at least twenty-five feet in all directions. Such storage tanks, substations and transformers shall be posted with readily visible fire hazard warning signs.

D. Structures or areas used for storage of flammable materials shall be constructed of fire resistant material, well ventilated, kept clean and orderly and posted with readily visible fire hazard warning signs.

E. Fuel lines shall be equipped with shut-off valves at the sources. Such valves shall be readily accessible and maintained in good operating condition.

F. Battery charging areas shall be well ventilated and posted with warning signs prohibiting smoking or open flames within twenty-five feet.

G. Oil, grease, other flammable hydraulic fluid, and other flammable materials shall be kept in closed metal containers and separated from other materials so as to not create a fire hazard.

H. Combustible materials, grease, lubricants, paints and other flammable materials and liquids shall not be allowed to accumulate where they could create a fire hazard. Provision shall be made to prevent the accumulation of such material on any equipment, at storage areas and any location where the material is used.

I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

J. Precautions shall be taken to ensure that sparks or other hot materials do not result in a fire when welding or cutting. Welding or cutting with arc or flame shall not be done in excessively dusty atmospheres or locations. Fire-fighting apparatus shall be readily available when welding or cutting is performed.

K. Precautions shall be taken before applying heat, cutting or welding on any pipe or container that has contained a flammable or combustible material.

L. Oxygen and acetylene bottles shall be stored in racks designated and constructed for the storage of such bottles with caps in place and secured when not in use. Such bottles shall not be stored near oil, grease, and other flammable material.

M. Oxygen and acetylene gauges and regulators shall be kept clean and free of oil, grease, and other combustible materials.

N. Belt conveyors shall be equipped with control switches to automatically stop the driving motor of the conveyor in the event the belt is stopped by slipping on the driving pulley, by breakage or other accident.

O. Areas surrounding main fan installations and other mine openings shall be kept free from grass, weeds, underbrush and other combustible materials for twenty-five feet in all directions.

P. Internal combustion engines, except diesel engines, shall be shut off prior to fueling.

Code 1950, § 45-85.9; 1954, c. 191; 1966, c. 594, § 45.1-39; 1978, c. 729; 1994, c. 28.

Article 6 - SURFACE EQUIPMENT

§ 45.1-161.268. Haulage and mobile equipment; operating condition

A. All mobile equipment shall be maintained in a safe operating condition.

B. Positive-acting stopblocks shall be used where necessary to protect persons from danger of moving or runaway haulage equipment.

C. Where it is necessary for men to cross conveyors regularly, suitable crossing facilities shall be provided.

D. Persons shall not get on or off moving equipment.

E. When the equipment operator is present, persons shall notify him before getting on or off mobile equipment.

F. Mobile equipment shall not be left unattended unless brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned into a bank unless the lowering of the bucket or blade to the ground will prevent movement.

G. Persons shall not work on or from a piece of mobile equipment in a raised position unless the equipment is specifically designed to lift persons.

H. Water, debris or spilled materials which may create hazards to moving equipment shall be removed.

I. Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved. No person shall be allowed to ride on top of self-propelled mobile equipment.

J. Operators of self-propelled haulage equipment shall sound a warning before starting such equipment and as approaching any place where persons are or are likely to be.

K. Each man-trip shall be under the charge of an authorized person, and operated independently.

L. Operator provided man-trips shall be maintained in safe operating condition, and enough of them shall be provided to prevent their being overloaded.

M. Employees shall not board or leave moving man-trips; they shall remain seated while in moving cars, and shall proceed in an orderly manner to and from man-trips.

Code 1950, §§ 45-69.1 to 45-69.3, 45-69.5; 1954, c. 191; 1966, c. 594, §§ 45.1-71 to 45.1-74; 1979, c. 315; 1983, c. 70; 1985, cc. 296, 302; 1994, c. 28.

§ 45.1-161.269. Equipment operation

A. Equipment operating speeds, conditions and characteristics shall be prudent and consistent with conditions of roadway, grades, clearance, visibility, traffic, type and use of equipment.

B. Vehicles shall follow at a safe distance; passing shall be limited to areas of adequate clearance and visibility.

C. Mobile equipment shall be operated under power control at all times and mobile equipment operators shall have full control of the equipment while in motion.

D. Before starting or moving equipment, an equipment operator must be certain by signal or other means that all persons are clear.

1994, c. 28; 1999, c. 256.

§ 45.1-161.270. Safety measures on equipment

A. Rubber tired or crawler mounted equipment shall have rollover protective structures to the extent required by 30 CFR 77.403a .

B. Seat belts provided in mobile equipment shall be maintained in safe working condition. Operators of such equipment shall wear seat belts when the equipment is in motion.

C. Mobile equipment shall be equipped with adequate brakes and parking brakes.

D. Cab windows shall be of safety design, kept in good condition and clean for adequate visibility.

E. Tires shall be deflated before repairs on them are started and adequate means shall be provided to prevent wheel locking rims from creating a hazard during tire inflation.

F. An audible warning device and headlights shall be provided on all self-propelled mobile equipment.

G. An automatic backup alarm, that is audible above surrounding noise levels, shall be provided on all mobile equipment. An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

H. All equipment raised for repairs or other work shall be securely blocked prior to persons positioning themselves where the falling of such equipment could create a hazardous condition.

Code 1950, § 45-69.1; 1954, c. 191; 1966, c. 594, § 45.1-73; 1979, c. 315; 1983, c. 70; 1985, c. 302; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.271. Transportation of personnel

No person shall be permitted to ride or be otherwise transported on or in: (i) dippers, shovels, buckets, forks and clamshells, (ii) the cargo space of dump trucks, (iii) outside cabs or beds of heavy equipment, or (iv) chain, belt or bucket conveyors unless specifically designed to transport persons.

1994, c. 28.

§ 45.1-161.272. Lighting

A. Lights shall be provided as needed, in or on surface structures.

B. Roads, paths and walks outside of surface structures shall be kept free from obstructions and shall be well illuminated if used at night.

1966, c. 594, § 45.1-38; 1994, c. 28.

§ 45.1-161.273. Shop and other equipment

A. The following shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices and couplings with protruding bolts or nuts.

2. Shafting and projecting shaft ends that are within seven feet of floor or platform level.

3. Belt, chain or rope drives that are within seven feet of floor or platform.

4. Fly wheels. Where fly wheels extend more than seven feet above the floor, they shall be guarded to a height of at least seven feet.

5. Circular and band saws and planers.

6. Repair pits. Guards shall be kept in place when the pits are not in use.

7. Counterweights.

8. Mine fans. The approach shall be guarded.

9. Lighting and other electrical equipment that may cause shock hazards or personal injury.

B. Machinery shall not be repaired or oiled while in motion; provided, however, that this shall not apply where safe remote oiling devices are used.

C. A guard or safety device removed from any machine shall be replaced before the machine is put in operation.

D. Mechanically operated grinding wheels shall be equipped with:

1. Safety washers and tool rests.

2. Substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel. Such hoods shall include a device to control and collect excess rock, metal or dust particles, or equivalent protection shall be provided to the employees operating such machinery.

3. Eyeshields, unless goggles are worn by the operators.

E. The operator or his agent shall develop procedures for examining for potential hazards, completing proper maintenance, and properly operating each type of centrifugal pump. The procedures shall, at a minimum, address the manufacturers' recommendations for start-up and shutdown of the pumps, proper actions to be taken when a pump is suspected of overheating, safe location of start and stop switches, and actions to be taken when signs of structural metal fatigue such as cracks in the frame, damaged cover mounting brackets, or missing bolts or other components are detected. All miners who repair, maintain, or operate such pumps shall be trained in these procedures.

Code 1950, § 45-85.3; 1954, c. 191; 1966, c. 594, § 45.1-88; 1978, c. 118; 1994, c. 28; 2005, c. 3.

§ 45.1-161.274. Hydraulic hoses

All hydraulic hoses used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi). For hoses purchased after January 1, 1989, the rated pressure shall be permanently affixed on the outer surface of the hose and repeated at least every two feet. Hoses purchased and installed on automatic displacement hydraulic systems shall have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system (such as a relief valve) or shall meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

1985, c. 612, § 45.1-88.1; 1988, c. 301; 1994, c. 28.

Article 7 - TRAVELWAYS, LOADING AND HAULAGE AREAS

§ 45.1-161.275. Stairways, platforms, runways and floor openings

A. Stairways, platforms, and runways shall be provided where men work or travel.

B. Stairways, elevated platforms, floor openings and elevated runways shall be equipped with suitable handrails or guardrails.

C. Elevated platforms, floor openings, stairways and runways shall be provided with toe boards. Platforms, stairways and runways shall be kept clear of stumbling and slipping hazards and maintained in good repair.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. 28.

§ 45.1-161.276. Loading and haulage work area requirements

A. Ramps and dumps shall be of solid construction, ample width, ample clearance and head room and shall be kept reasonably free of spillage.

B. Berms or guards shall be provided on the outer bank of elevated haulage roads. Berms constructed on or after July 1, 2005, shall be constructed of substantial material to the mid-axle height of the largest vehicle regularly used on the haulage road. The width and height of the berm shall be constructed on a two-to-one ratio when constructed of unconsolidated material. Other no-less effective methods may be used for berms.

C. Berms, bumper blocks, safety hooks or similar means shall be provided to prevent overtravel and overturning at dump stations.

D. Dumping locations and haulage roads shall be kept reasonably free of water, debris and spillage. Water, debris or spilled material that creates hazards to moving equipment shall be removed.

E. Haulage roads constructed on or after July 1, 2005, shall be constructed at least one and one-half times the width of the widest equipment in use, and those haulage roads used for passing

shall be constructed at least three times the width of the widest equipment in use. In areas where this may not be possible, the foreman shall establish procedures for safe travel of haulage vehicles.

F. Traffic rules, signals, and warning signs shall be standardized at each mine and posted. This shall include, but not be limited to, rules for the travel of on-road vehicles operating near off-road haulers in work areas.

G. Dumping stations where material is dumped over an embankment shall be designed to minimize backing and, where conditions permit, to provide for perpendicular travel to allow the equipment operator to observe the dumping station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other available means shall be used to clearly indicate dumping locations. This subsection shall not apply to dumping stations (i) that are moved after each dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are dumped short and pushed over the embankment. Dump stations that may interfere with haulroads or work areas below shall be clearly marked with signs to prevent further dumping, unless other effective precautions are taken to protect haulroads or work areas below the dump station.

Code 1950, § 45-85.7; 1954, c. 191; 1966, c. 594, § 45.1-36; 1978, c. 729; 1994, c. 28; 1996, c. 774; 2005, c. 3; 2010, cc. 809, 857.

§ 45.1-161.277. Equipment operation

A. If truck spotters are used, they shall be well in the clear while trucks are backing into dumping position and dumping. Truck spotters shall use lights at night to direct backing and dumping operations.

B. Dippers, buckets, scraper blades and similar movable parts shall be secured or lowered to the ground when not in use.

C. Equipment which is to be hauled shall be loaded and protected so as to prevent sliding or spillage. When moving between work areas the equipment shall be secured in the travel position.

D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar.

E. Dust control measures shall be taken so as to not obstruct visibility of equipment operators.

F. Dippers, buckets, loading booms, or other heavy loads shall not be swung over cabs of haulage equipment until the driver is out of the cab and is in a safe location unless the equipment is designed specifically to protect drivers from falling material.

G. Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard for other vehicles.

1994, c. 28; 2005, c. 3.

Article 8 - DUST CONTROL

§ 45.1-161.278. Control of dust and combustible material

A. Where mining operations raise an excessive amount of dust into the air, water or water with wetting agent added to it or other effective methods shall be used to allay such dust at its sources.

B. Drilling in rock shall be done wet, or other means of dust control shall be used.

C. Loose coal, coal dust, oil, grease, and other combustible materials shall not be permitted to accumulate excessively on equipment or surface structures.

Code 1950, §§ 45-77.1, 45-85.1; 1954, c. 191; 1966, c. 594, §§ 45.1-66, 45.1-87; 1979, c. 315; 1994, c. 28; 2005, c. 3.

Article 9 - ELECTRICITY

§ 45.1-161.279. Overhead high-potential power lines; surface transmission lines; electric wiring in surface buildings

A. Overhead high-potential power lines shall be placed at least fifteen feet above the ground and twenty feet above driveways and haulage roads, shall be installed on insulators, and shall be supported and guarded to prevent contact with other circuits.

B. Surface transmission lines shall be protected against short circuits and lightning.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

Code 1950, §§ 45-82, 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-75; 1994, c. 28; 1996, c. 774.

§ 45.1-161.280. Transformers

A. Unless surface transformers are isolated by elevation (eight feet or more above the ground), they shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless authorized persons are present.

B. Surface transformers containing flammable oil and installed where they present a fire hazard shall be provided with means to drain or to confine the oil in the event of rupture of the transformer casing.

C. Suitable danger signs shall be posted conspicuously at all transformer stations on the surface.

D. All transformer stations on the surface shall be kept free of nonessential combustible materials and refuse.

E. No electrical work shall be performed on low-voltage, medium-voltage, or high-voltage distribution circuits or equipment, except by a certified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a certified person. All high-voltage circuits shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons who perform electrical or mechanical work on such circuits or equipment connected to the circuits, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks and tags shall be removed only by the persons who installed them or, if such persons are unavailable, by

certified persons authorized by the operator or his agent. However, employees may, where necessary, repair energized trolley wires if they wear insulated shoes and lineman's gloves. This section does not prohibit certified electrical repairmen from making checks on or troubleshooting energized circuits or the performance of repairs or maintenance on equipment by authorized persons once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

Code 1950, §§ 45-82 to 45-82.2; 1954, c. 191; 1966, c. 594, §§ 45.1-76, 45.1-78; 1993, c. 442; 1994, c. 28; 1996, c. 774; 1999, c. 256; 2005, c. 3.

§ 45.1-161.281. Grounding

A. All metallic sheaths, armors, and conduits enclosing power conductors shall be electrically continuous throughout and shall be grounded effectively.

B. Metallic frames, casing, and other enclosures of stationary electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded effectively or equivalent protection shall be provided.

C. When electric equipment is operated from three-phase alternating current circuits originating in transformers connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the frames of the power-utilizing equipment. Such grounding conductors shall be grounded at the neutral point and at intervals along the conductor if feasible. A suitable circuit breaker or switching device shall be provided having a ground-trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

1966, c. 594, § 45.1-79; 1994, c. 28.

§ 45.1-161.282. Circuit breakers and switches

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and power circuits against excessive overload. Wires or other conducting materials shall not be used as a substitute for properly designed fuses, and circuit breaking devices shall be maintained in safe operating condition.

B. Operating controls, such as switches, starters, and switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

C. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction and installation.

D. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at stationary machinery where shock hazards exist.

E. Suitable danger signs shall be posted conspicuously at all high-voltage installations.

F. All power wires and cables shall have adequate current-carrying capacity, shall be guarded from mechanical injury and installed in a permanent manner.

G. Power circuits shall be labeled to indicate the unit or circuit they control.

H. Persons shall stay clear of an electrically powered shovel or other similar heavy equipment during an electrical storm.

I. All devices installed on or after July 1, 2005, which provide either short circuit protection or protection against overload, shall conform to the minimum requirements for protection of electric circuits and equipment of the National Electric Code in effect at the time of their installation.

J. All electric conductors installed on or after July 1, 2005, shall be sufficient in size to meet the minimum current-carrying capacity provided for in the National Electric Code in effect at the time of their installation.

K. All trailing cables purchased on or after July 1, 2005, shall meet the minimum requirements for ampacity provided in the standards of the Insulated Power Cable Engineers Association -- National Electric Manufacturers Association in effect at the time such cables are purchased.

Code 1950, §§ 45-82, 45-82.1, 45-82.3, 45-82.4; 1954, c. 191; 1966, c. 594, §§ 45.1-78, 45.1-80, 45.1-81; 1978, c. 118; 1979, c. 315; 1993, c. 442; 1994, c. 28; 1999, c. 256; 2005, c. 3.

§ 45.1-161.283. Electrical trailing cables

A. Trailing cables shall be provided with suitable short-circuit protection and means of disconnecting power from the cable.

B. Temporary splices in trailing cables shall be made in a workmanlike manner, mechanically strong, and well insulated.

C. The number of temporary, unvulcanized splices in a trailing cable shall be limited to one.

D. Permanent splices in trailing cables shall be made as follows:

1. Mechanically strong with adequate electrical conductivity and flexibility.

2. Effectively insulated and sealed so as to exclude moisture.

3. The finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

E. Trailing cables shall be protected against mechanical injury.

Code 1950, § 45-82.5; 1954, c. 191; 1966, c. 594, § 45.1-84; 1978, c. 118; 1993, c. 442; 1994, c. 28.

Article 10 - EXPLOSIVES AND BLASTING

§ 45.1-161.284. Surface storage of explosives and detonators

A. Separate surface magazines shall be provided for the storage of explosives and detonators.

B. Surface magazines for storing and distributing explosives in amounts exceeding 150 pounds shall be:

1. Reasonably bulletproof and constructed of incombustible material or covered with fire-resistive material. The roofs of magazines so located that it is impossible to fire bullets directly through the roof from the ground, need not be bulletproof, but where it is possible to fire bullets directly through them, roofs shall be made bullet-resistant by material construction, or by a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by other methods;

2. Provided with doors constructed of three-eighth inch steel plate lined with a two-inch thickness of wood, or the equivalent;

3. Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;

4. Provided with suitable warning signs so located that a bullet passing directly through the face of a sign will not strike the magazine;

5. Provided with properly screened ventilators;

6. Equipped with no openings except for entrance and ventilation;

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded, if constructed of metal.

C. Surface magazines for storing detonators need not be bulletproof, but they shall be in accordance with other provisions for storing explosives.

D. Explosives in amounts of 150 pounds or less or 5,000 detonators or less shall be stored in accordance with the preceding standards or in separate locked box-type magazines. Box-type magazines may also be used as distributing magazines when quantities do not exceed those mentioned. Box-type magazines shall be constructed strongly of two-inch hardwood or the equivalent. Metal magazines shall be lined with nonsparking material. No magazine shall be placed in a building containing oil, grease, gasoline, wastepaper or other highly flammable material; nor shall a magazine be placed within twenty feet of a stove, furnace, open fire or flame.

E. The location of magazines shall be not less than 300 feet from any mine opening. However, in the event that a magazine cannot be practicably located at such a distance, the magazine may be located less than 300 feet from a mine opening, if it is sufficiently barricaded and approved by the Chief. Unless approved by the Chief, magazines shall not be located closer to occupied buildings, public roads, or passenger railways than allowed in the "American Table of Distances for Storage of Explosive Materials" published by the Institute of Makers of Explosives.

F. The supply kept in distribution magazines shall be limited to approximately a forty-eight hour supply, and such supplies of explosives and detonators may be distributed from the same

magazine, if separated by at least a four-inch substantially fastened hardwood partition or the equivalent.

G. The area surrounding magazines for not less than twenty-five feet in all directions shall be kept free of rubbish, dry grass or other materials of a combustible nature.

H. If the explosives magazine is illuminated electrically, the lamps shall be of vapor-proof type, installed and wired so as to present minimum fire and contact hazards.

I. Only nonmetallic tools shall be used for opening wooden containers. Extraneous materials shall not be stored in an explosives or detonator magazine.

J. Smoking, carrying smokers' articles or open flames shall be prohibited in or near any magazine.

Code 1950, § 45-53.2; 1954, c. 191; 1966, c. 594, § 45.1-44; 1978, c. 729; 1994, c. 28; 2010, cc. 809, 857.

§ 45.1-161.285. Misfires

A. Misfires shall be reported promptly to the mine foreman and no other work shall be performed in the blasting area until the hazard has been corrected. A waiting period of at least fifteen minutes shall elapse before anyone returns to the misfired holes. If explosives are suspected of burning in a hole, all persons affected shall move to a safe location for the longer of one hour or until the danger has passed. When such failure involves electronic detonators, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

B. Explosives shall be removed by firing a separate charge at least two feet away from, and parallel to, the misfired charge or by washing the stemming and the charge from the borehole with water, or by inserting and firing a new primer after the stemming has been washed out.

C. A very careful search of the blasting area, and if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall be under the direct supervision of the foreman or an authorized person designated by him.

Code 1950, § 45-53.7; 1954, c. 191; 1966, c. 594, § 45.1-50; 1994, c. 28; 1999, c. 256.

§ 45.1-161.286. Minimum blasting practices

A. When explosives are in use on the surface and an electrical storm approaches, all persons shall be removed from such blast area until the storm has passed.

B. In accordance with the standards set forth in § 45.1-161.255 the Chief shall promulgate regulations regarding the safe storage, transportation, handling, and use of blasting agents and other explosives.

Code 1950, §§ 45-53.1, 45-53.5; 1954, c. 191; 1966, c. 594, §§ 45.1-48, 45.1-53.1; 1978, c. 729; 1981, c. 179; 1984, c. 229; 1993, c. 442; 1994, c. 28; 1996, c. 774.

Article 11 - GROUND CONTROL

§ 45.1-161.287. Ground control

A. All surface coal mining operations shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the operations. The ground control plan shall be consistent with prudent engineering design. Mining methods shall ensure wall and bank stability, including benching, to obtain a safe overall slope. The ground control plan shall also ensure the safety of persons (i) in residences or other occupied buildings, (ii) working or traveling on any roadway, and (iii) in any other area where persons congregate, work, or travel that may be affected by blasting or falling, sliding, or other uncontrolled movement of material. The plan shall identify how residents or occupants of other buildings located down the slope from active workings will be notified when ground disturbing activities will take place above them and what actions will be taken to protect such residents or occupants from ground control failures during the work.

B. Scaling and removal of loose hazardous material from the tops of pits and highwalls, banks, walls and benches shall be completed to assure a safe work area.

C. Employees and other persons, except those involved in correction of the condition, shall be restricted from areas where hazardous highwall or pit conditions exist.

D. Unless required for the purpose of repairs, all persons shall be restricted from areas between equipment and walls, benches, or banks if the equipment may hinder their escape from falling or sliding material. Special precautions shall be taken when persons are required to perform such repairs.

1994, c. 28; 2005, c. 3.

Article 12 - AUGER AND HIGHWALL MINING

§ 45.1-161.288. Inspection of electric equipment and wiring; checking and testing methane monitors

Electric equipment and wiring that extend to underground areas shall be inspected by a certified person at least once a week and more often if necessary to assure safe operating conditions, and any hazardous condition found shall be corrected or the equipment or wiring shall be removed from service. This surface inspection is required for trailing cables and circuit breakers used in conjunction with such equipment and wiring.

1966, c. 594, § 45.1-85; 1978, c. 118; 1993, c. 442; 1994, c. 28; 2005, c. 3; 2011, cc. 826, 862.

§ 45.1-161.289. Highwall inspections

A. The face of all highwalls, for a distance of 25 feet in both directions from an auger or highwall miner operation, shall be inspected by a mine foreman before any such operation begins and at least once during each coal producing shift.

B. Mine foreman shall examine the face of all highwalls for a distance of 25 feet in both directions from auger or highwall miner operations frequently during periods of heavy rainfall or intermittent freezing-thawing.

C. Hazardous conditions shall be corrected and loose material removed from above the mining area before any work is begun.

D. Records shall be kept of the inspection compiled pursuant to subsections A and B. Such records shall be maintained for one year.

1994, c. 28; 2011, cc. 826, 862.

§ 45.1-161.290. Penetration of underground mines; testing

A. A qualified person shall test for methane and deficiency of oxygen using an approved device at the entrance to an auger hole or highwall miner entry when either penetrates a worked-out area of an underground mine.

B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is found to exist no further work shall be performed until the atmosphere has been made safe.

1994, c. 28; 1999, c. 256; 2011, cc. 826, 862.

§ 45.1-161.291. Safety precautions

A. No person shall enter an auger hole or highwall miner entry without prior approval from the Chief.

B. Auger holes and highwall miner entries shall be blocked with highwall spoil or other suitable material before abandoned.

C. Auger and highwall mining machines which are exposed to highwall and explosion hazards shall be provided with worker protection from falling material and mine explosions.

D. At least one person shall be assigned to observe the highwall for possible movement while ground personnel are working in high risk areas in close proximity to the highwall.

E. Persons shall stay clear of any moving auger or highwall miner train and no persons shall pass over or under a moving train unless adequate crossing facilities are provided.

F. The ground control plan shall specify spacing of holes, web design, and alignment control devices.

G. The ground control plan shall include other administrative, engineering, and source controls provided for safe operations.

1994, c. 28; 2011, cc. 826, 862.

Article 13 - PROXIMITY OF MINING TO GAS, OIL WELLS AND VERTICAL VENTILATION HOLES

§ 45.1-161.292. Surface coal mining; distance from wells; requirements

A. Any mine operator who plans to remove coal or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Chief a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § 45.1-161.64 which show the mine workings and projected mine workings beneath the tract in question and within 500 feet of the well. Such mine operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall certify that the mine operator has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A of this section, the mine operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. The Chief shall promulgate regulations which prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities closer than 200 feet to a well. A petition may include a request to mine through a plugged well or plugged vertical ventilation hole. A petition may also include a request to mine through a well or vertical ventilation hole and lower the head of such well or vertical ventilation hole. Each mine operator who files a petition to remove coal or extend any workings closer than 200 feet to any gas or oil well shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. 28.

Chapter 14.4:1 - MINERAL MINE SAFETY ACT

Article 1 - GENERAL PROVISIONS

§ 45.1-161.292:1. Short title

This chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) of this title shall be known as the "Mineral Mine Safety Act."

1997, c. 390.

§ 45.1-161.292:2. Definitions

As used in this chapter and in Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and in regulations promulgated under such chapters, unless the context requires a different meaning:

"Abandoned area" means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned mine fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment or refuse pile which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, or refuse pile; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than 30 minutes; and (xii) an event at a mine which causes death or bodily injury to an individual not at a mine at the time the event occurs.

"Active areas" means all places in a mine that are ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of the miners in a mine.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Director.

"Approved competent person" means a person designated by the Department as having the authority to function as a mine foreman even though the person has less than five years' experience but more than two years' experience. If an approved competent person has met all the criteria for a mine foreman certification other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

"Armored cable" means a cable provided with a wrapping of metal, plastic or other approved material.

"Authorized person" means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is task trained in accordance with requirements of the federal mine safety law.

"Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working place.

"Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

"Cable" means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

"Certified person" means a person holding a valid certificate from the Department authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Competent person" means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Department" means the Department of Mines, Minerals and Energy.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

"Grounded" means connected to earth or to some connecting body which serves in place of the earth.

"Hazardous condition" means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

"Imminent danger" means the existence of any condition or practice in a mine which could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which coal or minerals have not been excavated or processed, or work, other than examinations by a certified person or emergency work to preserve the mine, has not been performed at an underground mine for a period of 30 days, or at a surface mine for a

period of 60 days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

"Independent contractor" means any person that contracts to perform services or construction at a mine.

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed entrances to abandoned areas and by analysis contains not less than 19.5 percent oxygen nor more than 0.5 percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

"Interested persons" means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), any other person.

"Licensed operator" means the operator who has obtained the license for a particular mine under § 45.1-161.292:30.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit from which cross entries, room entries, or rooms are turned.

"Mine" means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the mineral extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes.

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman issued by the Department.

"Mine inspector" means a public employee assigned by the Director to make mine inspections as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and other applicable laws.

"Miner" means any individual working in a mineral mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

"Mineral mine" means a surface mineral mine or an underground mineral mine.

"Mineral Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and shall include any regulations promulgated thereunder, where applicable.

"Operator" means any person who operates, controls or supervises a mine or any independent contractor performing services or construction at such mine.

"Panel entry" means a room entry.

"Permissible" means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

"Return air" means air that has passed through the last active working place on each split, or air that has passed through abandoned or worked-out areas. Area within a panel shall not be deemed abandoned until inaccessible or sealed.

"Room entry" means any entry or set of entries from which rooms are turned.

"Serious personal injury" means any injury which has a reasonable potential to cause death or any injury other than a sprain or strain which requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators and transformers.

"Surface mineral mine" means (i) the pit and other active and inactive areas of surface extraction of minerals; (ii) on-site mills, shops, loadout facilities, and related structures appurtenant to the excavation and processing of minerals; (iii) impoundments, retention dams, tailing ponds, and other areas appurtenant to the extraction of minerals from the site; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) equipment, machinery, tools and other property used in, or to be used in, the work of extracting minerals from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used for surface-disturbing exploration (other than by drilling or seismic testing) or preparation of a site for surface mineral extraction activities. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activities other than exploratory drilling or seismic testing, and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless (a) the mineral is extracted for its unique or intrinsic characteristics, or (b) the mineral requires processing prior to its intended use.

"Travel way" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Underground mineral mine" means (i) the working face and other active and inactive areas of underground excavation of minerals; (ii) underground travel ways, shafts, slopes, drifts, inclines

and tunnels connected to such areas; (iii) on-site mills, loadout areas, shops, and related facilities appurtenant to the excavation and processing of minerals; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) impoundments, retention dams, tailing ponds and waste areas appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) private ways and roads appurtenant to such area; and (viii) the areas used to prepare a site for underground mineral excavation activities. A site shall commence being an underground mineral mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground mineral mine upon completion of initial reclamation activities.

"Work area," as used in Chapter 14.4 (§ 45.1-161.253 et seq.), means those areas of a mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

"Working face" means any place in a mine in which work of extracting minerals from their natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine inby the last open crosscut.

"Working section" means all areas from the loading point of a section to and including the working faces.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

§ 45.1-161.292:3. Safety and health

In safety and health, all mineral miners are to be governed by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and Chapter 18.1 (§ 45.1-225.1 et seq.) of this title, and any other sections of the Code relating to safety and health of miners and rules and regulations promulgated by the Department.

1997, c. 390.

§ 45.1-161.292:4. Special safety rules

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). Such rules, when established, shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners subject to such rules, or in lieu thereof the operator shall furnish a printed copy of such rules to each miner subject to such rules.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:5. Persons not permitted to work in mines

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent or mine foreman shall obtain a birth certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

B. No operator, agent or mine foreman shall make a false statement as to the age of any person under eighteen years of age applying for work in or around any mine.

1997, c. 390.

§ 45.1-161.292:6. Prohibited acts by miners or other persons; miners to comply with law

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued pursuant to the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

B. Each miner at any mine shall comply fully with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and other mining laws of this Commonwealth that pertain to his duties.

1997, c. 390.

§ 45.1-161.292:7. Safety materials and supplies

It shall be the duty of every operator or agent to keep on hand, at or within convenient distance of each mine, at all times a sufficient quantity of all materials and supplies required to preserve the safety of the miners working in those areas in which the operator is responsible for their health and safety, as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:8. Notifying miners of violations; compliance with Act

A. The operator and his agent shall cooperate with the mine foreman, competent person and other officials in the discharge of their duties as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and shall direct that all miners comply with all provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), especially when his attention is called to any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) by the Director or a mine inspector.

B. The operator of any mine or his agent shall operate in full conformity with this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and any other mining law

of the Commonwealth at all times. This requirement shall not relieve any other person subject to the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) from his duty to comply with the requirements of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

C. Nothing in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.

D. No operator, agent, competent person, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

1997, c. 390; 1998, c. 695.

Article 2 - DIRECTOR AND MINING INSPECTORS

§ 45.1-161.292:9. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed

A. In addition to compliance with the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), neither the Director nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating company, operators' association, or labor union. Neither the Director nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any mine, nor shall the Director, or any other officer while in office, own any stock in a corporation owning a mine either directly or through a subsidiary.

B. Neither the Director nor any mine inspector shall perform an inspection at any mine site at which that individual was last employed for a period of two years following termination of his employment.

1997, c. 390.

§ 45.1-161.292:10. Appointment of mine inspectors

Mine inspectors shall be appointed by the Director.

1997, c. 390.

§ 45.1-161.292:11. Qualifications of mine inspectors generally

Each mine inspector shall (i) be not less than 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1, 2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:12. Qualifications of inspectors of mines

Each mine inspector conducting inspections of mineral mines shall have a thorough knowledge of the various systems of working and ventilating underground mineral mines and working surface mineral mines; the control of mine roof and ground control; methods of rescue and recovery in mining operations; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; and mine haulage.

1997, c. 390.

§ 45.1-161.292:13. Duties of Director

A. The Director shall supervise execution and enforcement of all laws pertaining to the safety and health of persons employed within or at mineral mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

B. The Director shall keep a record of all inspections of mineral mines made by him or his authorized representatives. He shall also keep a permanent record thereof, properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

1997, c. 390.

§ 45.1-161.292:14. Technical specialists

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation and other mine specialties. Technical specialists shall have all the qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

1997, c. 390.

Article 3 - CERTIFICATION OF MINERAL MINE WORKERS

§§ 45.1-161.292:15, 45.1-161.292:16. Repealed

Repealed by Acts 2012, cc. 803, 835, cl. 49.

§ 45.1-161.292:17. Records of Board of Mineral Mining Examiners

The Director of the Division of Mineral Mining shall preserve in his office a record of the meetings and transactions of the Board of Mineral Mining Examiners and of all certificates issued by the Board.

1997, c. 390.

§ 45.1-161.292:18. Repealed

Repealed by Acts 2012, cc. 803, 835, cl. 49.

§ 45.1-161.292:19. Certification of certain persons employed in mineral mines; powers of the Department

A. The Department may require certification of persons who work in mineral mines and persons whose duties and responsibilities in relation to mineral mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the Department, and a person holding such a certification shall be authorized to perform the tasks which this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated by the Department requires be performed by such a certified person:

1. Surface foreman;

2. Surface foreman open pit;

3. Underground foreman;

4. Surface blaster;

5. Electrical repairman;

6. Underground mining blaster;

7. General mineral miner; and

8. Mine inspector.

B. Certification shall also be required for such additional tasks as the Department may require by regulation.

C. The Department shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:20. Examinations required for Mineral Mining Certifications

A. The Department may require examination of applicants for certification; however, the Department shall require examination of applicants for a mine inspector certification. The Department may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as provided by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) for general mineral miner and surface foreman certifications, the Department shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Department shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Department, shall periodically be published, and shall be of uniform application to all applicants.

B. Any certificate issued by the Department, except the general mineral miner certification, shall be valid from the date of issuance for a period of five years, unless renewed, or unless revoked pur-

suant to § 45.1-161.292:26. The general mineral miner certification shall be valid from the date of issuance until it may be revoked pursuant to § 45.1-161.292:26.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:21. Performance of certain tasks by uncertified persons; penalty

It is unlawful for any person to perform any task requiring certification by the Department until he has been certified. It is unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this section shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense. A certificate issued by the Board of Mineral Mining Examiners prior to July 1, 2012, shall be acceptable as a certificate issued by the Department until the Department shall provide otherwise by appropriate regulations.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:22. Examination fees; Mineral Mining Examiners' Fund

A fee of $10 shall be paid to the Director by each person examined. All fees shall be paid before the commencement of the examination. All such fees collected, together with moneys collected pursuant to § 45.1-161.292:25, shall be retained by the Department and shall be promptly paid by the Director into the state treasury and shall constitute the Mineral Mining Examiners' Fund. The fund shall be administered by the Director for the payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. The Director shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:23. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 49.

§ 45.1-161.292:24. Reciprocal acceptance of other certifications

In lieu of an examination prescribed by law or regulation, the Department may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in this Commonwealth, provided that (i) the Department finds that the requirements for certification in such other state are substantially equivalent to those of Virginia and (ii) holders of certificates issued by the Department are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Department and without additional testing, training, or other requirements not directly related to program administration.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:25. Renewal of certificates

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance with the procedure set forth in subsection A of § 45.1-161.292:20. The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal which is not renewed by the fifth anniversary of its issuance, or previous renewal, shall be invalid. As a condition to renewal, the holder shall provide the Department with such administrative information as is reasonably required and shall pay the examination fee as provided in § 45.1-161.292:22.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:26. Revocation of certificates

A. The Department may revoke any certificate upon finding that the holder has (i) been intoxicated while in duty status; (ii) neglected his duties; (iii) violated any provision of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any other mineral mining law of the Commonwealth; (iv) used any controlled substance without the prescription of a licensed physician; or (v) other sufficient cause.

B. The Department may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division of Mineral Mining or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) 10 persons working at the mine at which such person is employed, or, if less than 10 persons are working at the mine, a majority of the workers at the mine.

C. Prior to revoking a certificate, the Department shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing shall be conducted by a hearing officer as provided in § 2.2-4024.

D. Any person who has been aggrieved by a decision of the Department shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

§ 45.1-161.292:27. Reexamination

The holder of a certificate revoked pursuant to § 45.1-161.292:26 shall be entitled to examination by the Department after three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:28. General mineral miner certification

A. Every person commencing work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners or the Department. Any person who has worked in a mineral mine in Virginia prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and applicable regulations pertaining to mineral mining health and safety.

1997, c. 390; 2012, cc. 803, 835.

§ 45.1-161.292:29. Foreman certification

A. At any mineral mine where three or more persons work during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only persons holding a foreman certificate in accordance with § 45.1-161.292:19 shall be employed as mine foremen. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. Applicants for a foreman certificate shall have had at least five years of experience at mineral mining or other experience deemed appropriate by the Department and demonstrate to the Department a thorough knowledge of the theory and practice of mineral mining by making 85 percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to miners starting work in the affected area.

D. Independent contractors working in a mineral mine who are engaged in activities other than the extraction or processing of minerals and working in a clearly demarcated area where (i) no mining-associated hazards exist and (ii) no other miners travel or work while engaged in extraction or processing activities, shall employ a competent person who shall examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to personnel starting work in the affected area.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

Article 4 - LICENSING OF MINERAL MINES

§ 45.1-161.292:30. License required for operation of mineral mines; term

A. No person shall engage in the operation of any mineral mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated.

Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The Director may transfer a license to a successor operator, provided that the successor operator has complied with the requirements of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). Every change in ownership of a mine shall be reported to the Department as provided in subsection D of § 45.1-161.292:35.

B. Licenses shall be valid for a period of one year following the date of issuance and shall be renewed on their anniversary date.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department, in writing, of such change.

1997, c. 390; 1998, c. 695; 2000, c. 974.

§ 45.1-161.292:31. Fee to accompany application for license; fund; disposition of fees

Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of $180. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of $48. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mineral mining industry. All expenditures from this fund must be approved by the Director.

1997, c. 390; 2003, cc. 542, 550.

§ 45.1-161.292:32. Application for license

A. An application for a license shall be submitted by the person who will be the licensed operator of the mine. No application for a license or a renewal thereof shall be complete unless it contains the following:

1. Identity regarding the applicant. If the applicant is a sole proprietorship, the applicant shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record and telephone number of the proprietorship. If the applicant is a partnership, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership

interest; (v) the full name and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a twenty percent or greater ownership interest. If the applicant is a corporation, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest; (v) the full name, address of record and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) if the corporation is a subsidiary corporation, the applicant shall state the full name, address, and state of incorporation of the parent corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a twenty percent or greater ownership interest. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, the applicant shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest; (vi) the full name, address of record and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the name and address of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a twenty percent or greater ownership interest;

2. The names and addresses of any agent of the applicant with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the minerals to be mined;

3. Information about each independent contractor working at the mine: (i) the independent contractor's trade name, business address and business telephone number; (ii) a description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed; (iii) the independent contractor's MSHA identification number, if any; (iv) the independent contractor's address of record for service of citations and other documents; (v) the names and addresses of persons with overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

4. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

5. Such information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

6. For any license renewal, the annual report required pursuant to § 45.1-161.292:35.

B. The application shall be certified as being complete and accurate by the applicant, if an individual; by the agent of a corporate applicant; or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within thirty days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department, in writing, of such change.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:33. Denial or revocation of license

A. The Director may deny an application for, or revoke a license for, the operation of a mineral mine, upon determining that the applicant, the licensed operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.1-161.233.

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of violating subsection A of § 45.1-161.177 or § 45.1-161.178.

D. Any person whose license is denied or revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action the court shall receive the records of the Department with respect to the determination, and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:34. Operating without license; penalty

A. In addition to any other power conferred by law, the Director, or his designated representative, shall have the authority to issue an order closing any mineral mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.1-161.292:64.

B. Any person operating an unlicensed mineral mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mineral mine shall constitute a separate offense.

1997, c. 390.

§ 45.1-161.292:35. Annual reports; condition to issuance of license following transfer of ownership

A. The licensed operator of every mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the quantity of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § 45.1-161.292:32; and (iv) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Each independent contractor working or who has worked at a mine during the preceding twelve months shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine, listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above $1,000, listed by mine name and license number.

C. For purposes of subsection B, independent contractor shall mean any (i) extraction and processing contractors, including, but not limited to, drillers, blasters, portable crushers, and stripping and land clearing contractors; (ii) maintenance and repair contractors for mobile and stationary extraction and processing equipment, including, but not limited to, welders, mechanics, painters and electricians; and (iii) construction contractors involved in mine site construction maintenance or repair, including, but not limited to, plant construction contractors, concrete fabricators and equipment erectors.

D. Whenever the owner of a mine shall transfer the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of minerals produced since the January 1 previous to the date of such sale or transfer of such mine. A license shall not be issued covering such transfer of ownership until the report is furnished.

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be published or open to public inspection in any manner revealing the employing unit's identity, except that such information may be disclosed to the Director or his authorized representative

concerned with carrying out any provisions of this title. Wage data aggregated in such a manner that it does not reveal the employing unit's identity shall not be considered confidential.

1997, c. 390; 1998, c. 695; 2000, c. 974.

§ 45.1-161.292:36. Notices to Department; resumption of mining following discontinuance

A. The licensed operator or his agent shall send notice of intent to abandon or discontinue the working of an underground mine for a period of thirty days or a surface mine for a period of sixty days to the Department at least ten days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine.

B. The licensed operator, or his agent, shall send to the Department ten days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine which is inspected by the Mine Safety and Health Administration, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The licensed operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The licensed operator, or his agent, shall send to the Department ten days' prior notice of any change in the name of a mine or in the name of the operation of a mine.

E. The licensed operator, or his agent, shall send to the Department ten days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the licensed operator, and the licensed operator's mailing address.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:37. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map

A. Prior to commencing mining activity, the licensed operator of a mineral mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine, on a scale to be stated thereon of 100 to 400 feet to the inch. Such map shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions of such mine or mines as may have been abandoned, and so much of the property lines and the outcrop of the mineral of the tract of land on which the mine is located, as may be within 1,000 feet of any part of the workings of such mine, and for underground mines only, the general inclination of the mineral strata. The licensed operator shall annually, beginning

on the anniversary date of the mine permit issued pursuant to Chapter 16 (§ 45.1-180 et seq.), while the mine is in operation, cause the map thereof to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described above, and shall forward the same to the Department to be kept on record, subject to the conditions stated in subsection C. If there are no changes in the information required by this section, an updated map shall not be required to be submitted to the Department.

B. The licensed operator of any surface mineral mine, or his agent, shall not be required to submit a map of such mine to the Department unless the mine may intersect (i) underground workings or (ii) workings from auger, thin seam, or highwall mining operations. The map shall be filed and preserved among the records of the Department and made available at a reasonable cost to all persons owning, leasing, or residing on or having an equitable interest in surface areas or coal or mineral interests within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon sworn affidavit that such person requesting a map has a proper legal or equitable interest; however, the Director shall provide to the person requesting a map only that portion of the map which abuts or is contiguous to the property in which such requesting party has a legal or equitable interest. In no case shall any copy of the same be made for any other person without the consent of the licensed operator or his agent. The Director shall promptly deliver notice of such request to the licensed operator of such mining operation.

C. The original map, or a true copy thereof, shall be kept by such licensed operator at the active mine, open at all reasonable times for the examination and use of the mine inspector.

D. Copies of such maps shall be made available at a reasonable cost to the governing body of any county, city or town in which the mine is located upon written request; however, such copies shall be provided on the condition that they not be released to any person who does not have a legal or equitable interest in surface areas or mineral interests within 1,000 feet of the mining operation without the written consent of the licensed operator or his agent. The governing body shall promptly deliver notice of any request for a copy of such a map to the licensed operator or his agent.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:38. When the Director may cause maps to be made; payment of expense

If the licensed operator, or his agent, of any mine shall neglect or fail to furnish to the Director a copy of any map or extension thereof, as provided in § 45.1-161.292:37, the Director is authorized to cause a correct survey and map of said mine, or extension thereof, to be made at the expense of the licensed operator of such mine, the cost of which shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. If at any time the Director has reason to believe that such map, or extensions thereof, furnished pursuant to § 45.1-161.292:37 is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or

extension thereof shall be paid by the licensed operator. The expense shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:39. Making false statements; penalty

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to fail to correctly show, within the limits of error, the data required.

B. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to knowingly make any false statement or return in connection therewith.

C. A violation of this section is a misdemeanor, and a person convicted of violating this section shall be fined not less than $50 nor more than $200.

1997, c. 390.

Article 5 - RESCUE CREWS; RESCUE TEAMS

§ 45.1-161.292:40. Mine rescue and first aid stations

The Director is hereby authorized to purchase, equip and operate for the use of the Department, such mine rescue and first aid stations as he may determine necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

1997, c. 390.

§ 45.1-161.292:41. Mine rescue crews

The Director is hereby authorized to have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth mine rescue crews as he may determine necessary. Each member of a mine rescue crew shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such crew members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such crew members have performed the required service. Upon such certification the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any crew member at any time.

1997, c. 390.

§ 45.1-161.292:42. Duty to train crew

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who have a certificate of training from the Department or the Mine Safety and Health Administration.

1997, c. 390.

§ 45.1-161.292:43. Qualification for crew membership; direction of crews

A. To qualify for membership in mine rescue crews, an applicant shall (i) be an experienced miner, (ii) be not more than 50 years of age, and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the Mine Safety and Health Administration and representatives of the miners, and all should be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Director in his discretion may take full responsibility in directing such work. In all instances, procedures shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

1997, c. 390; 2004, c. 855; 2006, c. 396.

§ 45.1-161.292:44. Crew members to be considered employees of the mine where emergency exists; compensation; workers' compensation

When engaged in rescue or recovery work during an emergency at a mine, all crew members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the licensed operator at the rate established in the area for such work. In no event shall this rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all crew members shall be deemed to be within the employment of the licensed operator of the mine for the purpose of workers' compensation coverage.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:45. Requirements of recovery work

A. During recovery work and prior to entering any mine, all mine rescue crews conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue crew performing rescue or recovery work with breathing apparatus shall be provided with a backup crew of equal strength, stationed at each fresh air base.

C. For every two crews performing work underground, one six-member crew shall be stationed at the mine portal.

D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to all crews and no crew member shall be permitted to advance beyond such communication system.

E. A mine rescue crew shall immediately return to the fresh air base should any crew member's breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty atmospheres.

F. The Director may also assign rescue and recovery work to inspectors, instructors or other qualified employees of the Department as the Director may determine desirable.

1997, c. 390.

§ 45.1-161.292:46. State-designated mine rescue teams

The Director may, upon the request of a licensed operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team which is certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49 shall be eligible to be a state-designated team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated teams to the licensed operator. A licensed operator who has paid the rescue fee shall be entitled to the rescue services of a state-designated rescue team at no additional charge.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:47. Mine Rescue Fund

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from licensed operators pursuant to the provisions of § 45.1-161.292:46 shall be paid into the Mine Rescue Fund. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, ten percent of the fund shall be transferred from the fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum which is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert to the general fund.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:48. Inspections; Mine Rescue Coordinator

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

1997, c. 390.

§ 45.1-161.292:49. Workers' compensation; liability

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, members of the state-designated team shall be deemed to be within the employment of the licensed operator of the mine at which the disaster occurred.

B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

1997, c. 390; 1998, c. 695.

Article 6 - MINE EXPLOSIONS; MINE FIRES; ACCIDENTS

§ 45.1-161.292:50. Reports of explosions and mine fires; procedure

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. Independent contractors shall notify the licensed operator of such incidents. All facilities of the mine shall be made available for rescue and recovery operations and fire fighting.

B. No work other than rescue and recovery work and fire fighting may be attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on any persons who may have survived the explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Director shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Director shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mineral mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plans shall be published annually and furnished to all licensed operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all licensed operators of mines.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:51. Operators' reports of accidents; investigations; reports by Department

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident involving serious personal injury or death to any person or persons, whether employed in the mine or not. The scene of the accident shall not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any changes are made.

B. The Director will go personally or dispatch one or more mine inspectors to the scene of such a mineral mine accident, investigate causes, and issue such orders as may be needed to ensure the safety of other persons.

C. Representatives of the operator will render such assistance as may be needed and act in a consulting capacity in the investigation. An employee if so designated by the employees of the mine will be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

D. The Department will render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the licensed operator, one copy to any other operator whose employees were exposed to hazards as a result of the accident, and one copy to the employee representative when he has been present at the investigation. The Director will maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:52. Reports of other accidents and injuries

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident including any accident which does not result in a lost-time injury. Copies of such report shall be given to the person injured or to his designated representative to review the accident report and verify its accuracy prior to filing such report for the review of state or federal mine inspectors.

1997, c. 390.

§ 45.1-161.292:53. Duties of mine inspectors

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless

of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable. He shall have the power to compel the attendance of witnesses, and to administer oaths or affirmations; and

3. Take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall supervise the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause.

1997, c. 390.

Article 7 - MINE INSPECTIONS

§ 45.1-161.292:54. Frequency of mine inspections

A. The Director shall conduct a complete inspection of every underground mineral mine not less frequently than every 180 days, and of those surface mineral mines which are not inspected by the Mine Safety and Health Administration not less frequently than once per year. Additional inspections of such mineral mines shall be made when deemed appropriate by the Director based on an evaluation of risks at the mines, or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct inspections of surface mineral mines which are inspected by the Mine Safety and Health Administration; however, mine inspectors and other employees of the Department may enter such mines in order to (i) respond to complaints of violations of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), (ii) respond to and investigate any serious personal injury or fatality, and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a surface mineral mine is inspected by the Mine Safety and Health Administration. The Director shall make such determination based on information provided by the Mine Safety and Health Administration and Department records. The Director shall request representatives of the Mine Safety and Health Administration to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division of Mineral Mining and such additional Division employees as the Director shall designate. The committee shall meet not less than twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of the state and federal agencies with respect to surface mineral mines in the Commonwealth.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:55. Evaluation of risks at mines

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such

inspections based on an assessment, to be made not less frequently than annually, of the comparative risks at each underground mineral mine and those surface mineral mines which are not inspected by the Mine Safety and Health Administration. The Department's procedural policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost. Risk assessments shall be developed for both independent contractors and individual mine sites.

B. The Director shall schedule additional inspections at underground mineral mines, and at surface mineral mines which are not inspected by the Mine Safety and Health Administration, based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines in the Commonwealth.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:56. Review of inspection reports and records

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine which are required to be maintained pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), for the thirty-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:57. Advance notice of inspections; confidentiality of trade secrets

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Director.

B. All information reported to or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this title which contains or might reveal a trade secret referred to in § 1905 of Title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

1997, c. 390.

§ 45.1-161.292:58. Scheduling of mine inspections

A. The Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the Mine Safety and Health Administration. To this end, the Director shall endeavor to coordinate the timing of inspections with Mine Safety and Health Administration personnel.

B. The Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

1997, c. 390.

§ 45.1-161.292:59. Denial of entry

No person shall deny the Director or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or any office at the site where maps or records relating to the mine are located, pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

1997, c. 390.

§ 45.1-161.292:60. Duties of operator

A. The operator, or his agent, of every mine shall furnish the Director and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector.

B. The operator of an underground mine, or his agent, shall provide a mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector during the course of his inspection, promptly clear the mine or section thereof of all persons.

1997, c. 390.

§ 45.1-161.292:61. Duties of inspectors

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to abandoned areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour

period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine, and of the outside of the mine where any danger may exist to the miners.

1997, c. 390.

§ 45.1-161.292:62. Certificates of inspection

A. Upon completing a mine inspection, a mine inspector shall complete a certificate regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the licensed operator, agent or mine foreman, and one copy to the employees' safety committee where applicable, and shall post copies at a prominent place or places on the premises where it can be read conveniently by the miners.

C. With respect to underground mineral mines, the Department shall provide access to certificates of inspection to the Mine Safety and Health Administration.

1997, c. 390; 1998, c. 695.

Article 8 - ENFORCEMENT AND PENALTIES; REPORTS OF VIOLATIONS

§ 45.1-161.292:63. Notices of violations

A. If the Director or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or the appropriate regulations violated, and shall include an order of abatement and fix a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the licensed operator, his agent, or mine foreman and any independent contractor whose employees were exposed to hazards related to the violation.

C. Upon a finding by the mine inspector of completion of the action required to abate the violation, the Director or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding has been waived, or if it has failed to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of the decision shall be entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

E. If it shall be finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated, and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:64. Closure orders

A. The Director or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § 45.1-161.292:30; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.1-161.292:63. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to the licensed operator of the mine or his agent or the mine foreman and any independent contractor working in the area of the mine affected by the closure order.

C. Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A, or cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner, licensed operator and independent contractor shall not be entitled to administrative review of such decision. The owner, licensed operator or independent contractor to whom a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action the court shall receive the records of the Department with respect to the issuance of the order, and shall receive additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. If it shall be finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated, and the improperly issued closure order shall not be used to the detriment of the owner or operator to whom it was issued.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:65. Tolling of time for abating violations

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or until the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that the appeal was undertaken in good faith and not solely for delay or avoidance of penalties.

1997, c. 390.

§ 45.1-161.292:66. Injunctive relief

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine or mines in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing to operate in compliance with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:67. Violations; penalties

Any person convicted of willfully violating any provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), unless otherwise specified in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), shall be guilty of a Class 1 misdemeanor.

1997, c. 390.

§ 45.1-161.292:68. Prosecution of violations

A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or on his own initiative to cause proceedings to be prosecuted in such cases.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such cases, the Director may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth; however, such action shall not preclude the Director from pursuing other applicable statutory procedures. Upon receiving such a request from the Director, the Attorney General shall have the authority to institute actions and proceedings for violations described in the request.

1997, c. 390.

§ 45.1-161.292:69. Fees and costs

No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

1997, c. 390.

§ 45.1-161.292:70. Reports of violations

A. Any person aware of a violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to every miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at a prominent place at the mine site where it can be read conveniently by the miners, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report being omitted or deleted, to the licensed operator of the mine or his agent and to any independent contractor who is alleged to have committed the violation. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1997, c. 390; 1998, c. 695.

Article 9 - MINER TRAINING

§ 45.1-161.292:71. Training programs

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Department. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this section. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

§ 45.1-161.292:72. Mineral mining safety training

The Director is authorized to implement a program of voluntary safety talks for mineral miners. Safety training may include topical training and talks conducted by inspectors or other Department personnel either on site or in a classroom provided for such purpose.

1997, c. 390.

§ 45.1-161.292:73. Mineral mining safety training program

A. Each operator shall have a plan containing the following programs: training for new miners, training for newly-employed experienced miners, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include scientific workers; delivery workers; customers, including commercial over-the-road truck drivers; vendors; or visitors.

B. The plan shall be available to the Director for review upon request.

1998, c. 695; 2003, c. 401.

Chapter 14.5 - REQUIREMENTS APPLICABLE TO UNDERGROUND MINERAL MINES

§ 45.1-161.293. Scope of chapter

This chapter shall be applicable to the operation of any underground mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ 45.1-161.292:1 et seq.).

1994, c. 28; 1997, c. 390.

§ 45.1-161.294. Regulations governing conditions and practices at underground mineral mines

A. The Director shall promulgate rules and regulations, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more

stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to underground mineral mines shall establish requirements:

1. For protecting miners from general risks found at underground mineral mines and mining;

2. For the provision and use of personal protection equipment and devices for the head, feet, hands, and body;

3. For the maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;

4. For controlling unstable roof, rib, wall and other ground conditions;

5. For the handling and storage of combustible materials, including requirements for emergency plans, fire fighting and emergency rescue, fire prevention and safety features on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;

6. For the control of exposure to airborne contaminants and excessive noise levels;

7. For adequate air quality through ventilation and other appropriate measures;

8. For the safe storage, transportation, and use of explosive and blasting devices;

9. For the safe design, operation, maintenance, and inspection of drilling equipment;

10. For the construction, installation, maintenance, use and inspection of boilers, air compressors, and compressed gas systems;

11. For the safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;

12. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;

13. For the storage, transportation, and handling of materials, including corrosive and hazardous substances;

14. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;

15. For the safe design and operation of chutes;

16. For the inspection, maintenance, safe design, and operation of hoisting equipment and cables;

17. For the inspection, maintenance, and construction of mine shafts;

18. For the actions of certified and competent persons; and

19. For the safe design, operation, maintenance, and inspection of, and the conduct of mining activities at, surface areas of underground mineral mines.

B. The Director shall not promulgate any regulations relating to underground mineral mines which are inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

1994, c. 28; 1996, c. 774; 1998, c. 695.

§ 45.1-161.295. Standards for regulations

In promulgating rules and regulations pursuant to § 45.1-161.294, the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;

2. Standards established by recognized professional mineral mining organizations and groups;

3. The federal mine safety law;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of the standards, and the experience gained under this Act and other mine safety laws; and

5. Such other criteria as shall be necessary for the protection of safety and health of miners and other persons or property likely to be affected by underground mineral mines or related operations.

1994, c. 28.

§ 45.1-161.296. Mining in proximity to gas and oil wells

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § 45.1-161.292:37, which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day

of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. 28; 1997, c. 390; 1998, c. 695.

§ 45.1-161.297. Flame safety lamps

Flame safety lamps shall not be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

Code 1950, § 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-64; 1993, c. 442; 1994, c. 28.

§ 45.1-161.298. Transportation of miners

A. The Director shall promulgate regulations regarding (i) the carrying of tools by miners on man-trips; (ii) the riding of miners, except the motorman and trip rider, inside the cars; and (iii) the boarding and unboarding of miners to and from man-trips.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the matters to be addressed by such regulations:

1. Each man-trip shall be operated independently of any loaded trip of minerals or other material;

2. All miners, except the motorman and trip rider, shall ride inside the cars; and

3. Miners shall remain seated while in moving man-trip cars, shall not board or leave moving man-trip cars, and shall proceed to and from man-trips in an orderly manner.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. 28.

§ 45.1-161.299. Bare wires and cables

A. The Director shall promulgate regulations requiring bare wires, and cables other than ground wires, grounded power wires, and trailing cables to be supported by insulators and away from combustible materials, roof, and ribs.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, wires and cables not encased in armor shall be supported by well-installed insulators and shall not touch combustible materials, roof, or ribs; however, this requirement shall not apply to ground wires, grounded power conductors, and trailing cables.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28.

§ 45.1-161.300. Use of track as electrical power conductor

A. The Director shall promulgate regulations regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet.

2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet.

3. Track switches on entries shall be well bonded.

4. Rails shall not be used as power conductors in rooms.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28.

§ 45.1-161.301. Disconnecting switches

A. The Director shall promulgate regulations requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, disconnecting switches shall be installed underground (i) in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and (ii) at other places where main power circuits enter the mine.

Code 1950, § 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-80; 1994, c. 28.

§ 45.1-161.302. Respiratory equipment and ear protectors

A. The Director shall promulgate regulations requiring (i) miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment and (ii) operators to supply ear protectors to miners upon request.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, (i) miners exposed for short periods to hazards from inhaling gas, dust, or fumes shall wear approved respiratory equipment and (ii) ear protectors shall be supplied by the operator to all miners upon request.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1978, c. 729, § 45.1-99.1; 1994, c. 28.

§ 45.1-161.303. Fire precautions in transportation of mining equipment

A. The Director shall promulgate regulations requiring fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the transportation of mining equipment underground:

1. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of oil, grease, and

other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

2. A record shall be kept of the examinations and shall be made available, upon request, to the Director or his authorized representative.

3. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.

4. The frames of off-track mining equipment being moved or transported, in accordance with this subsection, shall be covered on the top and on the trolley wire side with fire-resistant material, where appropriate as determined by the Director.

5. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

6. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.

7. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.

8. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the seam of minerals does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

a. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;

b. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

c. At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be in direct communication with persons actually engaged in the moving or transporting operation, and capable of communicating with the authorized person on the surface required to be on duty;

d. Where trolley phones are utilized to satisfy the requirements of paragraph c of this subdivision, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and

e. No person shall be permitted to be inby the unit of equipment being moved or transported, in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.

The provisions of subdivisions 1 through 8 shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28.

Chapter 14.6 - REQUIREMENTS APPLICABLE TO SURFACE MINERAL MINING

§ 45.1-161.304. Scope of chapter

This chapter shall be applicable to the operation of any surface mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ 45.1-161.292:1 et seq.).

1994, c. 28; 1997, c. 390.

§ 45.1-161.305. Regulations governing conditions and practices at surface mineral mines

A. The Director shall promulgate rules and regulations, in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to surface mineral mines shall establish requirements:

1. For protecting miners from general risks found at surface mineral mines;

2. For the provision and use of personal protection equipment;

3. For controlling unstable ground conditions;

4. For the handling and storage of combustible materials, including requirements for emergency plans, fire-fighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;

5. For controlling exposure to airborne toxic contaminants;

6. For safe storage, transportation, and use of explosives and blasting devices;

7. For the safe design, operation, maintenance, and inspection of drilling equipment;

8. For the construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;

9. For the safe design, operation, maintenance, and inspection of mobile equipment;

10. For the safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;

11. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;

12. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;

13. For the storage, transportation and handling of materials, including corrosive and hazardous substances;

14. For the safe design, operation, maintenance, and inspection of hoisting equipment and cables;

15. For the actions of certified and competent persons; and

16. For the design, construction, maintenance, inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

B. The Director shall not promulgate any regulation relating to surface mineral mines which is inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

1994, c. 28; 1996, c. 774; 1998, c. 695.

§ 45.1-161.306. Standards for regulations

In promulgating rules and regulations pursuant to § 45.1-161.305, the Director shall consider:

1. Standards utilized and generally recognized by the surface mineral mining industry;

2. Standards established by recognized professional mineral mining organizations and groups;

3. The federal mine safety law;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and

5. Such other criteria as shall be necessary for the protection of safety of miners and other persons or property likely to be endangered by surface mineral mines or related operations.

1994, c. 28.

§ 45.1-161.307. Mining in proximity to gas and oil wells

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § 45.1-161.292:37, which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

1990, c. 92, § 45.1-92.1; 1994, c. 28; 1997, c. 390; 1998, c. 695.

§ 45.1-161.308. Respiratory equipment

A. The Director shall promulgate regulations requiring miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, miners exposed for short periods to hazards from inhaling dust or fumes shall wear approved respiratory equipment.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. 28.

§ 45.1-161.309. Health regulations

A. The Director shall have the authority to promulgate regulations requiring that sources of dust at surface mineral mines be wetted down unless controlled by dry collection measures, or other means approved by the Director.

B. The Director shall have the authority to promulgate regulations providing that miners at surface mineral mines which are subject to inspection by the Department pursuant to § 45.1-161.292:54

shall not be exposed to noise levels that exceed the federal limit adopted by the Mine Safety and Health Administration for non-coal miners. The regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

1994, c. 28; 1997, c. 390.

Chapter 14.7 - RIGHTS OF OWNERS OF LAND ADJACENT TO COAL MINES

§ 45.1-161.310. Consent required before working mine near land of another

No owner or tenant of any land containing coal within this Commonwealth, shall open or sink, dig, excavate or work in any mine on such land within five feet of the line dividing such land from that of another person, without the consent, in writing, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion or remainder, or of the guardian of any such person that may be under a disability. If any person violates this section, he shall forfeit $500 to any person injured by such activity and to anyone whose consent is required but not obtained.

Code 1950, § 45-91; 1966, c. 594, § 45.1-102; 1978, c. 118; 1994, c. 28; 1997, c. 390.

§ 45.1-161.311. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey

A. The owner, tenant, or occupant of any land or coal, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, if he has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the purpose of ascertaining whether a violation of § 45.1-161.310 has occurred; however, such person shall not be entitled to enter the property more often than once a month. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey, shall forfeit twenty dollars for each refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is located, before whom complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county or city to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by the party making the complaint.

Code 1950, §§ 45-92, 45-93; 1966, c. 594, § 45.1-103; 1978, c. 118; 1994, c. 28; 1997, c. 390.

Chapter 14.7:1 - RIGHTS OF OWNERS OF LAND ADJACENT TO MINERAL MINES

§ 45.1-161.311:1. Consent required before working mine near land of another

No owner or tenant of any land containing minerals, within this Commonwealth, shall open or sink, dig, excavate or work in any mine on such land within five feet of the line dividing such land from that of another person, without the consent, in writing, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion or remainder, or of the guardian of any such person that may be under a disability. If any person violates this section, he shall forfeit $500 to any person injured by such activity and to anyone whose consent is required but not obtained.

1997, c. 390.

§ 45.1-161.311:2. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey

A. The owner, tenant, or occupant of any land or minerals, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, if he has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the purpose of ascertaining whether a violation of § 45.1-161.311:1 has occurred; however, such person shall not be entitled to enter the property more often than once a month. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey shall forfeit twenty dollars for each refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is located, before whom complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county or city to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by the party making the complaint.

1997, c. 390.

Chapter 14.7:2 - TRUST FOR COAL INTERESTS

Article 1 - UNKNOWN COAL OWNERS

§ 45.1-161.311:3. Petition to establish a trust for missing coal owners

A. Any person or persons or lessee with greater than 50 percent interest in coal on a particular tract, who is seeking to impress a trust upon unknown or missing owners of such tract of coal, may petition the circuit court in the county or city containing the majority of the tract to establish a trust to protect the interests of all coal owners and lessees.

B. The petition shall:

1. List all known owners, missing owners and unknown interests and set forth the efforts to locate and identify the unknown or missing owners of the interests in the tract of coal and such other information known to the petitioner that may be helpful in identifying or locating the present owners thereof; and

2. Include the proposed terms of a lease to be offered to the trust, which lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to identify and locate the present owners of such interests.

2003, c. 775.

§ 45.1-161.311:4. Advertisement upon filing of petition

Immediately upon filing of the petition, the petitioner shall advertise a notice of the pending action, including a statement that the action is brought for the purpose of impressing a trust authorizing the execution of a valid and present coal lease for the development of a tract of coal described in the petition. Such notice shall appear in a local newspaper of general circulation once a week for two consecutive weeks.

2003, c. 775.

§ 45.1-161.311:5. Court may declare trust; trustee sale of lease

A. If, upon presentation to the circuit court of the petition, it appears to the court that development of the interests in the tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests, and shall appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.

B. The trustee shall proceed in compliance with the provisions of the order to execute the lease, and after executing the lease shall submit a report thereof to the court.

C. The court shall not authorize a trustee's lease upon the coal interests of any owner whose identity and whereabouts is known, or can be ascertained, or is discovered as a result of the action brought under this article. Any such owner may intervene as a matter of right at any time prior to the judgment approving the trustee's lease, for the purpose of establishing his title to the coal interests. If the coal owner's claim is established to the satisfaction of the court, the court shall dismiss the action at plaintiff's cost.

2003, c. 775.

§ 45.1-161.311:6. Duty of trustee; sale of lease; distribution of funds

A. The trustee shall collect the proceeds from the sale of the lease and hold and invest such proceeds for the use and benefit of the unknown or missing owners. The court may authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by the trustee for the purpose of searching for the unknown or missing owners.

B. Five years after the date of first commercial production of the coal interests the proceeds in the trust shall be disposed of pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.).

2003, c. 775.

§ 45.1-161.311:7. Payment of attorney's fees, expenses, and court costs

All attorney's fees, expenses, and court costs incident to the original proceedings shall be paid by the lessee if a lease is executed, and by the plaintiff if for any reason no lease is executed. Subsequent to entry of judgment, all allowable fees, expenses, and court costs shall be paid out of funds controlled by the trustee.

2003, c. 775.

Article 2 - KNOWN COAL OWNERS

§ 45.1-161.311:8. Production of coal by majority interest owner; petition to establish trust for known coal owners

A. Any person or persons or lessee with at least two-thirds interest in coal on a particular tract of land, who is seeking to extract such coal, may petition the circuit court in the county or city containing the majority of the tract to establish a trust.

B. The petition shall:

1. List all known owners; and

2. Include the proposed terms of a lease to be offered to the minority owners, which lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to obtain the minority owners' consent to lease their interest in the coal. The petitioner shall demonstrate to the court that (i) production of the coal by the petitioner's lessee is of economic benefit to all parties, (ii) if the coal is not produced, then the economic value of the coal is lost and the economic benefit of owning the coal is decreased, and (iii) there is no practical method for dividing such coal among the owners without extracting the coal.

D. Immediately upon filing the petition, the petitioner shall send by registered or certified mail, with a return receipt requested, notice of the petition to the party subject to the petition.

E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to § 45.1-161.311:5.

F. The court shall escrow or direct the trustee to escrow the proceeds of the lease attributable to the minority interests until such time as the minority owner's claim is established to the satisfaction of the court.

2003, c. 775.

Chapter 14.8 - EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH

§ 45.1-161.312. Mining, etc., of coal essential business; subject to seizure by Commonwealth
Any person engaged in the business of mining, production and marketing of coal, any portion of which is customarily used in the manufacture of heat and power, is hereby declared to be engaged in a business essential to the welfare, health and safety of the people of Virginia, and, under the conditions and in the manner hereinafter set forth, may be seized and operated by the Commonwealth of Virginia, or any agency created and organized for such purpose, for public uses.

Code 1950, § 45-145; 1950, p. 29; 1966, c. 594, § 45.1-145; 1994, c. 28.

§ 45.1-161.313. "Public uses" defined; declaration of policy
A. As used in this chapter, "public uses" means the mining, production and marketing of coal for the purpose of providing and furnishing heat and power to the people of Virginia.

B. Any imminent threat of substantial interruption or existing substantial interruption of such service is hereby declared to be contrary to the public policy of the Commonwealth, and it is the duty of the government of the Commonwealth to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities or catastrophes which would result therefrom.

Code 1950, § 45-146; 1950, p. 29; 1966, c. 594, § 45.1-146; 1994, c. 28.

§ 45.1-161.314. Interruption of public uses; proclamation of emergency; seizure
When in the judgment of the Governor there is an imminent threat of substantial interruption or there exists a substantial interruption of the public uses, he shall proclaim that an emergency exists in this Commonwealth endangering the welfare, health and safety of its people and the enjoyment of the public and private property within its borders, and it shall be the duty of the Governor to forthwith seize and operate the property of any person used in the mining, production and marketing of coal that he deems essential for the protection of the welfare, health and safety of the people of Virginia.

Code 1950, § 45-147; 1950, p. 30; 1966, c. 594, § 45.1-147; 1994, c. 28.

§ 45.1-161.315. Additional powers of Governor to operate seized properties

The Governor shall, in addition to his inherent power as Governor, have and may exercise the powers and authority to possess and operate properties of any person used in the mining, production and marketing of coal for public uses in the manner hereinafter provided.

Code 1950, § 45-148; 1950, p. 30; 1966, c. 594, § 45.1-148; 1994, c. 28.

§ 45.1-161.316. Virginia Fuel Commission; powers and duties

To act for and on behalf of the Governor in the enforcement of the powers and duties set forth in this chapter, the Governor may appoint a commission, known and designated as the Virginia Fuel Commission, hereafter the Commission. The Commission shall be composed of three residents of the Commonwealth, one of whom shall be designated by the Governor as chairman. The Commission, subject to the approval of the Governor, shall have in addition to such powers and duties incident hereto as the Governor may have and shall delegate to it, the following powers and duties:

1. To promulgate such rules and regulations and to issue such orders as may in the judgment of the Commission be necessary to accomplish in full the purposes of this chapter, which shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor;

2. To appoint and employ such officers and personnel as in its judgment may be required to carry out the provisions of this chapter and to remove, in its discretion, any and all persons serving thereunder, and to fix, subject to approval by the Governor, the remuneration of all such officers and other personnel. Such personnel shall work subject to such safety provisions as are in force on the property at time of acquisition;

3. To acquire under the power of eminent domain, or by purchase, lease or otherwise, all the property of any person used in the business of mining, production and marketing coal, including all lands, tipples, mines, ores, rights-of-way, leaseholds, and every character and type of equipment deemed by the Commission necessary and incidental to the continuous mining and production of coal; and

4. To operate, manage and control any such properties so acquired; to purchase coal, coke and other fuel and to sell the same, either at retail or at wholesale; to enter into contracts; to allocate and provide for the distribution of coal and other fuels so as to assure distribution deemed most likely to promote the welfare, health and safety of the people of Virginia; and to do any and all things necessary and incident to the mining, production and marketing of coal.

Code 1950, § 45-149; 1950, p. 30; 1966, c. 594, § 45.1-149; 1994, c. 28.

§ 45.1-161.317. Terms and compensation of members of Commission

Members of the Commission shall be appointed to serve at the pleasure of the Governor at a compensation fixed by the Governor.

Code 1950, § 45-156; 1950, p. 33; 1966, c. 594, § 45.1-156; 1994, c. 28.

§ 45.1-161.318. Chapter subject to provisions of general law

This chapter shall be subject to all the provisions of general law applicable to coal mining operations.

Code 1950, § 45-154; 1950, p. 33; 1966, c. 594, § 45.1-154; 1994, c. 28.

§ 45.1-161.319. Negotiating purchase or lease of coal properties

Whenever the Governor shall have proclaimed that an emergency exists under this chapter, and the Governor has appointed the Commission, the Commission shall forthwith make a bona fide attempt to negotiate the purchase or lease of the coal properties of such persons engaged in the mining, production and marketing of coal as the Commission deems necessary to accomplish the purposes of this chapter except where such negotiations cannot be promptly made due to the incapacity of the owners, or one or more of them, of the property, or for any other reason, no attempt to negotiate for the acquisition of such property need be made.

Code 1950, § 45-150; 1950, p. 31; 1966, c. 594, § 45.1-150; 1994, c. 28.

§ 45.1-161.320. Proceedings for condemnation

A. Proceedings for condemnation hereunder shall be instituted and conducted in the name of the Commission, and the procedure shall, except insofar as altered herein, be as provided in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1.

B. The proceedings for condemnation shall be by petition to the circuit court of the county or city in which the land, property and property rights or the major portion thereof sought to be temporarily acquired are located, which petition shall set forth with reasonable particularity a description and designation of the interests, rights and property intended to be temporarily taken, the name or names of the owners of the property which is to be taken or affected, and such other facts, if any, as may be deemed necessary by the Commission, in order to give adequate information to the court and all persons in interest, which petition shall be verified by oath by a member of the Commission. Upon the filing of said petition in the office of the clerk of the circuit court to which it is addressed, together with as many copies thereof as there are defendants upon which it is to be served, and depositing with the clerk for the custody of the court, and for the benefit of the owners of the properties taken or affected, such an amount of money as the Commission shall estimate to be just compensation for the property temporarily taken and the damage done, if any, the Commission shall thereupon seize and take possession, custody and control of said property or properties. The amount of money so deposited shall not limit the amount of just compensation to be allowed to the owners of the property. Service of said petition upon the defendants shall be made in the manner prescribed by the Rules of the Supreme Court of Virginia with respect to Practice and Procedure in Actions at Law in effect at the time the petition is filed.

Code 1950, § 45-151; 1950, p. 31; 1966, c. 594, § 45.1-151; 1994, c. 28; 2003, c. 940.

§ 45.1-161.321. Expense of acquiring and operating coal properties; funds derived from operation

The expense of acquiring and operating any property or properties acquired under this chapter shall be paid out of moneys transferred from the general fund of the Commonwealth not otherwise appropriated upon such authorizations as the Governor may prescribe and shall be credited to the account of the Commission, and all funds and revenues derived from or received as a result of said operations shall be paid into the state treasury and credited to the same account. Any amounts transferred upon authorization of the Governor from the general fund of the Commonwealth shall be known and designated as the "Capital Account" of the Commission, which amount, or residue thereof, together with any surplus that may accrue, shall be returned to the general fund of the Commonwealth in the event of liquidation or, in the absence of liquidation, in such installments and at such times as the Governor may prescribe.

Code 1950, § 45-152; 1950, p. 32; 1966, c. 594, § 45.1-152; 1994, c. 28.

§ 45.1-161.322. Restoration of property to owner or operator

A. Whenever the owner or operator of the business of mining, production and marketing coal, whose property has been acquired by the Commission, shall notify the Commission in writing, stating that he is in position to, and can and will resume operation and render normal service, and shall satisfy the Commission of the correctness of such statement or whenever in the judgment of the Governor the emergency declared by him no longer exists, the Commission shall restore the possession of the property so acquired by them to the owner or operator upon his request. In the event the Commission refuses such restoration of possession, the owner or operator shall have the right to have a rule issued requiring the Commission to show cause why such possession should not be restored and the court shall determine the matter as in this section provided.

B. Any such owner or operator shall be entitled to receive reasonable, proper and lawful compensation for the use of the properties so acquired by the Commonwealth and paid the same out of the state treasury. In the event the Commission has acquired such property by purchase, the owners upon reacquisition shall repay the purchase price less fair compensation for use of such property. In the event the Commission and the owner or operator are unable to agree upon the amount of such compensation either party in interest may file a petition in the circuit court for the county or city in which the property is located for the purpose of having the same judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and render judgment thereon or may refer to a commissioner such questions as are considered proper and act upon the commissioner's report as in other equity proceedings. An appeal shall lie to the Supreme Court from any final judgment of the court rendered upon the provisions of this chapter.

Code 1950, § 45-153; 1950, p. 32; 1966, c. 594, § 45.1-153; 1994, c. 28.

Chapter 15 - STRIP MINING [Repealed]

§§ 45.1-162 through 45.1-179. Repealed

Repealed by Acts 1972, c. 785.

Chapter 15.1 - GEOTHERMAL ENERGY

Article 1 - GENERAL PROVISIONS

§ 45.1-179.1. Short title; purpose

This chapter may be cited as the Virginia Geothermal Resource Conservation Act. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (i) foster the development, production, and utilization of geothermal resources, (ii) prevent waste of geothermal resources, (iii) protect correlative rights to the resource, (iv) protect existing high quality state waters, and safeguard potable waters from pollution, (v) safeguard the natural environment, (vi) promote geothermal and water resource conservation and management, and (vii) safeguard the health, safety, and welfare of the citizens of the Commonwealth.

1981, c. 506.

§ 45.1-179.2. Definitions

The following terms used in this chapter have the meanings respectively ascribed thereto unless the context clearly requires otherwise:

"Correlative rights" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;

"Geothermal energy" means the usable energy produced or which can be produced from geothermal resources;

"Geothermal resource" means the natural heat of the earth and the energy in whatever form, present in, associated with, created by, or which may be extracted from, that natural heat, as determined by the rules and regulations of the Department;

"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources; and

"Board" means the State Water Control Board.

1981, c. 506; 1984, c. 590.

§ 45.1-179.3. Application

The provisions of this chapter regarding (i) permitting, well regulations, reservoir management and allocation apply to geothermal resources at temperatures above the minimum temperature set forth by the Department pursuant to § 45.1-179.7, (ii) leasing requirements, royalties or severance taxes apply to geothermal resource applications producing more than the volumetric rate set forth by the Department pursuant to § 45.1-179.7.

1981, c. 506.

§ 45.1-179.4. Ownership

Ownership rights to geothermal resources shall be in the owner of the surface property underlain by the geothermal resources unless such rights have been otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the Commonwealth of any rights, title, or interest they may have in geothermal resources.

1981, c. 506.

§ 45.1-179.5. Findings; clarification of nature of the resource

Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource. Mineral estates shall not be construed to include geothermal resources unless explicit in the terms of the deed or other instrument of conveyance.

1981, c. 506.

Article 2 - RESOURCE REGULATION

§ 45.1-179.6. Duties and responsibilities of Department

The Department shall have and is hereby given jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and shall have the power and authority to make and enforce rules, regulations, and orders and do whatever may reasonably be necessary to carry out the provisions of this chapter. Any such rules and regulations adopted by the Department pursuant to the provisions of this chapter shall be promulgated in compliance with the provisions of the Administrative Process Act (Chapter 40 of Title 2.2, § 2.2-4000 et seq.).

1981, c. 506.

§ 45.1-179.7. Additional powers of Department

The Department shall:

1. Consult with the Board in carrying out all of its duties and responsibilities pursuant to the provisions of this chapter;

2. Develop a comprehensive geothermal permitting system for the Commonwealth, which shall provide for the exploration and development of geothermal resources;

3. Promulgate such rules and regulations as may be necessary to provide for geothermal drilling and the exploration and development of geothermal resources in the Commonwealth; such rules and regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels (i) the Department shall set minimum temperature levels for permitting, well regulations, reservoir management, and allocation of the geothermal resource; and (ii) the Department shall set minimum volumetric rates for geothermal leasing, royalties and severance taxes, as necessary. The Department shall also be responsible for reviewing the established temperature level and volumetric rate

requirements biennially and revising the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years and such revision shall not operate retroactively; and

5. Consult with the State Department of Health, as necessary, to protect potable waters of the Commonwealth and in carrying out its duties and responsibilities pursuant to the provisions of this chapter.

1981, c. 506.

§ 45.1-179.8. Reinjection policy

The Department, the Board, and Department of Health shall jointly develop, and revise as necessary, a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

1981, c. 506.

§ 45.1-179.9. Cancellation or suspension of permit

Whenever, after a public hearing held in conjunction with the Board, the Department determines that a holder of a permit issued pursuant to the provisions of this chapter is willfully violating any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future use thereof in order to prevent future violations.

1981, c. 506.

§ 45.1-179.10. Penalties; injunctions

Any person who shall be adjudged to have violated any provisions of this chapter shall be guilty of a misdemeanor and shall be liable to a penalty of not less than $10 nor more than $250 for each violation. In addition, upon violation of any of the provisions of this chapter, or the regulations of the Department hereunder, the Department may either before or after the institution of proceedings for the collection of the penalty imposed by this section for such violation, institute a civil action in the circuit court wherein the well is located for injunctive relief to restrain the violation and for such other or further relief in the premises as said court shall deem proper.

1981, c. 506.

§ 45.1-179.11. Judicial review

Any person aggrieved by a final decision of the Department pursuant to the provisions of § 45.1-179.9 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1981, c. 506; 1986, c. 615.

Chapter 16 - PERMITS FOR CERTAIN MINING OPERATIONS; RECLAMATION OF LAND

Article 1 - GENERAL PROVISIONS

§ 45.1-180. Definitions

The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning:

(a) Mining. -- Means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals; any activity constituting all or part of a process for the extraction or removal of minerals so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Nothing herein shall apply to mining of coal. This definition shall not include, nor shall this title, chapter, or section be construed to apply to the process of searching, prospecting, exploring or investigating for minerals by drilling.

(b) Disturbed land. -- The areas from which overburden has been removed in any mining operation, plus the area covered by the spoil and refuse, plus any areas used in such mining operation including land used for processing, stockpiling, and settling ponds.

(c) Overburden. -- All of the earth and other material which lie above a natural deposit of minerals, ores, rock or other solid matter and also other materials after removal from their natural deposit in the process of mining.

(d) Spoil. -- Any overburden or other material removed from its natural state in the process of mining.

(e) Operator. -- Any individual, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, or any legal entity which is engaged in mining.

(f) through (i) [Repealed.]

(j) Mining operation. -- Any area included in an approved plan of operation.

(k) Reclamation. -- The restoration or conversion of disturbed land to a stable condition which minimizes or prevents adverse disruption and the injurious effects thereof and presents an opportunity for further productive use if such use is reasonable.

(l) Mineral. -- Ore, rock, and any other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.

(m) Division. -- The Division of Mined Land Reclamation.

(n) Refuse. -- All waste soil, rock, mineral tailings, slimes and other material directly connected with the mine, cleaning and preparation of substances mined including all waste material deposited in the permit area from other sources.

1968, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1984, c. 590.

§ 45.1-180.1. Repealed

Repealed by Acts 1974, c. 96.

§ 45.1-180.2. Legislative findings; declaration of policy

A. The General Assembly finds that the mining of minerals within the Commonwealth is an activity that makes a contribution to the standard of living of the citizens of the Commonwealth; and that it is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Uncontrolled mining of such minerals and unreclaimed land can adversely affect the environment through the destruction of vegetative cover, the disruption of drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, and the temporary and, in some circumstances, permanent destruction of scenic beauty and wildlife habitats. The General Assembly further finds that it is often not practicable to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original contour; but that it is essential to conduct mining in such a way as to minimize its effects on the environment.

B. The General Assembly recognizes that there are wide variations in the circumstances and conditions surrounding and arising out of the mining of minerals and that rehabilitation and conservation of land affected by mining of minerals will be assured only through proper planning, proper use of appropriate methods of mining, consideration of the impact of mining upon the environment as well as the land use of surrounding areas, and through the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of the mining of minerals.

C. The General Assembly declares that it is in the public interest and shall be the policy of the Commonwealth to require and encourage the proper control of mining of minerals so as to protect the public health, safety and welfare consistent with the protection of physical property and with maximum employment and the economic well-being of the Commonwealth through good industry and sound conservation practices, and to require and encourage thorough operations and reclamation planning, consideration of the surrounding environment, and incorporation of control techniques and reclamation actions in mining operations insofar as economically and physically practicable to assure such proper control of mining. To these ends, the Director is mandated to enforce this chapter and to adopt whatever regulations are found necessary to accomplish the provisions of this chapter.

D. The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated statewide program to aid in the protection of wildlife, in restoring these lands to productive purposes and to control present and future problems associated with mining resources and the reclamation of disturbed lands to the end that mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.

E. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right or rights of any person who is a party to any dispute involving property rights, or the right of any person to damages or other relief on account of injury to persons or property due to mining activities regulated by this chapter and to maintain any action or other appropriate procedure therefor; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

1977, c. 312; 1984, c. 590.

§ 45.1-180.3. Authority of Director; enforcement of chapter by injunction

A. The authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter and the authority to adopt definitions for use in interpreting this chapter are hereby vested in the Director.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter pursuant to the findings and legislative policy adopted by the General Assembly, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;

2. To issue orders to enforce the provisions of this chapter, all rules and regulations promulgated thereunder, and the terms and conditions of any permit;

3. To make investigations and inspections to insure compliance with any provision of this chapter or any rules, regulations, or orders promulgated thereunder;

4. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining;

5. To receive any federal funds, state funds or any other funds and to enter into any contracts, for which funds are available, to carry out the purposes of this chapter.

C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against any violation of the provisions of this chapter, and the rules, regulations and orders promulgated hereunder or to compel the performance of acts required thereby without regard to any adequate remedy which may exist at law, such injunction

to be issued without bond. However, with regard to the suspension of mining operations, § 45.1-193.1 shall control.

1977, c. 312; 1984, c. 590.

§ 45.1-180.4. Exemption for restricted mining

Any operator engaging in mining and disturbing less than one acre of land and removing less than 500 tons of minerals at any particular site, is exempt from all mining permit fees and renewal fees and bond requirements of this chapter; provided, however, each person intending to engage in such restricted mining shall submit an application for a permit, a sketch of the mining site and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1. The Director shall approve the application if he determines that the issuance of the permit shall not violate the provisions of this chapter.

1977, c. 312.

Article 2 - REGULATION OF MINING ACTIVITY

§ 45.1-181. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department

It is unlawful for any operator to engage in any mining operation in Virginia, without having first obtained from the Department a permit to engage in such operation and paying a fee therefor of $31 per acre for every acre of land to be affected by the total operation for which plans have been submitted, which shall be deposited in the state treasury in a special fund to be used by the Director for the administration of this chapter. A permit shall be obtained prior to the start of any mining operation. If within 10 days of the anniversary date of the permit the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator of $16 per acre for land to be affected by the total operation in the next ensuing year. The renewal fees shall be deposited in the state treasury in the special fund set out above. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ 45.1-182.1 and 45.1-183. A separate permit shall be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the Director shall contain the following information: (i) the common name and geologic title, where applicable, of the mineral to be extracted; (ii) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and

distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (iii) the name and address of the owner or owners of the surface of the land; (iv) the name and address of the owner or owners of the mineral, ore or other solid matter; (v) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (vi) the total number of acres of land to be covered by the permit; (vii) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (viii) whether any mining permits of any type are now held by the applicant and the number thereof; (ix) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (x) if known, whether the applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by clause (ix), has ever had a mining permit of any type issued under the laws of this or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited. Clause (iv) shall not apply to the shell, container chamber, passage, or open space set forth in § 55-154.2.

The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan and meeting the following requirements:

1. Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service or in such a manner as to be acceptable to the Director;

2. Identify the area to correspond with the land described in the application;

3. Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within 100 feet of any part of the affected area;

4. Be drawn to a scale of 400 feet to the inch or better;

5. Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within 500 feet of such area;

6. Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected;

7. Show the date on which the map was prepared, the north arrow and the quadrangle name; and

8. Show the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

Upon receipt of a written request by any landowner on whose property a sand and gravel operation is permitted pursuant to this section, the operator of the sand and gravel operation shall provide a copy of the map, photograph or plan to the landowner.

No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and § 45.1-182.1 and the bond from the applicant as required in § 45.1-183.

1968, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1983, c. 322; 1996, cc. 648, 659; 2003, cc. 542, 550; 2012, c. 695.

§ 45.1-182. Repealed

Repealed by Acts 1977, c. 312.

§ 45.1-182.1. Operations plan; reclamation; policy of Director

A. The application for a permit shall be accompanied by an operations plan in such form and with such accompanying material as the Director shall require. The operations plan shall describe the specifications for surface grading and restoration, including sketches delineating placement of spoil, stockpiles, and tailing ponds, to a surface that is suitable for the proposed subsequent use of the land after reclamation is completed.

B. The operations plan shall include a provision for reclamation of all land estimated to be affected by the mining operation for which the permit is sought. The reclamation provision shall be in such form and contain such accompanying material as the Director shall require and shall state:

1. The planned use to which the affected land is to be returned through reclamation;

2. Proposed actions to assure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as practicable. The Director shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.

C. It shall be the policy of the Director to encourage adoption of productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, forestry and timberland operations, industrial and building sites, and to consider the general original contour in determining the particular reclamation program for the acreage. The Director may require an amendment to the operations plan to meet the exigencies of any unanticipated circumstance or event.

1977, c. 312; 1984, c. 590.

§ 45.1-183. Bond of operator

Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the Director payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the operations plan as approved and directed by the Department. The amount of bond shall be no less than $200 nor more than $1,000 per acre, based

upon the number of acres of land which the operator estimates will be affected by mining operations during the next ensuing year. The minimum amount of bond furnished shall be $1,000, except in areas of five acres or less the bond shall be no less than $200 nor more than $1,000 per acre. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this Commonwealth; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director.

1968, c. 734; 1970, c. 245; 1972, c. 206; 1974, c. 312; 1977, c. 312.

§ 45.1-184. Review of operations plan and reclamation provision by Director; issuance of permit

Upon receipt of a reasonable operations plan and bond prescribed above, the Director shall review the plan and if it meets with his approval issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant shall amend his operations plan to meet the Director's reasonable objections and file a satisfactory amended plan with the Director, no permit shall be issued.

In reviewing such plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or proper drainage control is not feasible, he may disapprove the permit application. Provided, however, that the Director may approve the permit after deleting the areas from the permit application held to be objectionable in the Director's findings.

The Director shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust or corporation which has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, in which event no permit shall be issued. Except, however, if an operator who has heretofore forfeited a bond within thirty days of notice and demand by the Director pays the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or greater than the cost of reclamation, such operator shall then become eligible for another permit.

1968, c. 734; 1974, c. 312; 1977, c. 312.

§ 45.1-184.1. Application for permit; adjoining landowners; local official

A. The application for a permit shall be accompanied by a statement showing the names and addresses of the owners of property within one thousand feet of the property line of any land proposed to be permitted and certification that such landowners have been notified by certified mail of the application for a permit unless notified previously. Such residents may file written objections with the Director, and may request a hearing. This section shall apply to initial applications for permits only, and no new notice shall be required for renewal applications or for permits for acreage in addition to that originally permitted.

B. The application for the permit shall also be accompanied by a statement certifying that the chief administrative official of the local political subdivision has been notified of the proposed operation by certified mail.

1977, c. 312.

§ 45.1-184.2. Succession of one operator by another at uncompleted project

Where one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation and transfer the permit to the successor operator; provided, however, that the successor operator has complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be $16 per acre, except as provided by § 45.1-180.4. The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

1977, c. 312; 1996, cc. 648, 659; 2003, cc. 542, 550.

§ 45.1-185. Additional bond to be posted annually; release of previous bond; report of reclamation work

Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of no less than $200 nor more than $1,000 per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for the areas disturbed in the last twelve months if reclamation work has been completed or transferred to additional acres to be disturbed. The approval of the Director to release the bond shall be obtained in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(a) Identification of the operation; (b) the county or city in which it is located and its location with reference to the nearest public highway; (c) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (d) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or in such manner as to be acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area and the methods of access to the area from the nearest public highway.

1968, c. 734; 1974, c. 312; 1977, c. 312.

§ 45.1-186. Repealed

Repealed by Acts 1977, c. 312.

§ 45.1-186.1. Notice of noncompliance served on operator

A. The Director may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the Director to:

1. Apply the control techniques and institute the actions approved in his operations and reclamation plan;

2. Comply with any required amendments to the operations or reclamation plan; or

3. Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto which affect the health, safety and welfare of the Commonwealth.

B. A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in writing in what respects the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice.

C. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, which, when collected, shall be deposited in the state treasury in a special reclamation fund to be used by the Director in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: (i) of the bond shall be returned to the corporate surety; or (ii) of the collateral security, certified check or cash that has been deposited in lieu of bond, shall be returned to the person who provided it originally or to the operator. Within 30 days of the issuance of any permit revocation or bond forfeiture made under this section, the operator may request a review pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

1977, c. 312; 2012, cc. 803, 835.

§ 45.1-186.2. Collection of debts

The amount by which the cost of reclamation exceeds the amount of the operator's forfeited bond shall constitute a debt of the operator to the Commonwealth of Virginia. The Director is authorized to collect such debts, together with the cost of collection, through appropriate legal action or by declaring the forfeiture of other payments. Moneys collected through legal action, less the cost of collections, shall be deposited in the special reclamation fund created under § 45.1-186.1.

1981, c. 76.

§ 45.1-187. Additional bond to cover amended estimate of land to be disturbed

If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the Director shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be disturbed by such operation.

1968, c. 734; 1974, c. 312.

§ 45.1-188. Interference with reclamation unlawful; other mining operations on land

It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the Commonwealth for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire to conduct other mining operations on lands disturbed by the operator furnishing bond hereunder, such owner or other person shall be in all respects subject to the provisions of this chapter and the Director shall then release an equivalent amount of bonds to the operator originally furnishing bond on the disturbed area.

1968, c. 734; 1974, c. 312.

§ 45.1-189. Repealed

Repealed by Acts 1977, c. 312.

§ 45.1-190. Repealed

Repealed by Acts 1974, c. 312.

§ 45.1-191. Penalty for violation of chapter, etc

Any violation of any provision of this chapter or of any order of the Director shall be a misdemeanor punishable by a maximum fine of $1,000 or a maximum of 1 year in jail, or both.

1968, c. 734; 1974, c. 312.

§ 45.1-192. Assistance of federal, state and local agencies

In approving plans of operation and in issuing rules and regulations for reclamation, the Director may avail himself and his Department of the advice, assistance and facilities of local soil and water conservation district supervisors or any other federal, state or local agency.

1968, c. 734.

§ 45.1-193. Repealed

Repealed by Acts 1977, c. 312.

§ 45.1-193.1. Injunction prohibiting mining operation

Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or endanger the health, safety, welfare and property rights of citizens of Virginia, and abatement is not feasible by the application of control techniques, the Director shall petition the appropriate circuit court for an injunction to prohibit further operations. Such injunction shall not relieve the operator from his duty to reclaim lands previously affected according to the terms and conditions of this permit.

1977, c. 312.

§ 45.1-194. Appeals from decisions of the Department

An appeal from any order of the Department shall be conducted in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. The appeal shall be taken within 30 days following the issuance of the order by forwarding to the Director by certified mail a notice of appeal designating the order from which the appeal is taken.

1968, c. 734; 1974, c. 312; 1979, c. 302; 1982, c. 117; 2012, cc. 803, 835.

§§ 45.1-195, 45.1-196. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 47.

§ 45.1-197. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter

Counties, cities and towns may establish standards and adopt regulations dealing with the same subject, provided, however, such standards and regulations shall not be below those adopted by the Director.

This chapter shall not be construed to repeal any local ordinance or regulation or charter provision now in effect in any county, city or town where the provisions are not less than the standards adopted by the Director. The Director may waive the application of this chapter if, in his opinion, a county, city or town in which mining operations are being conducted has enacted and is enforcing zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the Director waives the provisions hereof, the operator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

The Director may also waive the application of this chapter as to any mining or borrow pit operation which is conducted solely and exclusively for a state project and which is subject by contract to the control and supervision of a state agency, provided regulations satisfactory to the Director have been promulgated and are incorporated in any contract for such removal.

The county, city, town or state agency shall assure strict compliance with all the provisions of the ordinances, regulations or contracts and the Director shall from time to time review the ordinances, regulations or contracts and the enforcement programs to assure compliance with this chapter. If the Director determines that there is not strict compliance with this chapter, then he may rescind his waiver of the application of this chapter.

1968, c. 734; 1974, c. 312; 1977, c. 312.

§ 45.1-197.1. Repealed

Repealed by Acts 1974, c. 96.

§ 45.1-197.2. Repealed

Repealed by Acts 1984, c. 590.

Article 3 - ORPHANED LANDS

§ 45.1-197.3. Definition

For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed.

1978, c. 634.

§ 45.1-197.4. Survey; priorities for reclamation

The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this Commonwealth and shall establish priorities for the reclamation thereof.

1978, c. 634.

§ 45.1-197.5. Agreements with owners or lessees; reclamation by Director

The Director is authorized to enter into agreements with owners or lessees of orphaned lands when the owners agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the Director return orphaned land to other than the minimum potential use thereof which obtained prior to the initiation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, but in no event shall the Director enter into such agreement unless funds are immediately available for the performance of the agreement by the Director as hereinafter provided.

1978, c. 634.

§ 45.1-197.6. Contracts for reclamation

The Director is authorized to contract with any state agency, federal agency, or private contractor through the Division for the purpose of reclaiming orphaned lands pursuant to the agreements herein specified.

1978, c. 634.

§ 45.1-197.7. Acceptance of federal funds, gifts, etc

The Director is authorized to accept federal funds or gifts or grants from any source for the purposes of this article and is further authorized to acquire by gift or purchase, but not by the exercise of the power of eminent domain, such orphaned lands as in his judgment is in the public interest and to utilize any such funds, gifts or grants for the purposes of this article.

1978, c. 634.

Article 4 - MINERALS RECLAMATION FUND

§ 45.1-197.8. Creation of Fund

There is hereby created in the State Treasurer's office a special fund to be known as the Minerals Reclamation Fund, hereinafter referred to as the Fund, which shall be under the supervision of the Department. The Fund shall consist of all payments made into the Fund by operators in accordance with the provisions of this article.

1978, c. 634.

§ 45.1-197.9. Membership in Fund; payments required

Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 (§ 45.1-180 et seq.) of this title shall become a member of the Fund by making an initial payment to the Fund of fifty dollars for each acre estimated to be affected by mining operations during the next ensuing year. Thereafter, the member shall, within ten days following the anniversary date of each permit issued to the member, make a payment to the Fund of twelve dollars and fifty cents for each acre estimated to be affected by mining operations during the next ensuing year. Such payments shall continue to be made until the member has paid into the Fund a total of $500 for each acre, estimated to be affected under the permits issued to the member.

1978, c. 634.

§ 45.1-197.10. Release of bonds and other securities

When the size of the Fund shall have reached $400,000, the bonds and other securities previously posted, pursuant to § 45.1-183, by all members shall be released.

1978, c. 634.

§ 45.1-197.11. Return of member payments

Subject to the provisions of § 45.1-197.14, the Director shall return from the Fund to the member, the payments which the member has paid previously to the Fund, when the Director has determined that the member has completed satisfactory reclamation, in accordance with § 45.1-185. The payments returned shall be only those payments which the member has made for the acres which have been satisfactorily reclaimed. In lieu of a return, the member may request the Director to retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

1978, c. 634.

§ 45.1-197.12. Revocation of permits; reclamation work

If a permit which has been issued to a member is revoked pursuant to § 45.1-186.1, then the payments which the member has made to the Fund, with respect to the permit so revoked, shall be forfeited to the Fund. The Director shall use the payments so forfeited or as much thereof as shall be necessary, for the reclamation of the mining operation to which the permit had applied. In the event that the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit, in accordance with § 45.1-186.1, except that if all members' bonds

and other securities have been released pursuant to § 45.1-197.10 then the Director shall draw upon the Fund for the entire cost of reclamation.

1978, c. 634.

§ 45.1-197.13. Collection of debt where cost of reclamation exceeds member's forfeited payments, etc

The amount by which the cost of reclamation exceeds the amount of a member's forfeited payments and, if any, the member's bond or other security also forfeited, shall constitute a debt of the member to the Commonwealth of Virginia. The Director is authorized to collect such debts together with the cost of collection, through appropriate legal action, or by declaring the forfeiture of other payments made by the member to the Fund. Moneys collected through legal action, less the costs of collection, shall be deposited in the Fund.

1978, c. 634.

§ 45.1-197.14. Decreases in size of Fund

Whenever the size of the Fund shall decrease to less than $250,000 the Director shall suspend the return of payments pursuant to § 45.1-197.11 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to $250,000. In lieu of such an assessment all members shall at the request of the Director post bonds or other securities, within six months after the Director so notifies the members. Failure to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with § 45.1-197.12.

1978, c. 634.

§ 45.1-197.15. Order of return of payments

The return of payments to members shall be in the order in which the Director approves the completion of reclamation pursuant to § 45.1-185.

1978, c. 634.

§ 45.1-197.16. Discontinuance of Fund

In the event of the discontinuance of the Fund, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

1978, c. 634.

§ 45.1-197.17. Construction of article; Fund used solely for reclamation

Nothing in this article shall be construed as vesting in any member any right, title or interest in the Fund, or the disposition thereof. The Fund shall be used solely for reclamation of land pursuant to this chapter.

1978, c. 634.

§ 45.1-197.18. Reclamation funding

An amount equal to the average interest rate earned for all funds in the state treasury as applied to the Fund shall be paid annually to the Department to be used only for the reclamation of orphaned lands pursuant to Article 3 (§ 45.1-197.3 et seq.) of this chapter and is hereby allocated for such purposes.

1978, c. 634; 1984, c. 590.

Chapter 17 - SURFACE MINING OF COAL [Repealed]

§§ 45.1-198 through 45.1-220.5. Repealed

Repealed by Acts 2013, cc. 47 and 129, cl. 2.

Chapter 18 - COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS

§ 45.1-221. Repealed

Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.

§ 45.1-221.1. Definitions

As used in this chapter, unless the context requires a different meaning:

"Coal refuse" means waste material resulting from the mining and screening or processing of coal.

"Coal slurry" means waste water and impurities produced as the result of coal washing and preparation for market, containing a combination of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings.

"Dam" means an artificial barrier or obstruction designed to impound water, coal slurry, or silt to an elevation of five feet or more above the upstream toe of the structure, and has a storage volume of 20 acre-feet or more, or is designed to impound water, coal slurry, or silt to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

"Impounding water" means to impound water that has been used in carrying out any part of the process necessary in the production or preparation of coal.

"Operator" means any person who operates, controls, or supervises a water, coal slurry, or silt retaining dam or mine refuse pile impounding water.

"Refuse pile" means a pile of coarse or fine coal refuse that is a result of the mining or screening process that may be stacked, spread, or graded, and covers a minimum of 20 acre-feet or more.

"Silt" means fine particles resulting from a mining operation, suspended in or deposited by water.

"Water" means liquid or slurry as a result of the processing of coal in mining operations.

2005, c. 3.

§ 45.1-222. Design and construction of water, coal slurry, or silt retaining dams or mine refuse piles impounding water; designs and other data to be submitted to the Chief

A. New water, coal slurry, or silt retaining dams, or mine refuse piles impounding water, or the modification of existing water, coal slurry, or silt retaining dams or mine refuse piles impounding water shall be designed and constructed by, or under the direction of, a licensed professional engineer, if such retaining dam or refuse pile:

1. Is designed to impound water, coal slurry, or silt to an elevation of five feet or more above the upstream toe of the structure; and

2. Has a storage volume of 20 acre-feet or more; or

3. Is designed to impound water or silt to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

The design, construction specifications, and other related data, including final abandonment plans, shall be certified by the licensed professional engineer.

B. No person shall place, construct, enlarge, alter, repair, remove, or abandon such water, coal slurry, or silt retaining dam or mine refuse pile impounding water until the operator has filed an application for and received approval from the Chief for such construction or modification. However, routine repairs that do not affect the engineering design criteria and safety of an approved water, coal slurry, or silt retaining dam or mine refuse pile impounding water are not subject to the application and approval requirements.

1974, c. 323; 1984, c. 590; 1999, c. 256; 2005, c. 3.

§ 45.1-223. Repealed

Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.

§ 45.1-224. Examination of water, coal slurry, or silt retaining dams or mine refuse piles impounding water; potentially hazardous conditions; plans to be submitted by operators

A. All water, coal slurry, or silt retaining dams or mine refuse piles impounding water shall be examined by an authorized person, as defined in § 45.1-161.8, at least every seven days or as otherwise approved by the Chief. Each dam or refuse pile shall be examined for compliance with approved design and maintenance requirements, visible structural weakness, volume overload and other hazards.

B. After each examination, the authorized person shall promptly record the results of the examination in a book that shall be available at the dam or refuse pile, or other designated location, for inspection by the Chief or his authorized representative. All examination records shall include a description of any hazardous condition found and any action taken to abate any hazardous condition. Records shall be countersigned by the supervisor of the authorized person creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the

shift for which the examination was completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. The operator of the dam or refuse pile may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe design capacity of the dam or refuse pile, such examination shall be made more often as required by the Chief or his authorized representative.

D. When a potentially hazardous condition exists, the operator shall immediately initiate procedures to:

1. Remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;

2. Eliminate the potentially hazardous condition; and

3. Notify the Chief and other governing agencies by the quickest available means following the protocol established in the site's Emergency Notification and Evacuation Plan.

E. The operator of each coal site on which a water, coal slurry, or silt retaining dam or mine refuse pile impounding water is located shall submit a plan for carrying out the requirements of § 45.1-222 and subsections A, B, C, and D for approval by the Chief. The plan shall include:

1. The designs, construction specifications, and other related data required under § 45.1-222;

2. A schedule and procedures for inspection of the retaining dam by a qualified person under normal conditions and under conditions that could cause flooding;

3. Procedures for evaluating potentially hazardous conditions;

4. Procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous conditions;

5. Procedures for eliminating the potentially hazardous conditions;

6. Procedures for notifying the Chief and other governing agencies; and

7. Any additional information which may be required by the Chief.

F. Before making any changes or modifications in the approved plan, the operator shall obtain approval of such changes or modifications from the Chief.

G. The Chief shall notify the operator in writing whether the operator's plan is approved or disapproved. If he disapproves the plan, he shall provide the operator with his written objections thereto and his required amendments.

1974, c. 323; 1999, c. 256; 2005, c. 3.

§ 45.1-224.1. Emergency Notification and Evacuation Plan

A. On or before July 1 of each year the operator of any water, coal slurry, or silt retaining dam or mine refuse pile that impounds water that meets the criteria of subsection A of § 45.1-222 shall submit to the Chief an Emergency Notification and Evacuation Plan. If there are no changes to a plan at the time the updated plan is due, the operator may submit a notice that there are no changes to the plan in lieu of submitting an updated plan to the Chief.

B. The plan and attendant maps, appropriate for the level of hazard of the dam or refuse pile, shall describe the water, coal slurry, or silt retaining dam or mine refuse pile that impounds water and include:

1. The name and address of the operator owning, operating, or controlling the structure.

2. The identification numbers of the structure as assigned by the Chief, the Mine Safety and Health Administration, and the Office of Surface Mining.

3. The location of the structure indicated on (i) a current United States Geological Survey 7 1/2-minute or 15-minute topographic quadrangle map, (ii) an equivalent digital map, or (iii) a topographic map of a scale approved by the Chief.

4. The name and size in acres of the watershed in which the structure is located.

5. A description of the physical and engineering properties of the foundation materials on which the structure is to be or was constructed.

6. The location of existing or proposed instrumentation.

7. A statement of the runoff attributable to the probable maximum precipitation of six-hour duration and the calculations used in determining such runoff.

8. A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff.

9. The locations of surface and underground coal mines, including the depth and extent of such workings, under and within 1,000 feet around the perimeter of the dam and area of impounded material, shown at a scale not to exceed one inch equals 1,000 feet.

10. A map depicting the impoundment area, downstream and adjacent drainways, streambeds, roads, structures, and other public areas that might be affected should an accident occur at the impoundment. The map shall be at a scale not to exceed one inch equals 1,000 feet.

11. The name of persons who are familiar with the plan protocols and can take actions necessary to eliminate the hazard and minimize the impact to miners, the community, and the environment.

12. A location where a command and communication center can be established for the company team and emergency response personnel to report during an impoundment event.

13. The location of potential evacuation centers where affected parties may take shelter during an impoundment event.

14. An emergency contact list for agencies that would respond to an impoundment event.

15. A list of miners employed at the site and businesses, community buildings, residences, and other occupied buildings within the impact zone that could be affected by an impoundment event, or other effective means of identifying such impact zone.

2005, c. 3.

§ 45.1-225. Repealed

Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.

Chapter 18.1 - MINERAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS

§ 45.1-225.1. Dams and refuse piles to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director

A. On and after July 1, 1974, new water or silt retaining dams, or a mine refuse pile, or the modification of existing mine water or silt or mine refuse retaining dams shall be designed and constructed by, or under the direction of, a qualified engineer, if such retaining dam:

1. Is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and

2. Has a storage volume of fifty acre-feet or more; or

3. Is designed to impound water or silt to a height of twenty feet or more, regardless of storage volume.

B. Water and silt retaining dam or mine refuse piles, designs, construction specifications, and other related data, including final abandonment plans, shall be approved and certified by the qualified engineer specified in subsection A of this section, and by the licensed operator or his agent.

C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B of this section shall be submitted for approval to the Director. If the submittal is approved by the Director, he shall notify the licensed operator in writing. If he disapproves, he shall notify the licensed operator with his written objections thereto and his required amendments. But in no event shall the Director fail to approve or disapprove the submittal within thirty days following the receipt thereof.

1997, c. 390; 1998, c. 695.

§ 45.1-225.2. Examination of dams and refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators

A. All water and silt retaining dams or mine refuse piles shall be examined daily for visible structural weakness, volume overload and other hazards by a qualified person designated by the licensed operator. When rising water and silt reaches eighty percent by volume of the safe design capacity of the dam, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations must be made during periods of rainfall that could create flooding conditions.

B. When a potentially hazardous condition exists, the operator shall initiate procedures to:

1. Remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;

2. Eliminate the potentially hazardous condition; and

3. Notify the Director.

C. Records of the inspections required by subsection A of this section shall be kept and certified by the licensed operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.

D. The licensed operator of each mineral mine on which a water and silt retaining dam is located shall adopt a plan for carrying out the requirements of subsections A and B of this section. The plan shall be submitted for approval to the Director on or before October 31, 1974. The plan shall include:

1. A schedule and procedures for inspection of the retaining dam by a qualified person;

2. Procedures for evaluating potentially hazardous conditions;

3. Procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous conditions;

4. Procedures for eliminating the potentially hazardous conditions;

5. Procedures for notifying the Director; and

6. Any additional information which may be required by the Director.

E. Before making any changes or modifications in the plan approved in accordance with subsection D of this section, the licensed operator shall obtain approval of such changes or modifications from the Director.

1997, c. 390; 1998, c. 695.

§ 45.1-225.3. Definitions

For the purpose of this chapter, the term

"Impound water" means to impound water for use in carrying out any part of the process necessary in the production or preparation of minerals.

"Refuse" means waste material resulting from a mineral mining operation.

"Silt" means fine particles resulting from a mineral mining operation, suspended in or deposited by water.

"Water" means water used in mining operations.

1997, c. 390.

Chapter 19 - VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979

Article 1 - GENERAL AND ADMINISTRATIVE PROVISIONS

§ 45.1-226. Short title

This chapter shall be known as the "Virginia Coal Surface Mining Control and Reclamation Act of 1979."

1979, c. 290.

§ 45.1-227. Findings and policy [Not set out]

Not set out. (1979, c. 290.)

§ 45.1-228. Purpose and policy of chapter

A. It is the purpose and policy of this chapter to do the following:

1. Provide for the implementation and enforcement, by the Commonwealth, of the federal Surface Mining Control and Reclamation Act of 1977, and the regulations of the United States Secretary of the Interior promulgated thereunder, and amendments thereto, as the same may be or become effective at any time or from time to time.

2. Promote the reclamation of coal-mined areas, and areas which have been affected by such mining, which were not adequately reclaimed, or abandoned, prior to the enactment of the federal Surface Mining Control and Reclamation Act of 1977, and which, in their unreclaimed condition, continue to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the public health or safety;

3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to insure the protection of the public welfare and safety;

4. Authorize and enable the Department to submit, and obtain approval of, a permanent state regulatory program and abandoned mine reclamation program, pursuant to the federal Surface Mining Control and Reclamation Act of 1977.

B. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person in any dispute involving property rights, including interests in water resources, or the right of any person to damage or other relief on account of injury to persons or property, including interests in water

resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

1979, c. 290; 1984, c. 590.

§ 45.1-229. Definitions

The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them in this section except where the context clearly requires a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Director determines that they are in compliance with the applicable performance standards promulgated pursuant to this chapter.

"Division" means the Division of Mined Land Reclamation.

"Federal act" means the federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, 91 U.S. Stat. 445.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a coal surface mining and reclamation operation, which condition, practice or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before such condition, practice or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

"State regulatory program" or "permanent state regulatory program" means the program established by this chapter meeting the requirements of the federal act for the regulation of coal surface mining and reclamation operations within the Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

"Person" means any individual, partnership, association, joint venture, trust, company, firm, joint stock company, corporation, or any other group or combination acting as a unit, or any other legal entity.

"Secretary" means the Secretary of the Interior of the United States.

"State or local agency" means any department, agency or instrumentality of the Commonwealth; or any public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth; or any department, agency or instrumentality of any public authority,

municipal corporation, local governmental unit, political subdivision of the Commonwealth, or two or more of any of the aforementioned.

"Coal surface mining and reclamation operations" means surface mining operations and all activities necessary and incidental to the reclamation of such operations after March 20, 1979.

"Coal surface mining operations" means the following:

1. Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; however, such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 162/3 percent of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § 45.1-233 of this chapter; and

2. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the chapter due to indifference, lack of diligence, or lack of reasonable care.

"Operator" means any person engaging in coal surface mining operations whether or not such coal is sold within or without the Commonwealth.

"Permit" means a permit issued by the Director pursuant to the approved state regulatory program.

"Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by § 45.1-241 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding a permit issued by the Director for coal surface mining pursuant to § 45.1-234, for coal exploration pursuant to § 45.1-233, or for an NPDES permit pursuant to § 45.1-254.

"Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

1979, c. 290; 1984, c. 590.

§ 45.1-230. Authority and duties of Director

A. The authority to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter is hereby vested in the Director. Regulations shall be consistent with regulations promulgated by the Secretary pursuant to the federal act or in conformity to any court ruling construing such act. In promulgating such regulations, the Director shall provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

A1. In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to insure compliance with this chapter; to conduct hearings, administer oaths, issue subpoenas and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; to issue orders and notices of violation; to review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this chapter or any rules and regulations adopted thereunder;

2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ 45.1-260 et seq.) of this chapter;

3. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;

4. To receive any federal or state funds, or any other funds, and to enter into any contracts for which funds are available to carry out the purposes of this chapter;

5. To enter into cooperative agreements with the Secretary to regulate coal surface mining on federal lands.

C. The Division of Mined Land Reclamation shall have the responsibilities provided under this chapter and such duties and responsibilities as the Director may assign, or as may be provided for in regulations promulgated by the Director.

1979, c. 290; 1982, c. 425; 1984, c. 590.

§ 45.1-231. Conflicts of interest prohibited

A. No employee of the Department performing any function or duty under this chapter, shall have a financial interest in any underground or surface coal mining operation.

B. For the purposes of this section, "financial interest" shall include a pecuniary interest accruing to an employee or to his spouse, minor children or other relatives living in the same household.

C. The Director shall promulgate regulations by which the provisions of this section will be monitored and enforced, including provisions for the filing and review of statements and supplements by employees concerning any financial interest which may be affected by this section, for the hiring, transfer, and removal of employees consistent with the prohibition of this section, for the resolution of prohibited interests, for the confidentiality, protection and disclosure to enforcement authorities of reporting statements and for such exemptions from the provisions of this section as may be consistent with federal law.

D. [Repealed.]

E. Judicial proceedings to enforce the provisions of this section may be brought by the Attorney General at the request of the Director.

Nothing in this article shall be construed as repealing or amending any other provisions of law pertaining to conflicts of interest except that in cases of conflict, the provisions of this article shall control.

1979, c. 290; 1984, c. 590.

§ 45.1-232. Repealed

Repealed by Acts 1984, c. 590.

Article 2 - REGULATION OF MINING ACTIVITY

§ 45.1-233. Coal exploration operations

A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations promulgated by the Director. Such regulations shall include, at a minimum (i) the requirement that prior to conducting any exploration under this section, any person must file with the Director notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration, and (ii) provisions for reclamation, in accordance with the performance standards established pursuant to § 45.1-242, of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

B. Information submitted to the Director pursuant to this section as confidential concerning trade secrets or privileged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

C. Any person who conducts any coal exploration activities which substantially disturbs the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of § 45.1-246.

D. No person shall remove more than 250 tons of coal while engaged in coal exploration operations without a specific written coal exploration permit issued by the Director.

1979, c. 290.

§ 45.1-234. Permits required; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc

A. On and after eight months from the date on which a permanent state regulatory program is approved for the Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing those sections.

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

C. Coal surface mining permits issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under a permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations promulgated by him. The Director shall also promulgate regulations, meeting the requirements of § 506 of the federal act, for longer permit terms, successors in interest to the permittee, termination of permit for failure to commence operations, right of and procedure for permit renewal, and extension of boundaries of mining operations.

1979, c. 290; 1980, c. 364; 1983, c. 134; 1984, c. 590; 2013, cc. 47, 129.

§ 45.1-235. Form and contents of permit application; fee

A. Application for a surface mining permit shall be made to the Division in the format required by the Director and shall be signed and verified under oath by the person, or his legal representative, intending to engage in the surface mining of coal.

B. The application shall contain such information as shall be required by regulations adopted by the Director, including, but not limited to, the information required under the provisions of § 507 (b) of the federal act.

C. To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in § 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an operations plan and a reclamation plan which shall meet the requirements of this chapter and regulations promulgated by the Director.

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of $26 per acre for the area of land to be affected by the total operation for which plans have been submitted. An anniversary payment of $13 per acre for areas disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this chapter shall be paid into a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information which pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall be required to submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, not less than that specified in regulations adopted by the Director, adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, and including the length of all reclamation operations. The Director is authorized to promulgate regulations which provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

1979, c. 290; 1982, c. 246; 1984, c. 590; 1999, c. 114; 2003, cc. 542, 550.

§ 45.1-236. Operations and reclamation plans

Each application for a coal surface mining permit pursuant to the approved state regulatory program shall include an operations plan and a reclamation plan, in such form and containing such information as the Director shall require and meeting the requirements of this chapter and regulations adopted by the Director, including but not limited to the information required under § 508 (a) of the federal act. Operations plans shall not include underground workings. The operations and reclamation plans as approved by the Director shall be an integral part of the terms and conditions of the coal surface mining permit.

1979, c. 290; 1984, c. 590.

§ 45.1-237. Revision of permits

A.1. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised operations plan and reclamation plan, to the Director.

2. An application for a revision of a permit shall not be approved unless the Director finds that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the revised reclamation plan. The Director shall establish, by regulation, the period of time within which the revision shall be approved or disapproved, as well as guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any revisions which propose significant alterations in the operations plan and reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

3. Any extension to the area covered by the permit, except insignificant boundary revisions, must be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations promulgated by him, review outstanding permits and may require reasonable revision or modification of the permit provisions

during the term of such permit; however, such revision or modification shall be based upon a written finding and subject to notice and hearing requirements.

1979, c. 290; 1984, c. 590.

§ 45.1-238. Approval or denial of permit

A. Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by the federal act and pursuant to the approved permanent state regulatory program, including public notification and opportunity for public hearing, the Director shall grant, require modification of, or deny the application for a permit in a reasonable time established by regulation and shall notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of the permanent state regulatory program. Within ten days after the granting of a permit the Director shall notify the government officials in the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of the federal act and the permanent state regulatory program have been complied with;

2. The applicant has demonstrated that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated unsuitable for coal surface mining pursuant to this chapter nor is it within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit;

5. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with the laws of this Commonwealth; provided, however, that nothing herein shall be construed to authorize the Director to adjudicate property rights disputes.

C. The applicant shall file with his permit application a schedule listing any and all notices of violations of the federal act, this chapter and any law, rule or regulation of the United States or of this Commonwealth or of any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of the laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the Director after opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. In addition to finding the application in compliance with subsection B of this section, if the area proposed to be mined contains prime farmland pursuant to § 507 (b) (16) of the federal act, the Director shall comply with applicable regulations issued by the Secretary in determining whether to issue a permit for such area.

1979, c. 290.

§ 45.1-239. Public participation in process of issuing or revising permits

A. The Director shall establish, by regulation, procedures for the notification of and participation by the public and appropriate federal, state and local governmental authorities in the process for issuing or revising coal surface mining permits, in accordance with § 513 of the federal act.

B. Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within thirty days after the last publication of the applicant's notice required by the regulation promulgated pursuant to subsection A hereof. If written objections are filed and an informal hearing requested, the Director shall then hold an informal hearing in the

manner and location prescribed by regulation, unless all the parties requesting the informal hearing stipulate agreement prior to the requested informal hearing and withdraw their request therefor.

1979, c. 290; 1984, c. 590.

§ 45.1-240. Decision of Director upon permit application; hearing; appeal

A. The Director shall notify the applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and such written objections as may have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to § 45.1-239, the Director shall issue to the applicant and the parties to the hearing his written decision within sixty days of such hearings.

B. If the application is approved the permit shall be issued. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the Director on the permit application, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and within thirty days thereafter issue to the applicant and all persons who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § 45.1-239 shall preside at the formal adjudicatory hearing or participate in the decision therein or any administrative appeal therefrom.

C. Where a hearing is requested pursuant to subsection B herein, the Director, under such conditions as he may prescribe, may grant such temporary relief as he deems appropriate pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

D. Any applicant, or any person with an interest which is or may be adversely affected and who has participated in the formal hearing as an objector, aggrieved by the decision of the Director or by the failure of the Director to act within the time limits specified in this chapter shall have a right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1979, c. 290; 1983, c. 92; 1986, c. 615.

§ 45.1-241. Performance bonds

A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and conditioned upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of coal surface mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the Director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than $10,000.

B. Liability under the bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations promulgated pursuant to § 45.1-242. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. The Director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal

extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The Director is further authorized to develop and promulgate an alternative system that will achieve the objectives and purposes of the bonding program established under this section.

D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

1979, c. 290; 1984, c. 590; 1997, c. 285; 1998, c. 692; 2014, cc. 111, 135.

§ 45.1-242. Performance standards

A. The Director shall, by regulation, establish performance standards meeting the requirement of § 515 of the federal act and consistent with regulations adopted by the Secretary thereunder which shall be applicable to all coal surface mining and reclamation operations, except as otherwise provided in this chapter.

B. Any permit issued pursuant to this chapter to conduct coal surface mining operations shall require that such operations meet all applicable performance standards established by the Director.

C. The Director shall include, in his regulations, special procedures and standards, consistent with regulations promulgated by the Secretary, for the issuance of permits for mountain-top removal operations, without regard to requirements to restore to approximate original contour, and for variances from such requirements for steep-slope operations.

D. Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in Virginia, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for coal surface mining and reclamation operations should rest with the Commonwealth, and accordingly, the Director is encouraged and authorized to develop and promulgate, with the approval of the Secretary, alternative performance standards and procedures for administering and enforcing the program created pursuant to this chapter.

E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards promulgated under this section and § 45.1-243.

1979, c. 290; 1984, c. 590.

§ 45.1-243. Surface effects of underground coal mining operations

A. The Director shall promulgate regulations directed toward the surface effects of underground coal mining operations embodying the requirements of §§ 516 and 720 (a) (1) of the federal act. The provisions of this chapter relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. Nothing in § 720 (a) (1) of the federal act shall be construed to prohibit or interrupt underground coal mining operations.

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

C. In order to protect the stability of the land, the Director shall suspend underground coal mining under elementary and secondary schools, colleges, universities, urbanized areas, cities, towns and communities, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to the inhabitants or occupants of the elementary and secondary schools, colleges, universities, urbanized areas, cities, towns and communities.

1979, c. 290; 1984, c. 590; 1993, c. 582; 1996, cc. 409, 410.

§ 45.1-244. Inspections and monitoring

A. For the purpose of administering and enforcing any permit issued under this chapter or of determining whether any person is in violation of any requirement of this chapter or any regulation promulgated hereunder:

1. The Director shall require any permittee to (i) establish and maintain appropriate records, (ii) make monthly reports to the Division, (iii) install, use and maintain any necessary monitoring equipment or methods, (iv) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the Director shall prescribe, and (v) provide such other information relative to coal surface mining and reclamation operations as the Director deems reasonable and necessary;

2. For those coal surface mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the Director shall specify those (i) monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence, and to record level, amount, and samples of ground water and aquifers potentially affected by mining, and also directly below the deepest coal seam to be mined, and to record precipitation; and (ii) records of well logs and borehole data to be maintained. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set

forth in regulations promulgated by the Director in order to assure their reliability and validity; and

3. The authorized representatives of the Director, without advance notice and upon presentation of appropriate credentials, (i) shall have the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) shall have the right to inspect any monitoring equipment, any method of exploration, any method of operation, or any records required by this chapter, and shall have the right to copy any such records.

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. The inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation operations covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees except for necessary on-site meetings with the permittee; and (iii) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

C. Each permittee shall conspicuously maintain at the entrance to the coal surface mining and reclamation operation a clearly visible sign setting forth such information as shall be prescribed by regulation.

D. Each inspector, upon detection of each violation of any requirement of this chapter or of the regulations promulgated hereunder, shall forthwith inform the operator in writing and shall report in writing any such violation to the Director.

E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas; however, information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

1979, c. 290; 1984, cc. 323, 590.

§ 45.1-245. Enforcement of chapter generally

A. Whenever the Director or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or of any regulation promulgated hereunder or of any permit condition, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall immediately order a cessation of coal surface mining and reclamation operation or the portion thereof relevant to the condition,

practice or violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative. Whenever the Director or his authorized representative finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the Director shall, in addition to the cessation order, impose affirmative obligations on the operator and require him to take whatever steps the Director or his authorized representative determines necessary to abate the imminent danger or the significant environmental harm.

B. Whenever the Director or his authorized representative determines that any permittee is in violation of any requirement of this chapter or any regulation thereunder, or any permit condition, but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall issue a notice of violation to the permittee or his agent setting a reasonable time but not more than ninety days for the abatement of the violation and provide an opportunity for public hearing.

If, upon expiration of the period of time as originally set or subsequently extended for good cause shown upon the written finding of the Director or his authorized representative, the Director or his authorized representative finds that a violation has not been abated, he shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative pursuant to subsection D of this section. The Director or his authorized representative shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

C. Whenever the Director or his authorized representative determines that a pattern of violations of the requirements of this chapter, or regulations promulgated thereunder, or any permit conditions exist or have existed, and if the Director or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any such requirements, or that such violations are willfully caused by the permittee, the Director or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a formal public hearing. If a hearing is requested the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director or his authorized representative shall forthwith suspend or revoke the permit.

D. Notices and order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for

abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director or his authorized representative issuing such notice or order, and all such notices and orders shall be in writing and signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the Director or his authorized representative. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless an informal public hearing, unless waived by the operator, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing.

E. The Director may institute a civil action for injunctive or other relief in any court of competent jurisdiction whenever any permittee or his agent, or any other person:

1. Violates, fails or refuses to comply with any order or decision issued by the Director; or

2. Interferes with, hinders or delays the Director in carrying out the provisions of this chapter or the regulations thereunder; or

3. Refuses to admit such authorized representative to the mine; or

4. Refuses to permit inspection of the mine; or

5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations thereunder; or

6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations thereunder; or

7. Conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit.

1979, c. 290.

§ 45.1-246. Civil and criminal penalties

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations thereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed $5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed $70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. Where such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A of this section has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. The permittee charged with the penalty shall then have 30 days to pay the proposed penalty in full or if the permittee wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Director shall within 30 days of that determination remit the appropriate amount to the permittee with accrued interest thereon. Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. If a permittee who is required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the State Treasurer's office to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; or (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, fails or refuses to comply with the regulations or orders promulgated or issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B of this section shall, upon conviction, be punished by a fine of not more than $10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and confinement in jail that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any required statement, representation or certification, in any application, objection, record, report, plan or other document filed or required to be maintained pursuant to this chapter, the regulations promulgated thereunder, or any order or decision issued by the Director under this chapter shall, upon conviction thereof, be punished by a fine of not more than $10,000, or by confinement in jail for not more than 12 months, or both.

H. Any operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction, which period shall not end until the entry of a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders after an expedited hearing the suspension of the abatement requirements of the notice or order after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements, shall be assessed a civil penalty of not less than $750 for each day during which such failure or violation occurs.

1979, c. 290; 1980, c. 510; 1993, c. 663; 2005, c. 3.

§ 45.1-246.1. Citizen suits; rights of citizens to accompany inspectors

A. Except as provided in subsections B or C of this section, any person having an interest which is or may be adversely affected may, in order to compel compliance with the provisions of this chapter, commence a civil action on his own behalf against:

1. The United States or any other governmental instrumentality or agency, or any other person that is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto; or

2. The Director when there is alleged a failure of the Director to perform any act or duty under this chapter which is not discretionary with the Director.

B. No action may be commenced under subdivision A 1 of this section:

1. Prior to sixty days after the plaintiff has given written notice of the violation to (i) the Secretary, (ii) the Director and (iii) any alleged violator; or

2. If the Commonwealth of Virginia or the Secretary of the Interior has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or this Commonwealth to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, provided, however, that any person may intervene as a matter of right in any such action in a court of the Commonwealth;

C. No action may be commenced under subdivision A 2 of this section prior to sixty days after the plaintiff has given written notice of such action to the Director, in such manner as shall be prescribed by regulation, provided, however, that such action may be brought immediately after such notification in any case in which it is alleged that a violation or order would constitute an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

D. Any action with respect to a violation of this chapter or the regulations thereunder may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. In any such action commenced under the provisions of this section, the Director may intervene as a matter of right, whether or not he is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A of this section, may award costs of litigation, including attorney and expert witness fees, to any party, provided that the court determines such award is appropriate. If a preliminary injunction is sought the court may require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

F. Nothing in this section shall restrict any common-law or statutory right which any person or class of persons may have to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or to seek any other relief, including relief against the Director.

G. Any person who as a result of the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter, suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Title 65.2.

H. Whenever information provided the Director by any person results in any inspection, the Director shall notify such person of the time at which the inspection is scheduled to occur, and such person shall be allowed to accompany the inspector during the inspection.

1980, c. 510.

§ 45.1-247. Forfeiture or release of performance bond

A. The Director shall promulgate regulations, consistent with regulations promulgated by the Secretary, establishing procedures, conditions, criteria, and schedules for the forfeiture or release of performance bonds or deposits required under this chapter; however, no bond shall be fully released until all reclamation requirements of this chapter and the regulations thereunder are fully met.

B. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond by the Director within thirty days after the last publication of notice, as required by regulation. If written objections are filed, and a hearing requested, the Director shall inform all interested parties of the time and place of the hearing and hold a public hearing in the locality of the coal surface mining operation proposed for bond release, or in Richmond at the option of the objector, within thirty days of the request for such hearing.

C. Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations promulgated pursuant to § 45.1-239 B, to resolve written objections.

D. For the purpose of such hearing the Director is authorized to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including but not limited to inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the Director.

1979, c. 290; 1984, c. 590.

§ 45.1-248. Performance of reclamation operations by Director

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the proceeds in the State Treasurer's office in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or he may enter into contracts for performance of such reclamation with any individual, corporation, partnership, association, or any other legal entity, any soil conservation district, or any agency of

the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.

1979, c. 290; 1984, c. 590.

§ 45.1-249. Administrative review of notice or order issued under § 45.1-245

A. A permittee who is issued a notice or order pursuant to § 45.1-245, or any person having an interest which is or may be adversely affected by such notice or order by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of the notice or order within thirty days of the receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate, which shall include an opportunity for a public formal hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the notice or order complained of and incorporate his findings therein. When the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or B of § 45.1-245, the Director shall issue the written decision within thirty days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C of this section or by a court pursuant to § 45.1-251.

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under § 45.1-245, together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or B of § 45.1-245, the order on such a request shall be issued within five days of its receipt. The Director may grant such relief, under such conditions as he may prescribe, if:

1. A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;

2. The applicant shows that there is substantial likelihood that the decision of the Director will be favorable to him; and

3. Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to § 45.1-245, the Director shall hold a public formal hearing, unless waived by the permittee, after giving written notice of the time, place and date thereof. Within sixty days following the formal hearing, the Director shall issue and furnish to the permittee and all other parties to the hearing a written decision concerning suspension or revocation of the permit and reasons therefor. If the Director revokes the permit, the permittee shall immediately cease coal surface mining operations on the permit area and shall complete reclamation within a period specified by the Director or the Director shall declare as forfeited the performance bonds for the operation.

E. The Director is authorized to promulgate regulations providing for the award of costs and expenses, including attorney fees, to any party to any administrative proceedings under this chapter, incurred by such person in connection with his participation in such proceedings and to assess such costs and expenses against any other party, as may be proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

1979, c. 290; 1983, c. 93.

§ 45.1-250. Hearings

A. [Repealed.]

B. All formal hearings shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, he shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless he provides for the making of findings and an initial decision by such hearings officer subject to review and reconsideration by the Director on appeal as of right or on the Director's own motion. Such regulations shall also provide for a reasonable time in which such appeals shall be acted upon, which shall be in addition to the period required for the making of the initial decision.

1979, c. 290; 1984, c. 590.

§ 45.1-251. Judicial review of final order or decision or of decision under § 45.1-263

A. Any party aggrieved by a final order or decision, and any decision for entry upon property pursuant to § 45.1-263, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, shall have the right to the judicial review thereof in the circuit court of the county or city in which the land or a major portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4020 et seq.).

B. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;

2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and

3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

C. To any proceeding under this section, the court may award costs and expenses, including attorneys' fees, to any party and to assess such costs and expenses against any other party as the court may deem proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

1979, c. 290; 1983, c. 93; 1984, c. 590; 1986, c. 615.

§ 45.1-252. Designating areas unsuitable for coal surface mining

A.1. The Director shall establish a planning process enabling objective decisions based on competent and scientifically sound data and information as to which, if any, land areas of the Commonwealth are unsuitable for all or certain types of coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 of this subsection but such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

2. Upon petition pursuant to subsection C of this section, the Director shall designate an area as unsuitable for all or certain types of coal surface mining operations if he determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

3. Upon petition pursuant to subsection C of this section, a surface area may be designated unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; or (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific and aesthetic values and natural systems; or (iii) affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products, and such lands to include aquifers and aquifer recharge areas; or (iv) affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

4. Determinations of the unsuitability of land for coal surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state and local levels.

5. The requirements of this section shall not apply to lands on which coal surface mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to the pro-

visions of the federal act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

B. Prior to designating any land areas as unsuitable for coal surface mining operations, the Director shall cause to be prepared a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy and the supply of coal.

C. Any person having an interest which is or may be adversely affected shall have the right to petition the Director to have an area designated as unsuitable for coal surface mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition, the Department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within sixty days after such hearing, a written decision regarding the petition and the reasons therefor. In the event that all petitioners stipulate agreement prior to hearing and withdraw their request such hearing need not be held.

D. On and after March 20, 1979, and subject to valid existing rights, no coal surface mining operations, except those which were existing on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by act of Congress and any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;

2. Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the Director and federal, state or local agency with jurisdiction over the park or historic site;

3. Within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the Director may permit such roads to be relocated or the area affected to lie within 100 feet of such road, if after public notice and opportunity for hearing in the locality, a written finding is made that the interests of the public and landowners affected thereby will be protected; or

4. Within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

1979, c. 290; 1984, c. 590.

Article 3 - MISCELLANEOUS PROVISIONS

§ 45.1-253. Certain mining operations exempt from this chapter

The provisions of this chapter shall not apply to any of the following activities:

1. The extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and

2. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction under regulations established by the Director.

1979, c. 290; 1984, c. 590; 1988, c. 295.

§ 45.1-254. National pollutant discharge elimination system permits

A. The authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. The Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application.

C. Prior to the issuance or reissuance of a permit, applicants shall submit an application on a form approved by the Director and a fee of $300 for each discharge outfall point under the permit. If an application is approved the permittee shall, on the anniversary of the permit approval for each year of the permit term, submit $300 for each discharge outfall point under the permit. Each permit shall remain valid for five years. All fees provided for under this section shall be in addition to any other fees levied pursuant to this chapter.

D. No national pollutant discharge elimination system permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

E. An applicant who is aggrieved by an objection made under subsection D of this section shall have the right to a hearing before the State Water Control Board pursuant to § 62.1-44.25. If the

State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the State Water Control Board made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

F. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

G. The Director shall promulgate such regulations as deemed necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

H. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in § 62.1-44.3.

I. The Director, by examining the available and relevant data, shall determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard.

J. If a total maximum daily load (TMDL) has been established by the State Water Control Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. If the receiving water body does not have a TMDL established, the Director may consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. The Director may require whole effluent toxicity testing if he determines that the discharge adversely affects the biological condition of the receiving water body.

1979, c. 290; 1986, c. 615; 2008, c. 275; 2011, cc. 252, 290.

§ 45.1-255. Repealed

Repealed by Acts 1984, c. 714.

§ 45.1-255.1. Repealed

Repealed by Acts 1988, c. 489.

§ 45.1-256. Training and certification of blasters

A. In order to ensure that explosives are used only in accordance with applicable state and federal laws, the Director is authorized to promulgate regulations requiring the training, examination and

certification of persons engaging in or directly responsible for blasting or the use, storage and handling of explosives in coal surface mining operations.

B. The Division shall assume primary responsibility for conducting the examinations and issuing the certificates for such persons in accordance with the regulations adopted pursuant to subdivision A of this section.

1979, c. 290; 1984, cc. 230, 590; 1996, c. 758.

§ 45.1-257. Impeding, etc., Director or agents a misdemeanor

It shall be a misdemeanor, punishable by a fine of not more than $5,000 or by confinement in jail for not more than one year, or both, for any person, except as permitted by law, to willfully resist, prevent, impede, or interfere with the Director or any of his agents in the performance of duties pursuant to this chapter.

1979, c. 290.

§ 45.1-258. Replacement of water supply

A. The operator of any coal surface mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such coal surface mine operation.

B. Underground coal mining operations conducted after October 24, 1992, shall promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Until amendments to the regulations governing the permanent state regulatory program implementing the provisions of this subsection are effective, the Director shall issue guidelines in accordance with subsection A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection. Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.

C. Each operator of an underground coal mine shall record the daily progress of mining operations on a mine map or maps maintained at the mine site or in the company office. The map or maps shall, at a minimum, include information on the daily progress of mining operations conducted after October 24, 1992, and be maintained until the completion of the mining. The operator shall provide the map or maps to the Division upon completion of mining and upon request of the Director.

D. If the Director has ordered replacement under subsection B of this section and the operator subject to the order has failed to provide the map or maps in accordance with subsection C of this section, then the Director's order shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion of an investigation, if the Director does not order replacement under

the provisions of subsection B of this section and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.

1979, c. 290; 1993, c. 582 .

§ 45.1-259. Applicability of chapter to public agencies, utilities and corporations

Any agency, unit, or instrumentality of the Commonwealth, or of federal or local government, including any publicly owned utility or publicly owned corporation of federal, state or local government, which proposes to engage in coal surface mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter.

1979, c. 290.

Article 4 - ABANDONED MINE RECLAMATION

§ 45.1-260. State Reclamation Program

A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall include the State Reclamation Plan and fund and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for his approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects, and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan, consistent with this article.

C. The Director is authorized:

1. To prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;

2. To enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control or prevention of the adverse effects of coal mining practices;

3. To administer the State Reclamation Plan and the annual reclamation projects and to receive and administer grants from the Secretary therefor;

4. To prepare and submit such information and reports as the Secretary may request.

D. The Director and the Department, in carrying out the functions of preparing and revising the State Reclamation Plan and developing annual reclamation projects, shall provide appropriate opportunities for public involvement.

1979, c. 290; 1984, c. 590.

§ 45.1-261. Abandoned Mine Reclamation Fund

A. There is hereby created in the State Treasurer's office a special fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as the fund, which shall be administered by the Director.

B. The fund shall consist of deposits, made from time to time, of:

1. Amounts granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;

2. Use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;

3. Moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;

4. Moneys recovered from sale of lands acquired by the Director pursuant to this article;

5. Donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes.

C. Moneys deposited in the fund shall be used to carry out the State Reclamation Program as approved by the Secretary.

1979, c. 290.

§ 45.1-261.1. Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ 45.1-270.1 et seq.), provided the Director finds that the following conditions have been met: (i) the operator

has had at least three years of relevant mining experience in the Commonwealth pursuant to Chapter 19 (§ 45.1-226 et seq.) and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11, the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

1983, c. 77; 1984, c. 590; 1991, c. 495; 2013, cc. 47, 129.

§ 45.1-262. Eligible lands and water; priorities for expenditures

A. Lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by such mining, waste banks, coal processing, or other coal mining processes, and abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under state or federal laws.

B. The Director shall establish priorities in the State Reclamation Plan for the expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

1979, c. 290; 1984, c. 590.

§ 45.1-263. Right of entry, acquisition, disposition and reclamation of land adversely affected by past coal mining practices

A. The Director shall take all reasonable actions to obtain written consent from the owner or owners of record of the land or property to be entered onto to perform an inspection for purposes of reclamation or for conducting studies or exploratory work pertaining to the need for and feasibility of reclamation, prior to such entry.

B. If the Director, pursuant to an approved state program, makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;

2. The adverse effects are at a state where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or

4. The owners will not give permission for the Director or his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies, the Director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal

mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land to the extent provided in § 45.1-264, and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

C. The Director, his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

D. The Director, pursuant to an approved state program, may acquire title in the name of the Commonwealth to any land or interest therein by purchase, donation, or condemnation, if such land or interest is adversely affected by past coal mining practices, after approval of the Secretary and upon a determination that acquisition of such land is necessary to successful reclamation, and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or

3. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

E. The Director, with the approval of the Secretary, and in accordance with the State Reclamation Plan, may:

1. Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon such terms as will

insure that the use of the land is consistent with the authorization under which the land was acquired;

2. Sell land acquired under this section which is suitable for industrial, commercial, residential, or recreational development, by public sale under a system of competitive bidding, at not less than fair market value and under such regulations promulgated to insure that such lands are put to proper use consistent with local, state or federal land use plan, if any, for the area in which the land is located; and

3. Transfer land acquired under this section to the United States to be reclaimed by the Secretary and after reclamation is completed, any state, regional, or local agency, department, or institution may purchase such land from the Secretary for governmental, educational, recreational, historical, open-space or other public purposes upon such terms as the Secretary may require.

F. Prior to the disposition of any land acquired under this section the Director, pursuant to the State Reclamation Plan, when requested after appropriate public notice shall hold a public hearing in the city or county or cities or counties where the land is located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

G. The Director may authorize the use, pending disposition, of land acquired under this section, for any lawful purpose that is not inconsistent with the reclamation and post-reclamation uses for which the land was acquired. The Director shall charge any user of the land a reasonable use fee, which shall go toward the purpose of operating and maintaining improvement of the land, and any excess thereof shall be deposited in the State Reclamation Fund. The Director may waive the fee if he finds in writing that a waiver is in the public interest.

H. Any state, regional, or local agency, department, or institution may purchase or otherwise acquire and develop lands which the Secretary is authorized to dispose of pursuant to § 407(h) of the federal act.

1979, c. 290.

§ 45.1-264. Commonwealth to have lien for reclamation work

The Commonwealth shall have a lien, if perfected as hereinafter provided, on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person who owned the surface of the land prior to May 2, 1977, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed under this article, nor shall any lien attach to or be filed against any property if the Director waives the lien as hereinafter provided.

1979, c. 290.

§ 45.1-265. Perfection of lien; waiver of lien

A. The Director shall perfect the lien given under the provisions of § 45.1-264, by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is situate, a statement consisting of the names of the owner or owners of record of the property sought to be charged, an itemized account of moneys expended for the reclamation work, and notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work, and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien exceeds the increase in fair market value resulting from reclamation, or that the reclamation primarily benefits health, safety or environmental values of the community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence, that the reclamation will not result in a significant increase in the market value of the land.

1979, c. 290.

§ 45.1-266. Recordation and indexing of lien; notice

It shall be the duty of the clerk in whose office the statement described in § 45.1-265 is filed to record the same in the deed books of such office, and to index the same in the general index of deeds, in the name of the Commonwealth as well as the owner of the property, and showing the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

1979, c. 290.

§ 45.1-267. Priority of lien

Liens acquired under this article shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

1979, c. 290.

§ 45.1-268. Hearing to determine amount of lien

Any party having an interest in the real property against which a lien has been filed may, within sixty days of such filing, petition the court of equity having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director the court shall hold a hearing to determine such increase. If the court determines such increase to be erroneously excessive, it shall determine the proper amount and order that the lien and the record be amended to show this amount.

1979, c. 290.

§ 45.1-269. Satisfaction of lien

Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the

property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided herein the Director may proceed to enforce the lien by a bill filed in a court of equity having jurisdiction wherein the property or some portion thereof is located.

1979, c. 290.

§ 45.1-270. Miscellaneous powers of Director

A. In addition to any other remedies provided for in this chapter, the Director may petition any court of competent jurisdiction for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work pursuant to this chapter.

B. The Director is authorized, to the extent of funds available for the purposes herein, to construct and operate plants for the control and treatment of water pollution resulting from mine drainage. Such plants may include major intercepters and other facilities appurtenant to the plant. No such control or treatment shall in any way be less than that required under the federal Water Pollution Control Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

1979, c. 290.

Article 5 - COAL SURFACE MINING RECLAMATION FUND

§ 45.1-270.1. Creation of Fund

There is hereby created in the office of the State Treasurer a special fund to be known as the Coal Surface Mining Reclamation Fund, hereinafter referred to as the Fund, which shall be administered as set forth in this article. The Fund shall consist of all payments made into the Fund in accordance with the provisions of this article, as well as all interest earned on money contained in the Fund.

1982, c. 334.

§ 45.1-270.2. Participation in Fund

A. Participation in the Fund shall be open to all operators applying for a permit under Chapter 19 (§ 45.1-226 et seq.) of this title, who can demonstrate to the Director at least a consecutive three-year history of compliance under this act or any other comparable state or federal act.

B. Participation in the Fund shall be optional as to each permit application and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § 45.1-241 and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing herein shall preclude compliance with § 45.1-241 in lieu of participation in the Fund, prior to commencement of the participation. Commencement of participation in the Fund, as to the applicable permit, shall constitute an irre-

vocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For mining operations bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and grading.

D. The Director may allow extended distances for rough backfilling and grading beyond those established in this section provided (i) the applicant can demonstrate to the Director at least a seven consecutive year history of compliance with this act or with any other comparable state or federal act, or (ii) the applicant submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C above, times an approved cost estimate of reclamation prepared for the permit.

1982, c. 334; 1983, c. 131; 1989, c. 432 .

§ 45.1-270.3. Initial payments into Fund; renewal payments; bonds

A. Operators filing permit applications for coal surface mining operations participating in the pool fund shall be required to pay into the Fund, as an entrance fee, a sum equal to $1,000 for each applicable permit application. An entrance fee of $5,000 shall be required of all operators who elect to participate in the Fund when the Director has determined the total balance of the Fund is less than $1,750,000. The entrance fee shall be reduced to $1,000 when the total Fund balance is greater than $2 million. A renewal fee of $1,000 shall be required of all permittees in the Fund at permit renewal.

1. For the purposes of this section, all planned expenditures shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering cost estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A of this section, all operators that participate in the Fund shall furnish to the Fund a bond which meets the criteria of § 45.1-241 and regulations issued pursuant thereto as follows:

1. For those underground mining operations participating in the Fund prior to July 1, 1991, the amount of $1,000 per acre covered by each permit. In no event shall such total bond be less than $40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than $10,000.

2. For underground mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of $3,000 per acre. In no event shall

the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than $40,000.

3. For other coal mining operations participating in the Fund prior to July 1, 1991, the amount of $1,500 per acre covered by each permit. In no event shall such total bond be less than $100,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than $25,000.

4. For other coal mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of $3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than $100,000.

C. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § 45.1-235 or any other payments required in compliance with this chapter.

D. Fund participants shall be allowed to post incremental bonds as set forth in § 45.1-241. Such bonds will be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided the permittee has posted bond pursuant to subsection B of this section.

1982, c. 334; 1983, c. 131; 1989, c. 432; 1991, c. 495; 2014, cc. 111, 135.

§ 45.1-270.3:1. Repealed

Repealed by Acts 1991, c. 495 .

§ 45.1-270.4. (Effective until July 1, 2017) Assessment of reclamation tax revenues for Fund

A. There is hereby levied a reclamation tax upon the production of coal by operators participating in the Fund under permits issued under this chapter as set forth herein.

B. Thirty days after the end of each calendar quarter during which the total balance of the Fund, including interest thereon, is less than $20 million, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter.

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter.

3. One and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities permitted under this chapter.

C. At the end of each calendar quarter during which the total balance in the Fund, including interest thereon, exceeds $20 million, payments under this section shall cease until again required pursuant to subsection B.

D. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that operator or in excess of four and one-half cents per ton on coal originally deep mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

1982, c. 334; 1983, c. 131; 1987, c. 468; 1991, c. 495; 2014, cc. 111, 135.

§ 45.1-270.4. (Effective July 1, 2017) Assessment of reclamation tax revenues for Fund

A. There is hereby levied a reclamation tax upon the production of coal by operators participating in the Fund under permits issued under this chapter as set forth herein.

B. Thirty days after the end of any calendar quarter during which the total balance of the Fund, including interest thereon, shall be less than $1,750,000, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter.

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter.

3. One and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities permitted under this chapter.

C. At the end of any calendar quarter during which the total balance in the Fund, including interest thereon, shall exceed two million dollars, payments under this section shall cease until again required pursuant to subsection B of this section.

1. For the purposes of subsection B of this section, all potential obligations shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering costs estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

D. Upon the issuance of a permit for which bond is provided pursuant to this article, each operator shall pay a reclamation tax into the Fund pursuant to the schedule set forth in subsection B of this section on coal mined and removed under authority of that permit during the one-year period commencing with and running from the date of the commencement of coal production, processing or loading from those operations covered under that permit.

E. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator, except as set forth in subsection D hereof. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that operator or in excess of four and one-half cents per ton on coal originally deep mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

1982, c. 334; 1983, c. 131; 1987, c. 468; 1991, c. 495 .

§ 45.1-270.4:1. Special assessment

A. In addition to the tax assessed pursuant to § 45.1-270.4, and in order to ensure Fund solvency, the Commissioner of the Division of Mined Land Reclamation shall require each permittee to pay any special assessment made pursuant to subsection B of this section.

B. On and after July 1, 1990, the Commissioner of the Division of Mined Land Reclamation shall assess each permit in the Fund the amount of $500. This assessment shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

On or after July 1, 1991, the Commissioner of the Division of Mined Land Reclamation shall assess an amount not to exceed $500,000. The amount of the assessment shall be $250 for each permit participating in the Fund which has completed all mining activity and for which a completion report has been approved. The remaining assessments shall be made in equal amounts per acre for each disturbed acre permitted under the Fund. The amount of disturbed acreage for each permit shall be determined by the most recent anniversary map, or updated anniversary map, submitted by the permittee to the Division of Mined Land Reclamation prior to July 1, 1991. The assessments under this subsection shall not apply to acreage that has been reclaimed and for which an increment of the bond has been transferred to other acreage in the permit. The

assessments under this subsection shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

C. Failure to tender moneys assessed pursuant to the provisions of this section within thirty calendar days of assessment shall constitute a violation of the Virginia Coal Surface Mining Control and Reclamation Act (§ 45.1-226 et seq.). Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

1990, c. 427; 1991, c. 495 .

§ 45.1-270.5. Collection of reclamation tax and penalties for nonpayment

A. Payment of taxes under this section shall be made no later than thirty days after the end of each calendar quarter when taxes are applicable in accordance with § 45.1-270.4. The Division shall notify each operator holding a permit under Chapter 19 (§ 45.1-226 et seq.) of this title of those periods during which the taxes are applicable, and shall provide forms for reporting coal production figures subject to taxes and shall collect all taxes for the Fund.

B. Pursuant to regulations promulgated by the Director, and consistent with the provisions of § 45.1-248, all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § 45.1-236. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also promulgate regulations for the implementation of this article and for the collection of taxes hereunder.

C. The Division, upon advance written request to an operator, may audit the relevant books and records of the operator upon which taxes paid under this section are based. Failure to consent to a reasonable request for the audit shall be deemed a violation of this article by the operator.

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to § 45.1-245 B. The notice of violation shall state that upon failure of payment within fifteen days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order, the enforcement procedures set forth in § 45.1-245 et seq. shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

1982, c. 334; 1984, c. 590.

§ 45.1-270.5:1. Forfeiture of bonds on operations participating in the Fund; alternative remedies

A. Forfeiture of bonds of operations participating in the Fund shall be accomplished as set forth in § 45.1-247 and the regulations promulgated by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of the surface coal mining operation, under the provisions of § 45.1-245 E, by filing a civil action for injunctive or other

relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations and the approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm and no bond shall be required.

C. Proceedings under either subsection A or subsection B shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

1987, c. 468.

§ 45.1-270.6. Reinstatement to the Fund; recovery of Fund expenditures

A. An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclamation expenses as a result thereof shall not be eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit application under this chapter but shall not affect the operator's need to comply with all other requirements of this chapter in applying for a permit.

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish the reclamation. Such expenditures shall include but not be limited to construction costs, engineering costs, administrative costs, and legal costs. In any action to recover these costs, the defendant may not relitigate the facts giving rise to the forfeiture nor may the defendant defend by claiming the forfeiture was improper.

1982, c. 334; 1987, c. 468.

§ 45.1-270.7. Coal Surface Mining Reclamation Fund Advisory Committee continued as Coal Surface Mining Reclamation Fund Advisory Board

A. The Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the Coal Surface Mining Reclamation Fund Advisory Board. The Reclamation Fund Advisory Board shall consist of five members appointed by the Governor subject to confirmation by the General Assembly, three of whom shall represent the coal industry, one of whom shall be a representative of the Director and one of whom shall be a member of the public without any coal industry interests. The Commissioner of the Division shall be a continuing ex officio nonvoting member of the Reclamation Fund Advisory Board and shall serve as Secretary thereto.

B. The voting members of the Reclamation Fund Advisory Board shall initially be appointed for terms of one, two, three, four and five years, such terms to be assigned by lot. Thereafter, all members shall be appointed for five-year terms. No person shall serve more than two consecutive terms.

C. The Reclamation Fund Advisory Board shall annually elect a chairman and shall formulate rules for its organization and procedure.

D. The voting members of the Reclamation Fund Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

E. The Reclamation Fund Advisory Board shall meet not less than twice each year for the purpose of formulating recommendations to the Director concerning oversight of the general operation of the Fund. The Reclamation Fund Advisory Board shall report biannually to the Director and to the Governor on the status of the Fund and shall recommend to the Director regulations or changes thereto for the administration or operation of the Fund. The Director, in his discretion, may adopt the recommendations of the Reclamation Fund Advisory Board through regulatory action from time to time in accordance with the provisions of Chapter 19 (§ 45.1-226 et seq.) of this title and otherwise in accordance with law.

1982, c. 334; 1985, c. 448.

Chapter 20 - INTERSTATE MINING COMPACT

§ 45.1-271. Interstate Mining Compact

ARTICLE I

FINDINGS AND PURPOSES

(a) The party States find that:

1. Mining and the contributions thereof to the economy and well-being of every State are of basic significance.

2. The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

3. Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

4. Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from State to State for all mining operation similarly situated.

5. The States are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

1. Advance the protection and restoration of land, water and other resources affected by mining.

2. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

3. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party States which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

4. Assist the party States in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

5. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II

DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and 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; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on site farming or construction.

(b) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a Territory or Possession of the United States.

ARTICLE III

STATE PROGRAMS

Each party State agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

ARTICLE IV

POWERS

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, such Commission shall have power to:

1. Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operation, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

2. Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.

3. Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

4. Gather and disseminate information relating to any of the matters within the purview of this compact.

5. Cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact.

6. Consult, upon the request of a party State and within resources available therefore, with the officials of such State in respect to any problem within the purview of this compact.

7. Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

8. Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V

THE COMMISSION

(a) There is hereby created an agency of the party States to be known as the "Interstate Mining Commission," hereinafter called "the Commission." The Commission shall be composed of one

commissioner from each party State who shall be the Governor thereof. Pursuant to the laws of his party State, each Governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his State on the Commission. In any instance where a Governor is unable to attend a meeting of the Commission or perform any other function in connection with the business of the business of the Commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to Article IV-3, IV-7, and IV-8 or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Article V (g), V (h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting: provided that action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The Commission shall have a seal.

(d) The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Commission shall appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission. The Executive Director, the Treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party States, the Executive Director with the approval of the Commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the Commission's functions, and shall fix the duties and compensation of such personnel.

(f) The Commission may establish and maintain independently or in conjunction with a party State, a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The Commission may borrow, accept or contract for the services of personnel from any State, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(h) The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and service, conditional or otherwise, from any State, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the Commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this Article shall be reported in the annual report of the Commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.

(j) The Commission annually shall make to the Governor, legislature and advisory body required by Article V (a) of each party State a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

ARTICLE VI

ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The Commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party States, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the Commission.

ARTICLE VII

FINANCE

(a) The Commission shall submit to the Governor or designated officer or officers of each party State a budget of its estimated expenditures for such period as may be required by the laws of that party State for presentation to the legislature thereof.

(b) Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party States. The total amount of appropriations requested under any such budget shall be apportioned among the party

States as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the Commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party States. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The Commission shall not pledge the credit of any party State. The Commission may meet any of its obligations in whole or in part with funds available to it under Article V (h) of this compact; provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under Article V (h) hereof, the Commission shall not incur any obligation prior to the allotment of funds by the party States adequate to meet the same.

(d) The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

(e) The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party States and by any persons authorized by the Commission.

(f) Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

ARTICLE VIII

ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more States. Thereafter, this compact shall become effective as to any other State upon its enactment thereof.

(b) Any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing State has given notice in writing of the withdrawal to the Governors of all other party States. No withdrawal shall affect any liability already incurred by or chargeable to a party State prior to the time of such withdrawal.

ARTICLE IX

EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party State.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State participating herein, the compact shall remain in full force and effect as to the remaining party States and in full force and effect as to the State affected as to all severable matters.

1977, c. 468.

Chapter 21 - EXPLORATION FOR URANIUM ORE

§ 45.1-272. Legislative findings; declaration of policy [Not set out]

Not set out. (1982, c. 269.)

§ 45.1-273. Definitions

The following words shall have the meanings respectively ascribed thereto:

"Exploration activity" means and shall be limited to the drilling of test holes or stratigraphic or core holes of a depth in excess of fifty feet for the purpose of determining the location, quantity, or quality of uranium ore.

"Person" shall mean any individual, firm, corporation, partnership, association or other legal entity.

1982, c. 269; 1984, c. 590.

§ 45.1-274. Permit for exploration activity required; fee

A. It shall be unlawful for any person to commence any exploration activity as defined herein without first obtaining a permit to do so from the Chief. The application for the permit shall be in such form as the Chief may prescribe and shall be accompanied by a fee of $250 and such other information as may be required by this chapter.

B. The application for a permit to carry out any exploration activity shall be accompanied by a bond, payable to the Commonwealth, with surety acceptable to the Chief. The bond shall ensure compliance with the provisions of this chapter and any regulations promulgated hereunder relating to the drilling, redrilling, plugging and abandoning of any exploration activity. The bond shall be set by the Chief in such amount as may be deemed reasonable and necessary.

C. An initial permit shall be valid for a period of one year, and may be renewed for a like period of time.

1982, c. 269.

§ 45.1-275. Maps or plats of proposed exploration activity area

Before undertaking any exploration activity on any tract of land, the person proposing the exploration activity shall prepare or have prepared and file with the Chief, together with the application required by § 45.1-274, an accurate map, on a scale to be stated thereon, showing the location of the proposed exploration activity; the courses and distances of such activity from two permanent points or landmarks on the tract; the approximate location areas in which test holes or core or stratigraphic holes may be drilled; the name of the owner; and boundaries and acreage of the tract on which the exploration activity is to take place.

1982, c. 269.

§ 45.1-276. Abandoning exploration hole; affidavits required

Within forty-five days after the abandonment of any exploration hole, the permittee shall notify the Chief that such exploration hole has been plugged and abandoned, giving the location of such hole. The permittee shall submit an affidavit, in triplicate, which shall set forth the time and manner in which the hole was plugged and filled. One copy of this affidavit shall be retained by the permittee, one sent to the State Geologist, and the third shall be mailed to the Chief.

1982, c. 269.

§ 45.1-277. Plugging

The plugging of exploration holes shall be as follows:

1. All exploration holes shall be adequately plugged with cement from the bottom of the hole upward to a point three feet below plow depth. The remainder of the hole between the top of the plug and the surface shall be filled with cuttings or nontoxic material.

2. If multiple aquifers alternating usable quality water and salt water zones, or other conditions determined by the Chief to be potentially deleterious to surface or ground water are encountered, the conditions must be isolated immediately by cement plugs. "Usable quality water" is defined as ground water that is used or can be used for a beneficial purpose, including, but not limited to, domestic, livestock, or irrigation uses. Each hole shall be plugged with cement to prevent water from flowing into or out of the hole or mixing within the hole. The length of the plug shall be determined by the Chief based on available data on the specific site.

3. Each exploration hole shall be plugged as soon as reasonably practical after drilling, unless multiple aquifers are encountered.

4. Alternative plugging procedures and materials may be utilized when the applicant has demonstrated to the Chief's satisfaction that the alternatives will protect ground waters and comply with

the provisions of this chapter. In the event that a hole is more suitably plugged with a nonporous material other than cement, the material shall have characteristics at least equal to cement.

5. In the event that an exploration hole is to remain unplugged pursuant to the provisions of § 45.1-278, the procedure contained in subdivision 2, if applicable, shall be applied and the exploration hole shall be plugged to the extent required by that paragraph.

1982, c. 269.

§ 45.1-278. Developing exploration hole as water well

If any exploration hole drilled for the purpose of determining the location, quantity or quality of uranium ore indicates a stratum or source of potable fresh water which could be developed pursuant to established EPA safe drinking water standards for a community water system, upon the request of the owner of the property on which the exploration hole is located and on application to and approval by the Chief, who shall secure concurrence from the Department of Health, the well, in lieu of being plugged and abandoned, may be developed and completed as a water well. The development and completion of an exploration hole as a water well shall be performed in accordance with applicable state water control law and regulation.

1982, c. 269.

§ 45.1-279. Rules and regulations

The Director shall promulgate such rules and regulations as may be necessary and proper to carry out the provisions of this chapter.

1982, c. 269; 1984, c. 590.

§ 45.1-280. Right of inspection by Chief

For the purposes of carrying out the provisions of this chapter, the Chief is hereby vested with authority to inspect at reasonable times and in a reasonable manner any area or areas for which he has received an application for a permit, or granted a permit, for exploration activity.

1982, c. 269.

§ 45.1-281. Administrative Process Act applicable

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to the provisions of this chapter.

1982, c. 269.

§ 45.1-282. Penalties

A. Any person who violates any provision of this chapter, or who fails, neglects or refuses to comply with any rule or regulation issued by the Director, or final order of a court lawfully issued, shall be subject to a civil penalty, not to exceed $10,000, for each violation. Each day of violation shall constitute a separate offense.

B. The Chief shall have the authority to restrain violations of this chapter in accordance with the provisions of § 45.1-358.

1982, c. 269; 1984, c. 590.

§ 45.1-283. Uranium mining permit applications; when accepted; uranium mining deemed to have significant effect on surface

Notwithstanding any other provision of law, permit applications for uranium mining shall not be accepted by any agency of the Commonwealth prior to July 1, 1984, and until a program for permitting uranium mining is established by statute. For the purpose of construing § 45.1-180 (a), uranium mining shall be deemed to have a significant effect on the surface.

1982, c. 269; 1983, c. 3.

§ 45.1-284. State and local authority

Nothing contained in this chapter shall be construed to alter the authority of any state or local governing body, including the authorities conferred under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, relative to matters which are the subject of this chapter.

1982, c. 269.

§ 45.1-285. Confidentiality of logs, surveys and reports

The Chief shall hold confidential all logs, surveys, plats and reports filed under this chapter by those engaged in the exploration for uranium for a period of two years after the completion of the exploratory activities. Further, upon written request by any person engaged in the exploration for uranium, the Chief shall hold confidential all logs, surveys, plats and reports filed under this chapter for all additional two-year periods. Such request shall be granted by the Chief if the requesting party certifies that he considers all such information to be of a proprietary nature relating to his competitive rights. Nothing in this section shall be construed to deny to the State Geologist the access to all logs, surveys, plats and reports filed under this chapter. The State Geologist, however, shall be bound to hold this information confidential to the same extent as the Chief is bound.

1982, c. 269.

§§ 45.1-285.1 through 45.1-285.10. Findings; declaration of policy [Not set out]

Not set out. (1983, c. 3. [Amendment: § 45.1-285.3 -- 1984, c. 590.])

§ 45.1-285.2. Definitions [Not set out]

(1983, c. 3.)

§ 45.1-285.3. Uranium Administrative Group created; composition [Not set out]

(1983, c. 3.)

§ 45.1-285.4. Employment of consultants; other support [Not set out]

(1983, c. 3.)

§ 45.1-285.5. Duties of Group [Not set out]

(1983, c. 3.)

§ 45.1-285.6. Study criteria [Not set out]
(1983, c. 3.

§ 45.1-285.7. Additional factors [Not set out]
(1983, c. 3.)

§ 45.1-285.8. Recommendations to the General Assembly [Not set out]
(1983, c. 3.)

§ 45.1-285.9. Study filing procedure [Not set out]
(1983, c. 3.)

§ 45.1-285.10. Applicability of studies under this chapter to any future licensing proceedings [Not set out]
(1983, c. 3.)

Chapter 22 - VIRGINIA OIL AND GAS ACT [Repealed]

§§ 45.1-286 through 45.1-361. Repealed
Repealed by Acts 1990, c. 92 .

Chapter 22.1 - THE VIRGINIA GAS AND OIL ACT

Article 1 - GENERAL PROVISIONS

§ 45.1-361.1. Definitions
As used in this chapter, unless the context clearly indicates otherwise:

"Abandonment of a well" or "cessation of well operations" means the time at which (i) a gas or oil operator has ceased operation of a well and has not properly plugged the well and reclaimed the site as required by this chapter, (ii) the time at which a gas or oil operator has allowed the well to become incapable of production or conversion to another well type, or (iii) the time at which the Director revokes a permit or forfeits a bond covering a gas or oil operation.

"Associated facilities" means any facility utilized for gas or oil operations in the Commonwealth, other than a well or a well site.

"Barrel" means forty-two U.S. gallons of liquids, including slurries, at a temperature of sixty degrees Fahrenheit.

"Board" means the Virginia Gas and Oil Board.

"Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata associated therewith.

"Coalbed methane gas well" means a well capable of producing coalbed methane gas.

"Coalbed methane gas well operator" means any person who has been designated to operate or does operate a coalbed methane gas well.

"Coal claimant" means a person identified as possessing an interest in production royalties when a drilling unit is force-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the coal estate contained within the drilling unit subject to the pooling order or agreement.

"Coal operator" means any person who has the right to operate or does operate a coal mine.

"Coal owner" means any person who owns, leases, mines and produces, or has the right to mine and produce, a coal seam.

"Coal seam" means any stratum of coal twenty inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the Department foreseeably be commercially worked and will require protection if wells are drilled through it.

"Correlative rights" means the right of each gas or oil owner having an interest in a single pool to have a fair and reasonable opportunity to obtain and produce his just and equitable share of production of the gas or oil in such pool or its equivalent without being required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the gas or oil or its equivalent.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 pounds per square foot and a standard temperature base of sixty degrees Fahrenheit.

"Disposal well" means any well drilled or converted for the disposal of drilling fluids, produced waters, or other wastes associated with gas or oil operations.

"Drilling unit" means the acreage on which one gas or oil well may be drilled.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) the application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Evidence of a proceeding or agreement" means written evidence that (i) the coal claimant has filed and has pending a judicial or arbitration proceeding against the gas claimant to determine the ownership of the coalbed methane gas and the right to the funds held in escrow or suspense or (ii) the coal claimant and gas claimant have reached an agreement to apportion the funds between them.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Field rules" means rules established by order of the Virginia Gas and Oil Board that define a pool, drilling units, production allowables, or other requirements for gas or oil operations within an identifiable area.

"First point of sale" means, for oil, the point at which the oil is sold, exchanged or transferred for value from one person to another person, or when the original owner of the oil uses the oil, the point at which the oil is transported off the permitted site and delivered to another facility for use by the original owner; and for gas, the point at which the gas is sold, exchanged or transferred for value to any interstate or intrastate pipeline, any local distribution company, any person for use by such person, or when the gas is used by the owner of the gas for a purpose other than the production or transportation of the gas, the point at which the gas is delivered to a facility for use.

"Fund" means the Gas and Oil Plugging and Restoration Fund.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil pursuant to this section.

"Gas claimant" means a person identified as possessing an interest in production royalties when a drilling unit is forced-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the gas estate contained within the drilling unit subject to the pooling order or agreement.

"Gas or oil operations" means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of a well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or replugging any well; ground disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline; the development, operation, maintenance, and restoration of any site involved with gas or oil operations; or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or which contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas or oil operator" means any person who has been designated to operate or does operate any gas or oil well or gathering pipeline.

"Gas or oil owner" means any person who owns, leases, has an interest in, or who has the right to explore for, drill or operate a gas or oil well as principal or as lessee. In the event that the gas is owned separately from the oil, the definitions contained herein shall apply separately to the gas owner or oil owner.

"Gas title conflicts" means conflicting ownership claims between gas claimants; the term does not include conflicting ownership claims between gas claimants and coal claimants.

"Gathering pipeline" means (i) a pipeline which is used or intended for use in the transportation of gas or oil from the well to a transmission pipeline regulated by the United States Department of Transportation or the State Corporation Commission or (ii) a pipeline which is used or intended for use in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where the gas or oil is sold.

"Geophysical operator" means a person who has the right to explore for gas or oil using ground disturbing geophysical exploration.

"Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Ground disturbing" means any changing of land which may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to, clearing, grading, excavating, drilling, and transporting and filling of land.

"Ground disturbing geophysical exploration" or "geophysical operation" means any activity in search of gas or oil that breaks or disturbs the surface of the earth, including but not limited to road construction or core drilling. The term shall not include the conduct of gravity, magnetic, radiometric and similar geophysical surveys, and vibroseis or other similar seismic surveys.

"Injection well" means any well used to inject or otherwise place any substance associated with gas or oil operations into the earth or underground strata for disposal, storage or enhanced recovery.

"Inspector" means the Virginia Gas and Oil Inspector, appointed by the Director pursuant to § 45.1-361.4, or such other public officer, employee or other authority as may in emergencies be acting in the stead, or by law be assigned the duties of, the Virginia Gas and Oil Inspector.

"Log" means the written record progressively describing all strata, water, oil or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volume of gas, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, cavings strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include electrical survey records or electrical survey logs.

"Mine" means an underground or surface excavation or development with or without shafts, slopes, drifts or tunnels for the extraction of coal, minerals or nonmetallic materials, commonly designated as mineral resources, and the hoisting or haulage equipment or appliances, if any, for the extraction of the mineral resources. The term embraces all of the land or property of the mining plant, including both the surface and subsurface, that is used or contributes directly or indirectly to the mining, concentration or handling of the mineral resources, including all roads.

"Mineral" shall have the same meaning as ascribed to it in § 45.1-180.

"Mineral operator" means any person who has the right to or does operate a mineral mine.

"Mineral owner" means any person who owns, leases, mines and produces, or who has the right to mine and produce minerals and to appropriate such minerals that he produces therefrom, either for himself or for himself and others.

"Nonparticipating operator" means a gas or oil owner of a tract included in a drilling unit who elects to share in the operation of the well on a carried basis by agreeing to have his proportionate share of the costs allocable to his interest charged against his share of production from the well.

"Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or waste from gas, oil, or geophysical operations off a permitted site which results from activity conducted on a permitted site.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

"Orphaned well" means any well abandoned prior to July 1, 1950, or for which no records exist concerning its drilling, plugging or abandonment.

"Participating operator" means a gas or oil owner who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging and abandoning a well on a drilling unit and to receive a share of production from the well equal to the proportion which the acreage in the drilling unit he owns or holds under lease bears to the total acreage of the drilling unit.

"Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or geophysical operations issued under authority of this chapter.

"Person under a disability" shall have the same meaning as ascribed to it in § 8.01-2.

"Pipeline" means any pipe above or below the ground used or to be used to transport gas or oil.

"Plat" or "map" means a map, drawing or print showing the location of a well or wells, mine, quarry, or other information required under this chapter.

"Pool" means an underground accumulation of gas or oil in a single and separate natural reservoir. It is characterized by a single natural pressure system so that production of gas or oil from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, or water in the formation, so that it is effectively separated from any other pool which may be present in the same geologic structure. A coalbed methane pool means an area which is underlain or appears to be underlain by at least one coalbed capable of producing coalbed methane gas.

"Project area" means the well, gathering pipeline, associated facilities, roads, and any other disturbed area, all of which are permitted as part of a gas, oil, or geophysical operation.

"Restoration" means all activity required to return a permitted site to other use after gas, oil, or geophysical operations have ended, as approved in the operations plan for the permitted site.

"Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights, who is eligible to receive payment based on the production of gas or oil.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction and which affect the public welfare.

"Stimulate" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including, but not limited to, fracturing, shooting or acidizing, but excluding (i) cleaning out, bailing or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, and other agents which affect the gas or oil being produced, as distinguished from the producing formation.

"Storage well" means any well used for the underground storage of gas.

"Surface owner" means any person who is the owner of record of the surface of the land.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil which is (i) produced or generated during or results from the development, drilling and completion of wells and associated facilities or the development and construction of gathering pipelines or (ii) produced or generated during or results from well, pipeline and associated facilities' operations, including, but not limited to, brines and produced fluids other than gas or oil. In addition, this term shall include all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Waste" or "escape of resources" means (i) physical waste, as that term is generally understood in the gas and oil industry; (ii) the inefficient, excessive, improper use, or unnecessary dissipation of reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the locating, drilling, equipping, operating, or producing of any gas or oil well in a manner that causes, or tends to cause, a reduction in the quantity of gas or oil ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of gas or oil; (v) the production of gas or oil in excess of transportation or marketing facilities; (vi) the amount reasonably required to be produced in the proper drilling, completing, or testing of the well from which it is produced, except gas produced from an oil well or condensate well pending the time when with reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable; or (vii) underground or above ground waste in the production or storage of gas, oil, or condensate, however caused. The term "waste" does not include gas vented from methane drainage boreholes or coalbed methane gas wells, where necessary for safety reasons or for the efficient testing and operation of coalbed methane gas wells; nor does it include the plugging of coalbed methane gas wells for the recovery of the coal estate.

"Water well" means any well drilled, bored or dug into the earth for the sole purpose of extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, methane drainage boreholes where the methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face of an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or non-fuel mineral core hole or borehole for the purpose of exploration.

1982, c. 347, § 45.1-288; 1984, c. 590; 1987, c. 452; 1988, c. 160; 1990, c. 92; 1992, c. 812; 1993, c. 254; 2015, c. 396.

§ 45.1-361.2. Regulation of coal surface mining not affected by chapter

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of Chapter 19 (§ 45.1-226 et seq.), including requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on areas for which a coal surface mining permit is in effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on areas that have been reclaimed by the surface mine operator or the Director shall be treated as postmining uses. The Director shall give special consideration to the development and promulgation of variances from the postmining use requirements of Chapter 19 for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of Chapter 19.

1982, c. 347, § 45.1-289; 1984, c. 590; 1990, c. 92; 2013, cc. 47, 129.

§ 45.1-361.3. Construction

The provisions of this chapter shall be liberally construed so as to effectuate the following purposes:

1. 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;

2. To provide a method of gas and oil conservation for maximizing exploration, development, production and utilization of gas and oil resources;

3. To recognize and protect the rights of persons owning interests in gas or oil resources contained within a pool;

4. To ensure the safe recovery of coal and other minerals;

5. To maximize the production and recovery of coal without substantially affecting the right of a gas or oil owner proposing to drill a gas or oil well to explore for and produce gas or oil;

6. To protect the citizens and the environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil; and

7. To recognize that use of the surface for gas or oil development shall be only that which is reasonably necessary to obtain the gas or oil.

1982, c. 347, § 45.1-290; 1990, c. 92 .

§ 45.1-361.4. Duties and responsibilities of the Director

A. The Director shall have the jurisdiction and authority necessary to enforce the provisions of this chapter. The Director shall have the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities as may be prescribed in regulations promulgated by the Department or the Board.

B. The Director shall appoint the Gas and Oil Inspector.

1990, c. 92 .

§ 45.1-361.5. Exclusivity of regulation and enforcement

No county, city, town or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee or bond to perform any gas, oil, or geophysical operations which varies from or is in addition to the requirements of this chapter. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction and requirements of other state agencies, local land-use ordinances, regulations of general purpose, or §§ 58.1-3712, 58.1-3713, 58.1-3713.3, 58.1-3741, 58.1-3742, and 58.1-3743.

1990, c. 92; 2013, cc. 305, 618; 2016, c. 305.

§ 45.1-361.6. Confidentiality

The Director shall hold confidential all logs, surveys and reports relating to the drilling, completion and testing of a well which are filed by gas or oil operators under this chapter for a period of ninety days after the completion of the well or eighteen months after the total depth of the well has been reached, whichever occurs first. Upon receipt of a gas, oil, or geophysical operator's written request, the Director shall hold confidential this information concerning an exploratory well or corehole for a period of two years after completion of the well or four years from the date such well or hole reaches total depth, whichever occurs first. The Director, for good cause shown by the gas, oil, or geophysical operator, may annually extend the period of time for which information regarding exploratory drilling is held confidential. However, the Director shall upon request provide a copy of any survey or log for strata through the lowest coal seam to the coal owner.

1990, c. 92 .

§ 45.1-361.7. Expenditure of funds

All funds, except civil charges collected pursuant to § 45.1-361.8, collected by or appropriated to the Department pursuant to the provisions of this chapter shall be expended only for the purpose of carrying out the provisions of this chapter.

1990, c. 92 .

§ 45.1-361.8. Violations; penalties

A. Any person who violates or refuses, fails or neglects to comply with any regulation or order of the Board, Director, or Inspector, any condition of a permit or any provision of this chapter shall be guilty of a Class 1 misdemeanor.

B. In addition, any person who violates any provision of this chapter, any condition of a permit, or any regulation or order of the Board, Director, or Inspector shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than $10,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. The court shall direct that all civil penalties assessed under this section be paid into the treasury of the county or city wherein lies the gas, oil, or geophysical operation determined by the court to be in violation.

C. The Board, with the consent of the gas, oil, or geophysical operator, may provide, in an order issued by the Board against such operator, for the payment of civil charges for past violations in specific sums not to exceed the limit specified in subsection B of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section and shall not be subject to the provision of § 2.2-514. Civil charges collected under this section shall be paid into the treasury of the county or city wherein lies the gas, oil, or geophysical operation subject to the order issued by the Board.

1982, c. 347, §§ 45.1-358, 45.1-360; 1984, c. 590; 1990, c. 92 .

§ 45.1-361.9. Appeals; venue; standing

A. Any order or decision of the Board may be appealed to the appropriate circuit court. Whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo. The court shall have the power to enter interlocutory orders as may be necessary to protect the rights of all interested parties pending a final decision.

B. Unless the parties otherwise agree, the venue for court review shall be the county or city wherein lies the gas, oil, or geophysical operation which is the subject of such order or decision.

C. The Director and all parties required to be given notice of hearings of the Board pursuant to the provisions of § 45.1-361.19 shall have standing to appeal any order or decision of the Board which directly affects them. The permittee or permit applicant, the Director, and those parties with standing to object, pursuant to the provisions of § 45.1-361.30, shall have standing to appeal any order or decision of the Board which directly affects them; provided, however, with the exception of an aggrieved permit applicant or the Director, no person shall have standing to appeal a decision of

the Board concerning a permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.1-361.35. The filing of any petition for appeal concerning the issuance of a new permit which was objected to pursuant to the provisions of § 45.1-361.11, § 45.1-361.12 or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field shall automatically stay the permit until such stay is dissolved or the appeal is decided by the circuit court. However, in an appeal by a gas storage field operator such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than one hundred feet above the cap rock above the storage stratum.

1990, c. 92; 1997, c. 759.

§ 45.1-361.10. Duplicate leases

Any person, either as principal or agent, who executes a lease of land or right therein for drilling for gas or oil, or for the development or production of gas or oil, shall do so in duplicate. One copy of the lease, duly executed by the lessee, shall be furnished to the lessor.

1982, c. 347, § 45.1-352; 1990, c. 92 .

§ 45.1-361.11. Objections by coal owner

A. In deciding on objections by a coal owner to a proposed permit modification or drilling unit modification, only the following questions shall be considered:

1. Whether the work can be done safely with respect to persons engaged in coal mining at or near the well site; and

2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's right to explore for, market and produce oil and gas.

B. In deciding on objections by a coal owner to the establishment of a drilling unit, a permit for a new well, or the stimulation of a coalbed methane gas well, the following safety aspects shall first be considered, and no order or permit shall be issued where the evidence indicates that the proposed activities will be unsafe:

1. Whether the drilling unit or drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or in any coal mine already surveyed and platted but not yet being operated;

2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas well can be stimulated safely, taking into consideration the dangers from creeps, squeezes or other disturbances due to the extraction of coal; and

4. The extent to which the proposed drilling unit or drilling location or stimulation of the coalbed methane gas well unreasonably interferes with the safe recovery of coal, oil and gas.

C. The following questions with respect to the drilling unit or drilling location of a new well or stimulation of a new coalbed methane gas well shall also be considered:

1. The extent to which the proposed drilling unit or drilling location or coalbed methane gas well stimulation will unreasonably interfere with present or future coal mining operations;

2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out area, below the coal outcrop or to some other area;

3. The feasibility of a drilling moratorium for not more than two years in order to permit the completion of coal mining operations;

4. The method proposed for the recovery of coal and gas;

5. The practicality of locating the unit or the well on a uniform pattern with other units or wells;

6. The surface topography and use; and

7. Whether the decision will substantially affect the right of the gas operator to explore for and produce the gas.

The factors in subsection C of this section are not intended to and shall not be construed to authorize the Director, or the Board under § 45.1-361.36, to supersede, impair, abridge or affect any contractual rights or obligations now or hereafter existing between the respective owners of coal and gas or any interest therein.

1982, c. 347, § 45.1-318; 1990, c. 92 .

§ 45.1-361.12. Distance limitations of certain wells

A. If the well operator and the objecting coal owners present or represented at the hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

B. The minimum distance limitations established by this section shall not apply if the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth, and the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

1982, c. 347, § 45.1-319; 1990, c. 92 .

Article 2 - GAS AND OIL CONSERVATION

§ 45.1-361.13. Virginia Gas and Oil Board; membership; compensation

A. The Virginia Gas and Oil Board is hereby established. The Board shall be composed of seven members and shall have the powers and duties as specified under this chapter.

B. The Governor shall appoint, subject to confirmation by the General Assembly, the chairman and six additional members of the Board as follows: two for an initial term of two years, two for an initial term of four years, and three for an initial term of six years. Thereafter, the members shall be appointed for terms of six years. At all times, the Board shall consist of the following qualified members: the Director or his designee; one but not more than one individual who is a representative of the gas and oil industry; one but not more than one individual who is a representative of the coal industry; and four other individuals who are not representatives of the gas, oil or coal industry. All vacancies occurring on the Board shall be filled by the Governor, subject to confirmation by the General Assembly, for the unexpired term within sixty days of the occurrence of the vacancy. As the terms of office, respectively, of the members expire, the Governor shall appoint, subject to confirmation by the General Assembly, to fill the vacancies so occasioned, qualified persons whose terms shall be for six years from the day on which that of their immediate predecessor expired. The Governor shall seek to appoint persons who reside in localities with significant oil or gas production or storage.

C. Each member of the Board shall receive compensation and expenses in accordance with the provisions of § 2.2-2813.

1982, c. 347, § 45.1-295; 1985, c. 448; 1987, c. 452; 1988, c. 483; 1989, c. 529; 1990, c. 92; 1998, c. 159.

§ 45.1-361.14. Meetings of the Board; notice; general powers and duties

A. The Board shall schedule a monthly meeting at a time and place designated by the chairman. Should no petition for action be filed with the Board prior to such a meeting, the meeting may be cancelled. Notification or cancellation of each meeting shall be given in writing to the other members by the chairman at least five days in advance of the meeting. Four members shall constitute a quorum for the transaction of any business which shall come before the Board. All determinations of the Board shall be by majority vote of the quorum present.

B. The Board shall have the power necessary to execute and carry out all of its duties specified in this chapter. The Board is authorized to investigate and inspect such records and facilities as are necessary and proper to perform its duties under this chapter. The Board may employ such personnel and consultants as may be necessary to perform its duties under this chapter.

1982, c. 347, § 45.1-296; 1987, c. 452; 1990, c. 92 .

§ 45.1-361.15. Additional duties and responsibilities of the Board

A. In executing its duties under this chapter, the Board shall:

1. Foster, encourage and promote the safe and efficient exploration for and development, production and conservation of the gas and oil resources located in the Commonwealth;

2. Administer a method of gas and oil conservation for the purpose of maximizing exploration, development, production and utilization of gas and oil resources;

3. Administer procedures for the recognition and protection of the rights of gas or oil owners with interests in gas or oil resources contained within a pool;

4. Promote the maximum production and recovery of coal without substantially affecting the right of a gas owner proposing a gas well to explore for and produce gas; and

5. Hear and decide appeals of Director's decisions and orders issued under Article 3 of this chapter.

B. Without limiting its general authority, the Board shall have the specific authority to issue rules, regulations or orders pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) in order to:

1. Prevent waste through the design spacing, or unitization of wells, pools, or fields.

2. Protect correlative rights.

3. Enter spacing and pooling orders.

4. Establish drilling units.

5. Establish maximum allowable production rates for the prevention of waste and for the protection of correlative rights.

6. Provide for the maximum recovery of coal.

7. Classify pools and wells as gas, oil, gas and oil, or coalbed methane gas.

8. Collect data, make investigations and inspections, examine property, leases, papers, books and records and require or provide for the keeping of records and the making of reports.

9. Set application fees.

10. Govern practices and procedures before the Board.

11. Require additional data from parties to any hearing.

12. Take such actions as are reasonably necessary to carry out the provisions of this chapter.

1982, c. 347, § 45.1-296; 1987, c. 452; 1990, c. 92 .

§ 45.1-361.16. Applicability and construction

A. The provisions of this article shall apply to all lands in the Commonwealth, whether publicly or privately owned. However, no well commenced prior to July 1, 1990, shall be required to be plugged or abandoned solely for purposes of complying with the conservation provisions contained in this article.

B. No provision contained in this article shall be construed to grant to the Board the authority or power to fix prices of gas or oil.

1982, c. 347, § 45.1-300; 1987, c. 452; 1990, c. 92 .

§ 45.1-361.17. Statewide spacing of wells

A. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of oil shall not be located closer than 1,250 feet to any well completed in the same pool; however, this spacing requirement is subject to § 45.1-361.12;

2. Wells drilled in search of gas shall not be located closer than 2,500 feet to any other well completed in the same pool, or closer than 2,500 feet to any storage well within the boundary of a gas storage field certificated by the State Corporation Commission prior to January 1, 1997, if the well to be drilled is to be completed within the same horizon as the certificated gas storage field; and

3. A well shall not be drilled closer to the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit, than one-half of the minimum well spacing distances prescribed in this section.

B. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. Wells drilled in search of coalbed methane gas shall not be located closer than 1,000 feet to any other coalbed methane gas well, or in the case of coalbed methane gas wells located in the gob, such wells shall not be located closer than 500 feet to any other coalbed methane gas wells located in the gob.

2. A coalbed methane gas well shall not be drilled closer than 500 feet, or in the case of such well located in the gob, not closer than 250 feet, from the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit.

3. The spacing limitations set forth in this subsection are subject to the provisions of §§ 45.1-361.11 and 45.1-361.12.

1990, c. 92; 1996, c. 854; 1997, c. 759.

§ 45.1-361.18. Voluntary pooling of interests in drilling units; validity of unit agreements

A. When two or more separately owned tracts are embraced within a drilling unit, or when there are separately owned interests in all or a part of any such drilling unit, the gas or oil owners owning such interests may pool their interests for the development and operation of the drilling unit by voluntary agreement. Such agreements may be based on the exercise of pooling rights or rights to establish drilling units which are granted in any gas or oil lease.

B. No voluntary pooling agreement between or among gas or oil owners shall be held to violate the statutory or common law of the Commonwealth which prohibits monopolies or acts, arrangements, contracts, combinations or conspiracies in restraint of trade or commerce.

1982, c. 347, § 45.1-302; 1987, c. 452; 1989, c. 529; 1990, c. 92 .

§ 45.1-361.19. Notice of hearing; standing; form of hearing

A. Any person who applies for a hearing in front of the Board pursuant to the provisions of § 45.1-361.20, 45.1-361.21, or 45.1-361.22 shall simultaneously with the filing of such application, provide notice by certified mail, return receipt requested, to each gas or oil owner, coal owner, or mineral owner having an interest underlying the tract which is the subject of the hearing, and to the operator of any gas storage field certificated by the State Corporation Commission as a public utility facility whose certificated area includes the tract which is the subject of the hearing. Whenever a hearing applicant is unable to provide such written notice because the identity or location of a person to whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board of such inability.

B. At least 10 days prior to a hearing, the Board shall publish its agenda in newspapers of general circulation that are widely circulated in the localities where the lands that are the subject of the hearing are located. The agenda shall include the name of each applicant, the localities where the lands that are the subject of the hearing are located, the purpose of the hearing, and the date, time and location thereof.

C. The Board shall conduct all hearings on applications made to it pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The applicant and any person to whom notice is required to be given pursuant to the provisions of subsection A of this section shall have standing to be heard at the hearing. The Board shall render its decision on such applications within thirty days of the hearing's closing date and shall provide notification of its decision to all parties to the hearing pursuant to the provisions of the Administrative Process Act.

1982, c. 347, § 45.1-304; 1989, c. 529; 1990, c. 92; 1997, c. 759; 2008, c. 534.

§ 45.1-361.20. Field rules and drilling units for wells; hearings and orders

A. In order to prevent the waste of gas or oil, the drilling of unnecessary wells, or to protect correlative rights, the Board on its own motion or upon application of the gas or oil owner shall have the power to establish or modify drilling units. Drilling units, to the extent reasonably possible, shall be of uniform shape and size for an entire pool. Any gas, oil, or royalty owner may apply to the Board for the establishment of field rules and the creation of drilling units for the field. Unless such motion is made or an application is received at least thirty days prior to the next regularly scheduled monthly meeting of the Board, it shall not be heard by the Board at such meeting and shall be heard at the next meeting of the Board thereafter.

B. At any hearing of the Board regarding the establishment or modification of drilling units, the Board shall make the following determinations:

1. Whether the proposed drilling unit is an unreasonable or arbitrary exercise of a gas or oil owner's right to explore for or produce gas or oil;

2. Whether the proposal would unreasonably interfere with the present or future mining of coal or other minerals;

3. The acreage to be included in the order;

4. The acreage to be embraced within each drilling unit and the shape thereof;

5. The area within which wells may be drilled on each unit; and

6. The allowable production of each well.

C. In establishing or modifying a drilling unit for coalbed methane gas wells, and in order to accommodate the unique characteristics of coalbed methane development, the Board shall require that drilling units conform to the mine development plan, if any, and if requested by the coal operator, well spacing shall correspond with mine operations, including the drilling of multiple coalbed methane gas wells on each drilling unit.

D. If an order to establish or modify a drilling unit will allow a well to be drilled into or through a coal seam, any coal owner within the area to be covered by the drilling unit may object to the establishment of the drilling unit. Upon a coal owner's objection, and without superseding, impairing, abridging or affecting any contractual rights or obligations existing between coal and gas owners, the Board shall make its determination in accordance with the provisions of §§ 45.1-361.11 and 45.1-361.12.

E. The Board may continue a hearing to its next meeting to allow for further investigation and the gathering and taking of additional data and evidence. If at the time of a hearing there is not sufficient evidence for the Board to determine field boundaries, drilling unit size or shape, or allowable production, the Board may enter a temporary order establishing provisional drilling units, field boundaries, and allowable production for the orderly development of the pool pending receipt of the information necessary to determine the ultimate pool boundaries, spacing of wells for the pool, and allowable production. Upon additional findings of fact, the boundaries of a pool, drilling units for the pool, and allowable production may be modified by the Board.

F. Unless otherwise provided for by the Board, after an application for a hearing to establish or modify drilling units or pool boundaries has been filed, no additional wells shall be permitted in the pool until the Board's order establishing or modifying the pool or units has been entered.

G. After the Board issues a field or pool spacing order which creates drilling units or a pattern of drilling units for a pool, should a gas or oil owner apply for a permit or otherwise indicate his desire to drill a well outside of such drilling units or pattern of drilling units and thereby potentially extend the pool, the Board may, on its own motion or the motion of any interested person, require that the well be located and drilled in compliance with the provisions of the order affecting the pool.

1982, c. 347, § 45.1-301; 1987, c. 452; 1989, c. 529; 1990, c. 92 .

§ 45.1-361.21. Pooling of interests in drilling units

A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests in the drilling unit for the development and operation thereof when:

1. Two or more separately owned tracts are embraced in a drilling unit;

2. There are separately owned interests in all or part of any such drilling unit and those having interests have not agreed to pool their interests; or

3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § 45.1-361.17.

However, no pooling order shall be entered until the notice and hearing requirements of this article have been satisfied.

B. Subject to any contrary provision contained in a gas or oil lease respecting the property, gas or oil operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit. The portion of production allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that tract bears to the total acreage of the unit.

C. All pooling orders entered by the Board pursuant to the provisions of this section shall:

1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision 2 b of subsection F of § 45.1-361.29, subject to the permit provisions contained in Article 3 (§ 45.1-361.27 et seq.) of this chapter;

2. Include the time and date when such order expires;

3. Designate the gas or oil owner who is authorized to drill and operate the well; provided, however, that except in the case of coalbed methane gas wells, the designated operators must have the right to conduct operations or have the written consent of owners with the right to conduct operations on at least 25% of the acreage included in the unit;

4. Prescribe the conditions under which gas or oil owners may become participating operators or exercise their rights of election under subdivision 7 of this subsection;

5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between participating operators so that each participating operator pays the same percentage of such costs as his acreage bears to the total unit acreage;

6. Require that nonleasing gas or oil owners be provided with reasonable access to unit records submitted to the Director or Inspector;

7. Establish a procedure for a gas or oil owner who received notice of the hearing and who does not decide to become a participating operator may elect either to (i) sell or lease his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his share equal the following:

a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or

b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.). Upon discovery of the identity and location of any unknown owner subject to escrow under the provisions of this subsection and not subject to conflicting claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the next available hearing. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.

E. Any person who does not make an election under the pooling order shall be deemed to have leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of § 8.01-261 for purposes of making the election provided for by this section.

G. Any royalty or overriding royalty reserved in any lease which is deducted from a non-participating operator's share of production shall not be subject to charges for operating costs but shall be separately calculated and paid to the royalty owner.

H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs which may be shared in pooled gas or oil operations.

1982, c. 347, § 45.1-302; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1995, c. 269; 1996, c. 854; 2006, c. 498.

§ 45.1-361.21:1. Coalbed methane gas; ownership

A conveyance, reservation, or exception of coal shall not be deemed to include coalbed methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations. The provisions of this section shall not affect any settlement of any dispute, or any judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered prior to the enactment of this provision.

2010, cc. 730, 762.

§ 45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership

When there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof. In addition to the provisions of § 45.1-361.21, the following provisions shall apply:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § 45.1-361.19 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract which is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § 45.1-361.21 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses as provided for under § 45.1-361.21 and the order of the Board attributable to a participating or nonparticipating operator.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them; (ii) a determination reached by an arbitrator pursuant to § 45.1-361.22:1; or (iii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision, determination, or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests

of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas well operator as the pooling order may provide.

1990, c. 92; 1999, c. 122; 2006, c. 498; 2010, c. 442.

§ 45.1-361.22:1. Conflicting claims of ownership; arbitration

A. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration, and notify the circuit court in the jurisdiction wherein the majority of the subject tract is located, (i) upon written request from all claimants to the ownership of coalbed methane gas related to the subject tract under § 45.1-361.22; (ii) upon receipt of an affidavit executed by all such claimants affirming that there is no other known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract; (iii) after a hearing noticed pursuant to subsection B of § 45.1-361.19; and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an attorney from the list maintained by the Department pursuant to subsection C or, at the discretion of the court, such other attorney meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not derived more than 10 percent of his income during any of the preceding three years from any claimants asserting ownership or rights in the subject tract or any affiliated entities or immediate family members of such claimants. If the attorney cannot provide such certification, he shall notify the circuit court and he will be disqualified from serving as arbitrator for that particular dispute.

B. The Department shall send notice to all claimants if it determines that there are insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such funds are available.

C. To be qualified as an arbitrator, a candidate (i) shall be an attorney licensed in the Commonwealth; (ii) shall have at least 10 years of experience in real estate law, including substantial expertise in mineral title examination; and (iii) shall disclose to the Board whether he has been engaged within the preceding three years by any person in matters subject to the jurisdiction of the Board or the Department under this chapter. The Department shall solicit applications from attorneys meeting the qualifications set forth above and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. At least once annually, the Department shall update its

list. To maintain qualification, each attorney whose name appears on the list shall update annually his disclosures set forth in clause (iii).

D. The arbitrator shall determine a time and place for the arbitration hearing and cause written notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any party to the arbitration has the right to representation before the arbitrator pursuant to § 8.01-581.05. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; administer oaths; and, upon application by a party to the arbitration, permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party to appear at the hearing.

E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and entitlement to proceeds held in escrow within six months from the order of the Board requiring the matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to the Board and each party to whom notice is required to be given under subsection D.

F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the respective claimants or any other costs of the claimants, shall be paid from the accrued interest on general escrow account funds.

G. An arbitrator's determination, rendered pursuant to subsection E, shall be binding upon the parties and, upon request of any party to the arbitration, may be entered as the judgment of the circuit court responsible for appointing the arbitrator under subsection A.

H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

2010, c. 442.

§ 45.1-361.22:2. Release of funds held in escrow or suspense because of conflicting claims to coalbed methane gas

A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the coalbed methane gas well operator shall, on or before January 1, 2016, apply to the Board for the release of the funds in escrow and give written notice of such application to all conflicting claimants identified in the pooling orders, or to the successors of such claimants where the successors are known to the coalbed methane gas well operator or have identified themselves to the coalbed methane gas

well operator or the Board. Such notice shall be in accordance with the applicable provisions of § 45.1-361.19 and, if unknown persons or unlocatable conflicting claimants are subject to escrow, such notice shall also be published in a newspaper of general circulation in the county or counties where the drilling unit is located once each week for four successive weeks. The application shall include a detailed accounting in accordance with subdivision 5 of § 45.1-361.22. The Board shall order payment of the principal and accrued interest, less escrow account fees, held in escrow, along with all future royalties attributable to the drilling unit, to each gas claimant identified in the pooling order unless, within 45 days of the coalbed methane gas well operator's notice of its application, the coal claimant provides the Board and the coalbed methane gas well operator with evidence of a proceeding or agreement. The Board, pursuant to its authority granted by § 45.1-361.15, may extend the time for filing the application and delay the payment of funds for gas title conflicts, the existence of unknown gas claimants, the existence of unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator and shall not order payment where the gas claimant fails to provide the Board with information needed under applicable law or regulation to distribute the funds.

B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its pooling order, shall direct the coalbed methane gas well operator to pay royalties to the gas claimant unless the coal claimant provides the coalbed methane gas well operator and the Board with evidence of a proceeding or agreement not later than the time and place of the pooling hearing. The coalbed methane gas well operator shall provide written notice of the hearing to the gas claimants and coal claimants in accordance with § 45.1-361.19. However, the Board, pursuant to its authority granted by § 45.1-361.15, shall not order the coalbed methane gas well operator to make payment to a gas claimant where there are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the gas claimant fails to provide the coalbed methane gas well operator with the information required under applicable law or regulation to pay royalties. In such cases, the coalbed methane gas well operator shall provide each affected gas claimant and the Board with written notice of the same in accordance with the applicable provisions of § 45.1-361.19. Where payment is not required to be made due to the gas claimant's failure to provide needed information under applicable law or regulation, the notice shall identify the information that is needed to enable the payment to be made.

C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane gas well operator shall pay royalties, including past royalties held, to each gas claimant unless, within 45 days of the coalbed methane gas well operator's provision of written notice to the coal claimant that the operator will be paying royalties to the gas claimants, the coal claimant provides the coalbed methane gas well operator and each gas claimant with evidence of a proceeding or agreement. For units voluntarily pooled before July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants on or before January 1, 2016.

For units voluntarily pooled on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants not later than 45 days after production commences. However, the coalbed methane gas well operator shall not be required to make payment to a gas claimant where there are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the gas claimant fails to provide the coalbed methane gas well operator with information to process or pay royalties. In such cases, the coalbed methane gas well operator shall provide each affected gas claimant with written notice of the same. Where payment is not required to be made due to a gas claimant's failure to provide needed information, the notice shall identify the information that is needed to enable the payment to be made.

D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant with diligence and shall not be voluntarily dismissed or nonsuited without the consent of the gas claimant. No default judgment shall be entered against a gas claimant. Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas claimant shall be entitled to recover from that coal claimant reasonable costs and attorney fees if such person substantially prevails on the merits of the case and the coal claimant's position is not substantially justified.

E. A coalbed methane gas well operator paying funds to a gas claimant in accordance with this section shall have no liability to a coal claimant for the payments made by the coalbed methane gas well operator to a gas claimant.

F. This section shall not operate to extinguish any other right or cause of action or defenses thereto that may exist including, but not limited to, claims for an accounting or a claim under § 8.01-31. Nothing in this section shall create, confer, or impose a fiduciary duty.

2015, c. 396.

§ 45.1-361.23. Appeals of the Director's decisions; notices; hearings and orders

A. With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.1-361.35.

B. When a person applies for a hearing to appeal a decision of the Director to the Board, the Board shall, at least twenty days prior to the hearing, give notice by certified mail, return receipt requested, to the person making the appeal and, if different, to the gas or operator subject to the appeal.

C. Upon submittal of the petition for appeal of a decision of the Director to the Board, the Director shall forward to the Board (i) the permit application or order and associated documents, (ii) all required notices, and (iii) the written objections, proposals and claims recorded during the informal fact finding hearing.

D. In any appeal involving a permit of a new well which was objected to pursuant to the provisions of § 45.1-361.11, § 45.1-361.12, or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a State Corporation Commission certificated gas storage field, the filing of a petition for appeal shall stay any permit until the case is decided by the Board or the stay is dissolved by a court of record. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to oil, gas or coalbed methane wells completed more than one hundred feet above the cap rock above the storage stratum. In all other appeals, the Director may order the permit or other decision stayed for good cause shown until the case is decided by the Board or the stay is dissolved by a court of record. An appeal based on an alleged risk of danger to any person not engaged in the oil and gas operations shall be prima facie proof of good cause for a stay.

E. The Board shall conduct all hearings under this section in accordance with the formal litigated issues hearing provisions of the Administrative Process Act (§ 2.2-4020 et seq.). However, all persons to whom notice is required to be given pursuant to subsection B of this section shall have standing to be heard at the hearing. The Board shall render its decision on such appeals within thirty days of the hearing's closing date and shall provide notification of its decision to all parties pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1990, c. 92; 1997, c. 759.

§ 45.1-361.24. Enforcement

The provisions of this article shall be enforced by the Director pursuant to the provisions of Article 3 (§ 45.1-361.27 et seq.) of this chapter. In addition, should any person violate or threaten to violate any provision of this article, regulation promulgated thereunder, or order of the Board, the Board may maintain suit to restrain any such violation or threatened violation.

1982, c. 347, § 45.1-306; 1990, c. 92 .

§ 45.1-361.25. Standing when Director or Board fails to act

Should the Director or Board fail to take enforcement action within ten days of the Board's receipt of a petition alleging that the petitioner is or will be adversely affected by a violation or threatened violation of any provision of this article, regulation adopted thereunder, or an order of the Board, the petitioner shall have standing to file a complaint in the appropriate circuit court. The Board, in addition to the persons who are violating or threatening to violate any provision of this article, regulation adopted thereunder, or order of the Board, shall be made a party to any such action.

1982, c. 347, § 45.1-307; 1990, c. 92 .

§ 45.1-361.26. Recording of orders

The Inspector shall cause a true copy of any order entered by the Board which establishes a drilling unit or pools any interests to be recorded in the office of the clerk of the circuit court of each jurisdiction wherein any portion of the relevant drilling unit is located. Such orders shall be

recorded in the record book in which gas or oil leases are normally recorded. The sole charge for recordation shall be a tax equal to ten dollars plus one dollar per page of the order. The recordation from the time noted thereon by the clerk shall be notice of the order to all persons.

1982, c. 347, § 45.1-308; 1990, c. 92 .

Article 3 - REGULATION OF GAS AND OIL DEVELOPMENT AND PRODUCTION

§ 45.1-361.27. Duties, responsibilities and authority of the Director

A. The Director shall promulgate and enforce rules, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Such rules, regulations and orders shall be designed to:

1. Prevent pollution of state waters and require compliance with the Water Quality Standards adopted by the State Water Control Board;

2. Protect against off-site disturbances from gas, oil, or geophysical operations;

3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;

4. Prevent the escape of the Commonwealth's gas and oil resources;

5. Provide for safety in coal and mineral mining and coalbed methane well and related facility operations;

6. Control wastes from gas, oil, or geophysical operations;

7. Provide for the accurate measurement of gas and oil production and delivery to the first point of sale; and

8. Protect the public safety and general welfare.

B. In promulgating rules and regulations, and when issuing orders for the enforcement of the provisions of this article, the Director shall consider the following factors:

1. The protection of the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil;

2. The means of ensuring the safe recovery of coal and other minerals without substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore for and produce coal, minerals, gas, or oil; and

3. The protection of safety and health on permitted sites for coalbed methane wells and related facilities.

C. In promulgating rules, regulations and orders, the Director shall be authorized to set and enforce standards governing the following: gas or oil ground-disturbing geophysical exploration; the development, drilling, casing, equipping, operating and plugging of gas or oil production, stor-

age, enhanced recovery, or disposal wells; the development, operation and restoration of site disturbances for wells, gathering pipelines and associated facilities; and gathering pipeline safety.

D. Whenever the Director determines that an emergency exists, he shall issue an emergency order without advance notice or hearing. Such orders shall have the same validity as orders issued with advance notice and hearing, but shall remain in force no longer than thirty days from their effective date. After issuing an emergency order, the Director shall promptly notify the public of the order by publication and hold a public hearing for the purposes of modifying, repealing or making permanent the emergency order. Emergency orders shall prevail as against general regulations or orders when in conflict therewith. Emergency orders shall apply to gas, oil, or geophysical operations and to particular fields, geographical areas, subject areas, subject matter or situations.

E. The Director shall also have the authority to:

1. Issue, condition and revoke permits;

2. Issue notices of violation and orders upon violations of any provision of this chapter or regulation adopted thereunder;

3. Issue closure orders in cases of imminent danger to persons or damage to the environment or upon a history of violations;

4. Require or forfeit bonds or other financial securities;

5. Prescribe the nature of and form for the presentation of any information and documentation required by any provision of this article or regulation adopted thereunder;

6. Maintain suit in the city or county where a violation has occurred or is threatened, or wherever a person who has violated or threatens to violate any provision of this chapter may be found, in order to restrain the actual or threatened violation;

7. At reasonable times and under reasonable circumstances, enter upon any property and take such action as is necessary to administer and enforce the provisions of this chapter; and

8. Inspect and review all properties and records thereof as are necessary to administer and enforce the provisions of this chapter.

1982, c. 347, § 45.1-293; 1987, c. 452; 1989, c. 164; 1990, c. 92; 1997, c. 421.

§ 45.1-361.28. Powers, duties and responsibilities of the Inspector

A. The Inspector shall administer the laws and regulations and shall have access to all records and properties necessary for this purpose. He shall perform all duties delegated by the Director pursuant to § 45.1-161.5 and maintain permanent records of the following:

1. Each application for a gas, oil, or geophysical operation and each permitted gas, oil, or geophysical operation;

2. Meetings, actions and orders of the Board;

3. Petitions for mining coal within 200 feet of or through a well;

4. Requests for special plugging by a coal owner or coal operator; and

5. All other records prepared pursuant to this chapter.

B. The Inspector shall serve as the principal executive of the staff of the Board.

C. The Inspector may take charge of well or corehole, or pipeline emergency operations whenever a well or corehole blowout, release of hydrogen sulfide or other gases, or other serious accident occurs.

1982, c. 347, § 45.1-293; 1987, c. 452; 1989, c. 164; 1990, c. 92 .

§ 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment

A. No person shall commence any ground disturbing activity for a well, gathering pipeline, geophysical exploration or associated activity, facilities or structures without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans and other information as required by regulation or the Director.

B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking initially productive zones and plugging a well, or gathering pipeline construction and operation. Applications for new permits to conduct geophysical operations shall be accompanied by an application fee of $130. Applications for all other new permits shall be accompanied by an application fee of $260.

C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or plugging of the well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. All applications for permit modifications shall be accompanied by a permit modification fee of $130. For permits issued on July 1, 1996, or thereafter, prior to commencing any new zone completions a permittee shall first obtain a permit modification from the Director.

D. All permits and operations provided for under this section shall conform to the rules, regulations and orders of the Director and the Board. When permit terms or conditions required or provided for under Article 3 (§ 45.1-361.27 et seq.) of this chapter are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (§ 45.1-361.13 et seq.) of this chapter, the terms of the permit shall control. In this event, the operator shall return to the Board for reconsideration of a conservation order in light of the conflicting permit. Every permittee shall be responsible for all operations, activity or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied

with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit shall be required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam which is located within 750 horizontal feet of the proposed well location (i) which the applicant proposes to stimulate or (ii) which is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to stimulate.

b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § 45.1-361.19, provided by a pooling order entered pursuant to § 45.1-361.21 or 45.1-361.22 and provided such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator. The consent required by this section shall be deemed to be granted for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the co-tenants holding majority interest in the tract and none of the coal co-tenants has leased the tract for coal development. The requirement of signed consent contained in this section shall in no way be considered to impair, abridge or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, and any extensions or renewals thereto, and the existence of such lease or contractual arrangement and any extensions or renewals thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit required by this chapter for activities to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § 62.1-195.1 shall be granted until the environmental impact assessment required by § 62.1-195.1 has been conducted and the assessment has been reviewed by the Department.

H. The applicant for a permit for a gathering pipeline, oil or gas well, or coal bed methane well shall identify in the permit application any cemetery, as identified on a U.S.G.S. topographic map or located by routine field review, within 100 feet of the permitted activity.

I. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial service that takes place on the surface area of such

cemetery. However, if the well operator or a mine operator determines that suspension of such operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

1982, c. 347, § 45.1-311; 1985, c. 601; 1987, c. 452; 1988, c. 160, § 45.1-311.1; 1990, cc. 92, 967; 1994, c. 957; 1995, c. 269; 1996, c. 854; 1997, cc. 759, 765; 1998, c. 229; 2003, cc. 542, 550; 2008, c. 227.

§ 45.1-361.30. Notice of permit applications and permit modification applications required; content

A. Within one day of the day on which the application for a permit for a gas or oil operation is filed, the applicant shall provide notice of the application to the following persons:

1. All surface owners, coal owners, and mineral owners on the tract to be drilled;

2. Coal operators who have registered operation plans with the Department for activities located on the tract to be drilled;

3. All surface owners on tracts where the surface is to be disturbed;

4. All gas, oil, or royalty owners within one-half of the distance specified in § 45.1-361.17 for that type of well, or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established pursuant to the provisions of this chapter;

5. All coal operators who have applied for or obtained a mining or prospecting permit with respect to tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof;

6. All coal owners or mineral owners on tracts located within 500 feet of the proposed well location or in the case of a proposed coalbed methane gas well location, within 750 feet thereof; and

7. All operators of gas storage fields certificated by the State Corporation Commission as a public utility facility whose certificated area includes the well location, or whose certificated boundary is within 1,250 feet of the proposed well location.

B. Within one day of the day on which the application for a permit modification for a gas or oil operation is filed, the applicant requesting such permit modification shall provide notice of the application to all persons listed in subsection A of this section who may be directly affected by the proposed activity.

C. Within one day of the day on which the application for a permit for geophysical operations is submitted, the applicant shall provide notice to those persons listed in subdivisions 1, 2, and 3 of subsection A of this section.

D. All notices required to be given pursuant to subsections A, B, and C of this section shall contain a statement of the time within which objections may be made and the name and address of the person to whom objections shall be forwarded. Only those persons entitled to notice under subsections A, B, and C of this section shall have standing to object to the issuance of the proposed permit or permit modification for a gas, oil, or geophysical operation as the use may be. Upon receipt of notice, any person may waive in writing the time and right to object.

E. Within seven days of the day on which the application for a permit is filed, the applicant shall provide notice to (i) the local governing body or chief executive officer of the locality where the well is proposed to be located and (ii) the general public, through publication of a notice in at least one newspaper of general circulation that is widely circulated in the locality where the well is proposed to be located.

F. An applicant shall make a reasonable effort to provide the notices required under subsections A, B, and C. If an applicant is unable to identify or locate any person to whom notice is required, then the notice provided in clause (ii) of subsection E shall be considered sufficient notice to such persons and the date of notification shall be the date of publication.

1982, c. 347, § 45.1-313; 1984, c. 590; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1996, c. 854; 2008, c. 534.

§ 45.1-361.31. Bonding and financial security required

A. To ensure compliance with all laws and regulations pertaining to permitted activities and the furnishing of reports and other information required by the Board or Director, all permit applicants shall give bond with surety acceptable to the Director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of the bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site, but in no case shall the amount of the bond be less than $10,000 per well plus $2,000 per acre of disturbed land, calculated to the nearest tenth of an acre. Bonds shall remain in force until released by the Director.

B. Upon receipt of an application for permits for gas or oil operations and at the request of the permit applicant, the Director may, in lieu of requiring a separate bond for each permit, require a blanket bond. The amount of the blanket bond shall be as follows:

1. For one to fifteen wells, $25,000.

2. For sixteen to thirty wells, $50,000.

3. For thirty-one to fifty wells, $75,000.

4. For fifty-one or more wells, $100,000.

For purposes of calculating blanket bond amounts, from one-tenth of an acre to five acres of disturbed land for a separately permitted gathering pipeline shall be equivalent to one well. The Dir-

ector shall promulgate regulations for the release of acreage used to calculate blanket bond amounts for separately permitted gathering pipelines in cases where sites have been stabilized.

C. Any gas or oil operator who elects to post a blanket bond shall pay into the Gas and Oil Plugging and Restoration Fund those fees and assessments required under the provisions of § 45.1-361.32.

D. This section's minimum requirements for bonding shall be met by all permitted gas or oil operations by July 1, 1991.

1990, c. 92 .

§ 45.1-361.32. Gas and Oil Plugging and Restoration Fund

A. The Gas and Oil Plugging and Restoration Fund is hereby established as a non-lapsing revolving fund to be administered by the Department pursuant to the provisions of this section. The Fund shall consist of all payments made into the Fund by gas or oil operators, all collections of debt for expenditures made from the Fund and all interest payments made into the Fund pursuant to the provisions of this section. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the books of the Comptroller and any funds remaining in such Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall be returned to all gas or oil operators with blanket bonds in proportion to the number of permits under the blanket bonds of each operator.

B. Pursuant to § 45.1-361.31, each gas or oil operator who has posted a blanket bond shall pay into the Fund a fee of fifty dollars per permit held, by July 31, 1990. Each permittee operating under a blanket bond shall annually pay to the Fund an amount equal to fifty dollars multiplied by the number of permits he then holds, such payment to be submitted with the annual report required under § 45.1-361.38, until the payments and interest accruing to the Fund totals $100,000.

C. Disbursements from the Fund shall be used only to supplement bond proceeds in order to pay for the full cost of plugging and restoration in the event of a blanket bond forfeiture.

D. The amount by which the cost of plugging and restoration exceeds the amount of the gas or oil operator's forfeited bond shall constitute a debt of the operator to the Commonwealth. The Director is authorized to collect such debts together with the costs of collection through appropriate legal action. All moneys collected pursuant to this subsection, less the costs of collection, shall be deposited in the Fund.

E. Once the initial balance of the Fund exceeds $100,000, and thereafter whenever the Director determines that the Fund's balance has fallen below $25,000 due to uncollectible debts, the Director shall assess a fee of fifty dollars per permit per year on all permittees with blanket bonds until the Fund's balance once again reaches $100,000.

F. No permit shall be issued to a gas or oil operator until he has fully reimbursed the Commonwealth for any debt incurred pursuant to the provisions of subsection D of this section.

1990, c. 92 .

§ 45.1-361.33. Expiration of permits

All permits issued pursuant to this chapter shall expire 24 months from their date of issuance unless the permitted activity has commenced within that time period. An operator may renew the existing permit for an additional 24 months by submitting a written request containing the coal operator's approval and remitting a $325 renewal fee no later than the expiration date.

1990, c. 92; 1996, c. 854; 2003, cc. 542, 550.

§ 45.1-361.34. Abandonment or cessation of well or corehole operation; plugging required

Upon the abandonment or cessation of the operation of any well or corehole, the gas, oil, or geophysical operator shall immediately fill and plug the well or corehole in the manner required by regulations in force at the time of abandonment or the operation's cessation.

1990, c. 92 .

§ 45.1-361.35. Objections to permits; hearing

A. Objections to new or modification permits may be filed with the Director by those having standing as set out in § 45.1-361.30. Such objections shall be filed within fifteen days of the objecting party's receipt of the notice required by § 45.1-361.30. Persons objecting to a permit must state the reasons for their objections.

B. The only objections to permits or permit modifications that may be raised by surface owners are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;

2. Measures in addition to the requirement for a well's water-protection string are necessary to protect fresh water-bearing strata;

3. The permitted work will constitute a hazard to the safety of any person;

4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

5. If the surface owner is an interstate park commission, the location of the well or pipeline will unreasonably infringe on the surface owner's use of the surface, provided that a reasonable alternative site is available within the unit, and that granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

C. The only objections to permits or permit modifications that may be raised by royalty owners are whether the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest; or

2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and

3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.

D. Objections to permits or permit modifications may be raised by coal owners or operators pursuant to the provisions of §§ 45.1-361.11 and 45.1-361.12.

E. The only objections to permits or permit modifications that may be raised by mineral owners are those that could be raised by a coal owner under § 45.1-361.11 provided the mineral owner makes the objection and affirmatively proves that it does in fact apply with equal force to the mineral in question.

F. The only objections to permits or permit modifications that may be raised by gas storage field operators are those in which the gas storage operator affirmatively proves that the proposed well work will adversely affect the operation of his State Corporation Commission certificated gas storage field; however, nothing in this subsection shall be construed to preclude the owner of non-storage strata from the drilling of wells for the purpose of producing oil or gas from any stratum above or below the storage stratum.

G. The Director shall have no jurisdiction to hear objections with respect to any matter subject to the jurisdiction of the Board as set out in Article 2 (§ 45.1-361.13 et seq.) of this chapter. Such objections shall be referred to the Board in a manner prescribed by the Director.

H. The Director shall fix a time and place for an informal fact-finding hearing concerning such objections. The hearing shall not be scheduled for less than twenty nor more than thirty days after the objection is filed. The Director shall prepare a notice of the hearing, stating all objections and by whom made, and send a copy of such notice by certified mail, return receipt requested, at least ten days prior to the hearing date, to the permit applicant and to every person with standing to object as prescribed by § 45.1-361.30.

I. At the hearing, should the parties fail to come to an agreement, the Director shall proceed to decide the objection pursuant to those provisions of the Administrative Process Act (§ 2.2-4000 et seq.) relating to informal fact-finding procedures.

1982, c. 347, §§ 45.1-315, 45.1-316, 45.1-317; 1987, c. 452; 1989, c. 529; 1990, c. 92; 1996, c. 854; 1998, c. 228; 2002, c. 277.

§ 45.1-361.36. Appeals of Director's decisions to the Board

A. Any person with standing under the provisions of § 45.1-361.30 who is aggrieved by a decision of the Director may appeal to the Board, subject to the limitations imposed by subsection B of this section, by petition to the Board filed within ten days following the appealed decision.

B. No petition for appeal may raise any matter other than matters raised by the Director or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal fact-finding hearing held under § 45.1-361.35 leading to the appealed decision.

1982, c. 347, § 45.1-325; 1984, c. 590; 1990, c. 92 .

§ 45.1-361.37. Persons required to register; designated agents

A. Any person who owns a well, drills a well, completes well work, operates any well or gathering pipeline, conducts ground disturbing geophysical explorations, or who transports gas or oil up to and including the first point of sale shall register with the Director and shall provide his name and address and the name, address and official title of the person in charge of his operations in the Commonwealth.

B. Any person registering under subsection A of this section shall designate the name and address of an agent who shall be the attorney-in-fact of the registrant for the purposes hereinafter set forth. The designated agent shall be a resident of the Commonwealth. Notices, orders, other communications and all processes issued pursuant to this chapter may be served upon or otherwise delivered to the designated agent as and for the operator. Any designation of an agent shall remain in force until the Director is notified in writing of a designation termination and the designation of a new agent.

1990, c. 92 .

§ 45.1-361.38. Report of permitted activities and production required; contents

A. Each holder of a permit for gas or oil wells or gathering pipelines shall file monthly and annual reports of his activities as prescribed by the Director. These reports shall be for the purpose of obtaining information regarding the production and sale of gas and oil resources, as well as information concerning the ownership and control of permitted activities. Filing of these reports by a permittee shall be a condition of such permit. Every annual report filed by a permittee shall contain a certification that such permittee has paid all severance taxes levied under the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3741.

B. At the same time that a permittee files the monthly and annual reports as required by subsection A, the permittee shall send copies of the reports by mail to the commissioner of revenue of the political subdivision where the permitted wells are located.

1990, c. 92; 1992, c. 361; 2013, cc. 305, 618; 2016, c. 305.

§ 45.1-361.39. Developing a gas or oil well as a water well

Should any well drilled for gas or oil not produce commercial or paying quantities of either resource, the well may be developed as a water well upon the request of the surface owner of the property on which the well is located. Any development of such a water well shall occur only after notice is given to the Director and his approval has been received. Such development of a water well shall be performed in accordance with applicable state and local requirements. Unless the gas or oil operator and surface owner otherwise agree, the surface owner shall pay the gas or oil operator a reasonable sum for all casing and tubing set and left in the well which would have otherwise been removed upon plugging of the well.

1982, c. 347, § 45.1-350; 1990, c. 92 .

§ 45.1-361.40. Orphaned Well Fund; orphaned wells

A. The Orphaned Well Fund is hereby established as a non-lapsing revolving fund to be administered by the Department pursuant to the provisions of this section. The Orphaned Well Fund shall consist of such moneys as are appropriated to it by the General Assembly. Interest earned on the Orphaned Well Fund shall be credited to the Orphaned Well Fund. The Orphaned Well Fund shall be established on the books of the Comptroller and any funds remaining in it at the end of the biennium shall not revert to the general fund but shall remain in the Orphaned Well Fund. In the event of a discontinuance of the Orphaned Well Fund, any amounts remaining in it shall be placed in the Gas and Oil Plugging Restoration Fund. Moneys from the Orphaned Well Fund shall be used only for purposes of restoration and plugging of orphaned wells.

B. The Director shall conduct a survey to determine the condition and location of orphaned wells in the Commonwealth. He shall establish priorities for the plugging and restoration of the identified orphaned wells. The plugging and restoration of orphan well sites which pose an imminent danger to public safety shall have the highest priority.

C. In performing his duties under this section, the Director shall make every reasonable effort to identify and obtain the permission of a surface owner prior to entering onto the surface owner's land. In all cases, the Director shall as soon as practicable cause to be published in a newspaper of general circulation in the county or city wherein an orphaned well is located a notice of the proposed plugging and restoration work to be conducted on the property.

D. Each operator who applies for a new permit for any activity other than geophysical operations shall pay a fifty dollar surcharge per permit into the Orphaned Well Fund. Such surcharge shall continue until the Director determines all orphaned wells in the Commonwealth are properly plugged and their sites are properly stabilized.

1990, c. 92 .

§ 45.1-361.41. Interference by injection wells with ground water supply

A. Any person who owns or operates an injection well in a manner that proximately causes the contamination or diminution of ground water used for a beneficial use by any person who resides within the lesser of (i) the area of review required by the United States Environmental Protection

Agency for the permitting of that injection well, or (ii) a one-half mile radius of the well shall provide the person with a replacement water supply. A replacement water supply shall provide the person or persons with water of equivalent quality and quantity as was provided by ground water prior to the contamination or diminution of the water supply resulting from the operation of the injection well. A replacement water supply shall include the provision of necessary storage and service facilities. "Ground water" shall have the same meaning ascribed to it in § 62.1-255. "Beneficial use" shall have the same meaning ascribed to it in § 62.1-10.

B. This section shall apply to any injection well, whether operating under a permit from the Director of the Department of Mines, Minerals and Energy issued prior to, on or after July 1, 1992.

1992, c. 324; 1993, c. 276 .

§ 45.1-361.42. Safety in coalbed methane gas, oil and geophysical operations

The Director shall inspect permitted coalbed methane well and related facility operations to ensure the safety of persons on permitted sites. When the inspection reveals any hazardous condition that creates an imminent danger, the Director shall issue a closure order pursuant to § 45.1-361.27 requiring the area to be cleared or the equipment removed from use, except for (i) work necessary to continue to vent methane from an active underground mine if it can be done safely and (ii) any work necessary to correct or eliminate the imminent danger. The Director shall lift the closure order when he finds that the imminent danger has been corrected or eliminated. When the inspection reveals any other condition that creates a risk to the safety or health of any person on the permitted site, the Director shall notify the Department of Labor and Industry for actions under Title 40.1, as applicable.

1997, c. 421.

Article 4 - REPLACEMENT OF WATER BY GAS WELL OPERATORS

§ 45.1-361.43. Operator's right to sample water and quality

An operator shall have the right to enter upon surface land at reasonable times and in a reasonable manner to obtain samples of water from water wells that are (i) located within 750 feet of a proposed or existing gas well and (ii) actually being utilized by the surface owner or occupant for domestic use. If the surface owner or occupant refuses to allow or causes the operator to be prevented from sampling any such water well, the operator shall promptly notify the Department of such refusal or prevention. The Department shall maintain a record of such notifications. In the event of such a refusal or prevention, the surface owner shall not be entitled to the remedies set forth in § 45.1-361.44.

1998, c. 227; 2009, c. 293.

§ 45.1-361.44. Replacement of water supply

If any water supply of a surface owner who obtains all or part of his supply of water for domestic use from a water well has been materially affected by contamination or partial or complete

interruption proximately resulting from a gas well operation within 750 feet of the water well, the operator of such gas well shall promptly provide a replacement water supply which shall be capable of meeting the uses such water supply met prior to the contamination or partial or complete interruption.

1998, c. 227; 2009, c. 293.

Chapter 23 - SURFACE MINING OF COAL FOR OPERATIONS DISTURBING TWO SURFACE ACRES OR LESS [Repealed]

§§ 45.1-362 through 45.1-380. Repealed

Repealed by Acts 1988, c. 295.

Chapter 24 - INTERSTATE COMPACT TO CONSERVE OIL AND GAS

§ 45.1-381. Governor authorized to execute compact

The Governor of the Commonwealth is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

An Interstate Compact to Conserve Oil and Gas

Article I.

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the States of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

Article IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or to create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI.

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission, the duty of which shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as the Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of the states and to recommend measures for the maximum ultimate recovery of oil and gas. The Commission shall adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except: (1) By the affirmative vote of the majority of the whole number of the compacting states represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at the meeting, such interest to be determined as follows: the vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during that period.

Article VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject that state to financial responsibility to the other states joining herein.

Article VIII.

This compact shall continue in effect until Congress withdraws its consent. Any state joining herein may, upon sixty (60) days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party thereto by affixing its signature to a counterpart to be similarly deposited, certified and ratified.

1982, c. 570.

§ 45.1-382. Governor to act as representative to Commission

A. The Governor is hereby designated as the official representative of the Commonwealth of Virginia on the Interstate Oil Compact Commission provided for in the compact ratified by this chapter. The Governor shall exercise and perform for the Commonwealth all powers and duties imposed by the compact upon representatives to the Interstate Oil Compact Commission.

B. The Director is hereby designated to be the assistant representative and shall act as the official representative of the Commonwealth on the Interstate Oil Compact Commission when the authority to so act is delegated to him by the Governor.

1982, c. 570; 1984, c. 590.

Chapter 25 - DIVISION OF GEOLOGY AND MINERAL RESOURCES

§ 45.1-383. Division of Geology and Mineral Resources; State Geologist

In the Department there shall be a Division of Geology and Mineral Resources. The chief executive and head officer of the Division shall be called the Commissioner of Mineral Resources and State Geologist, hereinafter referred to as the State Geologist. The State Geologist shall be appointed by the Director, shall be a geologist of established reputation and shall receive such compensation as may be provided in accordance with law for the purpose.

1984, c. 590; 2008, c. 369.

§ 45.1-384. General powers and duties of State Geologist

The State Geologist shall exercise such of the powers and perform such of the duties, in relation to mineral resources, geology and geophysical matters, which are conferred or imposed upon the Director by the provisions of this title, including powers and duties that involve the exercise of discretion, as may be delegated to him by the Director. The State Geologist may also exercise and

perform such other powers and duties as may be lawfully delegated to him, and such powers and duties as may be conferred or imposed upon him by law.

1984, c. 590.

§ 45.1-385. Using or revealing information gathered

Notwithstanding any provision of law to the contrary, neither the State Geologist, nor any employee or agent of the Division, shall make use of or reveal any proprietary information or statistics gathered from any source for any purpose or purposes other than those of this chapter, except with the express written consent of the source of such information or statistics. Neither shall the State Geologist reveal such information to the Director or any other employee of the Department who is not employed within the Division.

1984, c. 590.

§ 45.1-386. Responsibilities and duties of the Division

The Division shall have for its responsibilities and duties the following:

1. An examination of the geological formations of the Commonwealth and the resources contained therein, with special reference to both economic products and energy resources, namely, coals, ores, clays, feldspar, lime, natural gas, oil, cement, sand and gravel, stone, materials suitable for use in building and road construction, mineral waters, other mineral substances, and geothermal energy resources.

2. An examination of latent resources and waste minerals to determine the best methods of utilizing the same, studies of the soils and weathered residuum as related to parent rock.

3. The maintenance of repositories for representative rock and mineral materials from various wells, mines, excavations and naturally occurring exposures.

4. Maintenance of records and statistics of the mineral industry and geological conditions of the Commonwealth.

5. Performance of such chemical and physical tests, including test borings, to acquire subsurface information relative to mineral deposits masked by soils and rock overburden.

6. An examination of the physical features of the Commonwealth with reference to their practical bearing upon the occupation and well-being of the people.

7. The preparation of special geological and economic maps and displays to illustrate the resources of the Commonwealth.

8. The preparation of regular and special reports, with necessary illustrations and maps, which shall embrace both a general and detailed description of the geology and mineral resources of the Commonwealth.

9. The consideration of such other scientific and economic questions as in the judgment of the Director shall be deemed of value to the people of the Commonwealth.

10. To arrange for the investigation and reporting of geology of the Commonwealth with the Director or the representative of the United States Geological Survey in regard to cooperation between the United States Geological Survey and the Department in topographic and geologic work in such instances as may be deemed necessary and of advantage to the Commonwealth. In all cooperative work, a sum of money shall be expended by the United States Geological Survey at least equivalent to that expended by the Department. The Director may accept or reject the work of the United States Geological Survey.

11. The participation in matters requiring geological and mineral resources advice and guidance as related to state lands and sought by state agencies and institutions.

12. The provision of basic research and the development of methods utilized in the determination of characteristics, structure and origin for geological formations and economic mineral deposits.

1984, c. 590.

§ 45.1-387. Printing and distribution of regular and special reports

The regular and special reports of the Division, with proper illustrations and maps, shall be printed as the Director may direct, and the reports shall be distributed as the interests of the Commonwealth and of science may indicate.

1984, c. 590.

§ 45.1-388. Disposition of materials that have served purpose of the Division

Materials collected, after having served the purpose of the Division, shall be distributed to the educational institutions of the Commonwealth, in such manner as the Director may determine to be of the greatest advantage to the educational interests of the Commonwealth.

1984, c. 590.

§ 45.1-389. Immunity from prosecution for trespass

No criminal action for trespass shall lie against the State Geologist, or any agent or employee of the State Geologist, on account of lawful acts done in the performance of their duties, including entry upon the lands of any person or persons for the purpose of performing such duties.

1984, c. 590.

Chapter 26 - ENERGY DIVISION, ETC.

§ 45.1-390. Division of Energy established; findings and policy; powers and duties

The General Assembly finds that because energy-related issues continually confront the Commonwealth, and many separate agencies are involved in providing energy programs and services, there exists a need for a state organization responsible for coordinating Virginia's energy programs and ensuring Virginia's commitment to the development of renewable and indigenous energy sources, as well as the efficient use of traditional energy resources. In accordance with this need, the Division of Energy is created in the Department of Mines, Minerals and Energy. The

Director shall have the immediate authority to coordinate development and implementation of energy policy in Virginia.

The Division shall coordinate the energy-related activities of the various state agencies and advise the Governor on energy issues that arise at the local, state and national levels. All state agencies and institutions shall cooperate fully with the Division to assist in the proper execution of the duties assigned by this section.

In addition, the Division is authorized to make and enter into all contracts and agreements necessary or incidental to the performance of its duties or the execution of its powers, including the implementation of energy information and conservation plans and programs.

The Division shall:

1. Consult with any or all state agencies and institutions concerning energy-related activities or policies as needed for the proper execution of the duties assigned to the Division by this section;

2. Maintain liaison with appropriate agencies of the federal government on the activities of the federal government related to energy production, consumption, transportation and energy resource management in general;

3. Provide services to encourage efforts by and among Virginia businesses, industries, utilities, academic institutions, state and local governments and private institutions to develop energy conservation programs and energy resources;

4. In consultation with the State Corporation Commission, the Department of Environmental Quality, and the Center for Coal and Energy Research, prepare the Virginia Energy Plan pursuant to § 67-201;

5. Observe the energy-related activities of state agencies and advise these agencies in order to encourage conformity with established energy policy; and

6. Serve, pursuant to § 58.1-3660, as the state certifying authority for solar energy projects and for the production of coal, oil, and gas, including gas, natural gas, and coalbed methane gas.

1984, c. 590; 2006, c. 939; 2016, c. 518.

§ 45.1-390.1. Repealed

Repealed by Acts 1993, c. 274 .

§ 45.1-391. Solar Energy Center; purposes

The Virginia Solar Energy Center is continued as a part of the Department. The purposes of the Center are (i) to serve the people of the Commonwealth as a clearinghouse to gather, maintain and disseminate general and technical information on solar energy and its utilization; (ii) to coordinate programs for solar energy data-gathering in Virginia; (iii) to coordinate efforts and programs on solar energy with other state agencies and institutions, other states and federal agencies; (iv) to promote cooperation among and between Virginia business, industry, agriculture and the

public related to the use of solar energy; (v) to develop public education programs on solar energy for use in schools and by the public; and (vi) to provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth.

The intent of the General Assembly is to provide an organization for the purposes set out in this section to receive nonstate funds for such purposes.

1984, c. 590.

§ 45.1-392. Repealed

Repealed by Acts 2011, cc. 815 and 864, cl. 2, effective July 1, 2013.

§ 45.1-393. (Repealed effective July 1, 2017) Biofuels Production Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Biofuels Production Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys as may be appropriated to it by the General Assembly. Moneys in the Fund shall be used solely for the purposes of providing grants to certain producers of biofuels as specified in § 45.1-394. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Division of Energy.

2006, c. 652.

§ 45.1-394. (Repealed effective July 1, 2017) Biofuels Production Incentive Grant Program

A. For the purposes of this section:

"Advanced biofuels" means a fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass, or algae.

"Biodiesel fuel" means a fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D6751.

"Biofuels" means neat biodiesel fuel, neat green diesel fuel, or neat ethanol fuel that is not blended with a traditional fuel such as gasoline or diesel.

"Ethanol fuels" means fermentation alcohol derived from agricultural products, including potatoes, cereal grains, dry mill corn, whey, and sugar beets; forest products; or other renewable resources, including residue and waste generated from the production, processing, and marketing of agricultural products, forest products, and other renewable resources, that:

1. Meets all applicable ASTM specifications; and

2. Is denatured as specified in 27 C.F.R. Parts 20 and 21.

"Feedstock" means the agricultural or other renewable resources, whether plant or animal derived, used to produce biofuels.

"Green diesel fuel" means a fuel produced from nonfossil renewable resources, including agricultural or silvicultural plants; animal fats; residue and waste generated from the production,

processing, and marketing of agricultural products; silvicultural products; and other renewable resources, and meeting applicable ASTM specifications.

"Producer" means any person, entity, or agricultural cooperative association, as defined in the Agricultural Cooperative Association Act (§ 13.1-312 et seq.) that, in a calendar year, produces in the Commonwealth at least one million gallons of advanced biofuels or biofuels using feedstock originating domestically within the United States.

B. 1. A producer of neat advanced biofuels or neat biofuels, including but not limited to such biofuels derived from cereal grains, shall be eligible to receive a biofuels production incentive grant for each gallon of the same that it produces in the Commonwealth. However, a producer shall be eligible for a grant from the Biofuels Production Fund (the Fund) established under § 45.1-393 only for each gallon of neat advanced biofuels or neat biofuels that it produces in the Commonwealth on or after January 1, 2014, which gallon has also been sold by the producer to customers.

2. The grant for neat advanced biofuels or neat biofuels produced in the Commonwealth and subsequently sold to customers shall equal (i) $0.04 per gallon for sales to customers in calendar year 2014, (ii) $0.03 per gallon for sales to customers in calendar year 2015, and (iii) $0.025 per gallon for sales to customers in calendar year 2016 and for the period January 1, 2017, through June 30, 2017.

3. Each producer applying for a grant under this section for 2015 production of neat advanced biofuels or neat biofuels shall make a good faith effort to produce the same using feedstock that is not derived from corn or the corn kernel, stalk, or any other part of the plant. Further, no grant shall be awarded for neat advanced biofuels or neat biofuels produced in 2016 or thereafter using feedstock derived from corn or the corn kernel, stalk, or any other part of the plant.

No person shall be eligible for any grants pursuant to this section if the person, or an affiliate of the person, was the recipient of a grant under the Clean Energy Manufacturing Incentive Grant Program (§ 59.1-284.25 et seq.) as such program was in effect prior to July 1, 2015.

4. In no case shall the Director of the Division of Energy approve more than $1.5 million in grants in each of fiscal years 2014-2015, 2015-2016, and 2016-2017. Grants awarded under this section shall be paid from the Fund.

C. In the event applications for grants pursuant to subsection B as approved by the Director of the Division of Energy exceed the total amount of money allocated in the Fund, grant payments shall be apportioned among eligible producers pro rata based upon the total qualifying gallons of neat advanced biofuels or neat biofuels sold in the respective calendar year by all such eligible producers.

D. Any producer eligible to apply for a grant pursuant to this section shall provide evidence in the form of production reports, satisfactory to the Director of the Division of Energy, that the producer

met the production requirements provided under this section for the respective calendar year. The producer shall also provide evidence in the form of sales reports, satisfactory to the Director, of the number of qualifying gallons of neat advanced biofuels or neat biofuels sold by the producer to customers in the respective calendar year. Such reports shall be filed no later than March 31 following the calendar year in which the producer sold the qualifying gallons of biofuels. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant. The postmark cancellation shall govern the date of the filing determination unless the Director has approved an alternative means of filing.

No producer shall be eligible to receive grants pursuant to this section for qualifying sales made in more than six calendar years. No grants shall be paid under this section for neat advanced biofuels or neat biofuels sold on or after July 1, 2017.

E. The Director of the Division of Energy shall determine the amount of the grant payable to each qualifying producer. The Director shall then certify to the Comptroller the grant amount each producer of biofuels is eligible to receive in a given calendar year. Payments shall be paid by check issued by the State Treasurer on warrant of the Comptroller.

F. The Director, upon presenting appropriate credentials, may examine the records, books, invoices, bills of lading, storage and production facilities, and other applicable documents to determine whether the production and sale of neat advanced biofuels or neat biofuels meet the requirements for grants as set forth in this section.

2006, c. 652; 2007, c. 684; 2008, c. 418; 2009, cc. 19, 525; 2011, cc. 815, 864; 2014, c. 669; 2015, c. 761.