

Chapter 10. Virginia Coal Surface Mining Control and Reclamation Act of 1979

Article 1. General and Administrative Provisions

§ 45.2-1000. Definitions

As used in this chapter, unless the context requires a different meaning:

"Approximate original contour" means the surface configuration achieved by backfilling and grading the mined area so that the reclaimed area, including any terracing or access road, 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 adopted pursuant to this chapter.

"Coal surface mining and reclamation operation" means a surface mining operation and any activity necessary and incidental to the reclamation of such operation.

"Coal surface mining operation" means:

1. Any activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § [45.2-1018](#), any surface operation and surface impact incident to an underground coal mine, the products of which enter commerce or the operation of which directly or indirectly affects interstate commerce. Such activity includes (i) excavation for the purpose of obtaining coal, including by such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; (ii) the use of explosives and blasting; (iii) in situ distillation or retorting, leaching, or other chemical or physical processing; and (iv) the cleaning, concentrating, or other processing or preparation and loading of coal for interstate commerce at or near the mine site. However, such activity does not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § [45.2-1008](#); and

2. The area upon which such activity occurs or where such activity disturbs the natural land surface. Such area includes (i) any adjacent land whose use is incidental to any such activity; (ii) all lands affected by the construction of any new road or the improvement or use of any existing road to gain access to the site of such activity and for haulage; and (iii) any excavation, workings, impoundment, dam, ventilation shaft, entryway, refuse bank, dump, stockpile, overburden pile, spoil bank, culm bank, tailings, hole or depression, repair area, storage area, processing area, shipping area, and other area upon which is sited any structure, facility, or other property or materials on the surface, resulting from or incident to such activity.

"Division" means the Division of Mined Land Repurposing.

"Federal act" means the federal Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 U.S. Stat. 445.

"Imminent danger to the health and safety of the public" means the existence in a coal surface mining and reclamation operation of any condition, practice, or violation of a permit or other requirement of this chapter that could reasonably be expected to cause substantial physical harm to a person outside the permit area before such condition, practice, or violation can be abated. A reasonable expectation of substantial physical harm, including death or serious injury, before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

"Operator" means any person engaging in a coal surface mining operation whether or not such coal is sold within the Commonwealth.

"Other minerals" means clay, stone, sand, gravel, metalliferous or nonmetalliferous ore, 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 any mineral that occurs naturally in liquid or gaseous form.

"Permit" means a permit issued by the Director pursuant to state regulations.

"Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application. Such area of land shall be covered by the operator's bond as required by § 45.2-1016 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding any of the following permits issued by the Director: (i) a permit for coal surface mining pursuant to § 45.2-1009, (ii) a permit for coal exploration pursuant to § 45.2-1008, or (iii) a National Pollutant Discharge Elimination System permit pursuant to § 45.2-1029.

"Person" means any individual, partnership, association, joint venture, trust, company, firm, joint stock company, corporation, other group or combination acting as a unit, or other legal entity.

"Secretary" means the U.S. Secretary of the Interior.

"State or local agency" means any department, agency, or instrumentality of the Commonwealth; public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth; or department, agency, or instrumentality of any public authority, municipal corporation, local governmental unit, or political subdivision of the Commonwealth; or two or more of any of the aforementioned.

"State regulations" means the permanent state regulatory 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.

"Unwarranted failure to comply" means the failure of a permittee to (i) prevent the occurrence of any violation of its permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care or (ii) abate any violation of such permit or requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care.

1979, c. 290, § 45.1-229; 1984, c. 590; 2021, Sp. Sess. I, cc. 387, 532.

§ 45.2-1001. Limitations of chapter

Nothing in this chapter is intended or 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 seek damages 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. Nothing in this chapter is intended or shall be construed to affect the powers of the Commonwealth to initiate, prosecute, or maintain actions to abate public nuisances.

1979, c. 290, § 45.1-228; 1984, c. 590; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1002. Application of chapter

A. The provisions of this chapter shall not apply to the extraction of coal:

1. By a landowner for his own noncommercial use from land owned or leased by him; or
2. As an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Director.

B. 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, that proposes to engage in coal surface mining operations that are subject to the requirements of this chapter shall comply with the provisions of this chapter.

1979, c. 290, §§ 45.1-259, 45.1-253; 1984, c. 590; 1988, c. 295; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1003. Authority and duties of Director

A. The authority to adopt regulations necessary to carry out the purposes and provisions of this chapter is vested in the Director. Such regulations shall be consistent with regulations adopted by the Secretary pursuant to the federal act or in conformity with any court ruling construing such act. The Director may adopt by regulation definitions other than those provided in § [45.2-1000](#) as necessary to carry out the intent of this chapter. Unless otherwise directed by law, in adopting regulations, the Director shall comply with the Administrative Process Act (§ [2.2-4000](#) et seq.) and the Virginia Register Act (§ [2.2-4100](#) et seq.).

B. In addition to the adoption of regulations under this chapter, the Director may issue or distribute to the public interpretative, advisory, or procedural bulletins 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.). Such materials shall be clearly designated as to their nature, shall be provided solely for purposes of public information and education, and shall not have the force of regulations.

C. The authority to administer and enforce the provisions of this chapter is 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 ensure 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 to order the suspension, revocation, or

withholding of any permit for failure to comply with any provision of this chapter or any regulation adopted hereunder;

2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ [45.2-1031](#) et seq.);

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, state, or other funds and to enter into any contracts for which funds are available to carry out the purposes of this chapter; and

5. To enter into cooperative agreements with the Secretary to regulate coal surface mining on federal lands.

D. The Division of Mined Land Repurposing 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 adopted by the Director.

1979, c. 290, § 45.1-230; 1982, c. 425; 1984, c. 590; 2021, Sp. Sess. I, cc. [387](#), [532](#).

§ 45.2-1004. 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 may adopt 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 this section.

1979, c. 290, § 45.1-256; 1984, cc. 230, 590; 1996, c. [758](#); 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1005. Conflicts of interest prohibited

A. For the purposes of this section, "financial interest" includes a pecuniary interest accruing to an employee or to the employee's spouse, minor child, or other relative living in the same household.

B. 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.

C. The Director shall adopt regulations for the monitoring and enforcement of the provisions of this section, including regulations (i) for the filing and review of statements and supplements by employees concerning any financial interest that might be affected by this section; (ii) for the hiring, transfer, and removal of employees consistent with the prohibition of this section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection, and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions from the provisions of this section as are consistent with federal law.

D. Judicial proceedings to enforce the provisions of this section may be brought by the Attorney General at the request of the Director.

E. Nothing in this section shall be construed as repealing or amending any other provision of law pertaining to conflicts of interest except that in cases of conflict, the provisions of this section shall control.

1979, c. 290, § 45.1-231; 1984, c. 590; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1006. Resisting, etc., Director or agent of the Director; penalty

It is a misdemeanor, punishable by a fine of not more than \$5,000, 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 agent of the Director in the performance of duties pursuant to this chapter.

1979, c. 290, § 45.1-257; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1007. Coal Surface Mining Regulatory Fund

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to § [45.2-1010](#) or another provision of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for administering coal surface mining state regulations. 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.

2021, Sp. Sess. I, c. [387](#).

Article 2. Regulation of Mining Activity

§ 45.2-1008. Coal exploration operations

A. Any coal exploration operation that substantially disturbs the natural land surface shall be conducted in accordance with exploration regulations adopted by the Director. Such regulations shall, at a minimum, (i) require that any person, prior to conducting any exploration under this section, file with the Director notice of intention to explore that includes a description of the exploration area and the proposed period of exploration and (ii) include provisions for the reclamation, in accordance with the performance standards established pursuant to § [45.2-1017](#), of all lands disturbed in exploration, including all excavations, roads, and drill holes, and for 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 that relates to the competitive rights of the person or entity intended to explore the described area shall be exempt from disclosure under the Virginia Freedom of Information Act (§ [2.2-3700](#) et seq.) and shall not be disclosed.

C. Any person who conducts any coal exploration activity that substantially disturbs the natural land surface in violation of this section or any regulation issued pursuant thereto is subject to the provisions of § [45.2-1021](#).

D. No person shall remove more than 250 tons of coal while engaged in a coal exploration

operation without a specific written coal exploration permit issued by the Director.

1979, c. 290, § 45.1-233; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1009. Permit required for coal surface mining operation; term; transfer, etc

A. No person shall engage in or carry out any coal surface mining operation without having first obtained a permit to engage in such operation issued by the Director in accordance with state regulations.

B. Each coal surface mining permit issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under such permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with regulations adopted by the Director. The Director shall also adopt regulations meeting the requirements of § 506 of the federal act for longer permit terms, successors in interest to the permittee, termination of the permit for failure to commence operation, right of and procedure for permit renewal, and extension of boundaries of a mining operation.

1979, c. 290, § 45.1-234; 1980, c. 364; 1983, c. 134; 1984, c. 590; 2013, cc. [47](#), [129](#); 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1010. 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 intending to engage in the surface mining of coal, or the person's legal representative.

B. The application shall contain the information required by regulations adopted by the Director, including 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 Reclamation and Enforcement, 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 operation plan and a reclamation plan that meet the requirements of this chapter and regulations adopted 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. A payment of \$13 per acre for any area disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this section shall be paid into the Coal Surface Mining Regulatory Fund created pursuant to § [45.2-1007](#).

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 that pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content that 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 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 operation for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount that is not less than that specified in regulations adopted by the Director and is adequate to compensate any person who is injured or whose property is damaged as a result of a surface coal mining and reclamation operation, including by the use of explosives, and who is entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the term of the permit and any renewal, including the length of all reclamation operations. The Director may adopt regulations that 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, § 45.1-235; 1982, c. 246; 1984, c. 590; 1999, c. 114; 2003, cc. 542, 550; 2021, Sp. Sess. I, c. 387.

§ 45.2-1011. Operation and reclamation plans

Each application for a coal surface mining permit pursuant to state regulations shall include an operation plan and a reclamation plan, in such form and containing such information as the Director requires, including the information required under § 508(a) of the federal act, and meeting the requirements of this chapter and regulations adopted by the Director. An operation plan shall not include underground workings. An operation plan and a reclamation plan, as approved by the Director, shall be integral parts of the terms and conditions of a coal surface mining permit.

1979, c. 290, § 45.1-236; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1012. Revision of permits

A. The process for revision of a permit is as follows:

1. During the term of a permit, the permittee may submit an application for a revision of such permit, together with a revised operation 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 state regulations 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 parameters 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 that propose significant alterations in the operation plan or reclamation plan shall, at a minimum, be subject to notice and hearing requirements.
3. Any extension to the area covered by the permit, except an insignificant boundary revision, shall be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations adopted by him, review each outstanding permit and may require reasonable revision or modification of the permit provisions during the term of any permit; however, such revision or modification shall be based upon a written finding and subject to notice and hearing requirements.

1979, c. 290, § 45.1-236; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1013. 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 state regulations, 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 of the requirements of state regulations. Within 10 days after the granting of a permit, the Director shall notify the government officials in the county or city 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 shall 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 state regulations have been complied with;
2. The applicant has demonstrated that reclamation as required by the federal act and state regulations can be accomplished under the reclamation plan contained in the permit application;
3. An 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 as unsuitable for coal surface mining pursuant to this chapter or located within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter; and
5. In any case in which 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;
 - b. A conveyance that expressly grants or reserves the right to extract coal by surface mining methods; or
 - c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, evidence that the surface-subsurface legal relationship will be determined in accordance with the laws of the Commonwealth. Nothing herein shall be construed to authorize the Director to adjudicate any property rights dispute.

C. The applicant shall file with each permit application a schedule listing all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the United States, the Commonwealth, or 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 each 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 any law, rule, or regulation 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 that has jurisdiction over such violation. No permit shall be issued to an applicant after a finding by the Director, following an opportunity for a hearing, that the applicant or the operator specified in the application controls or has controlled any mining operation with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. If the Director finds an application in compliance with subsection B and 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, § 45.1-238; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1014. 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 that is or might be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority, has 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 30 days after the last publication of the applicant's notice required by the regulation adopted pursuant to subsection A. If no written objection is filed and an informal hearing is requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless every party requesting the informal hearing stipulates agreement prior to the requested informal hearing and withdraws such request therefor.

1979, c. 290, § 45.1-239; 1984, c. 590; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1015. Decision of Director upon permit application; hearing; appeal

A. The Director shall notify each 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 written objections that 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 [§ 45.2-1014](#), the Director shall issue to the applicant and the parties to the hearing his written decision within 60 days of such hearing.

B. If such application is approved, a permit shall be issued. If such application is disapproved, specific reasons shall be given in the notification. Within 30 days after the applicant is notified of the final decision of the Director on such permit application, the applicant, or any person with an interest that is or might 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 30 days thereafter shall issue to the applicant and every person 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 § [45.2-1014](#) 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, the Director, under such conditions as he prescribes, may grant temporary relief pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on any 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 person who has an interest that is or might be adversely affected and has participated in the formal hearing as an objector who is aggrieved by the decision of the Director or by the failure of the Director to act within the time limits specified in this chapter has a right to judicial review in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.).

1979, c. 290, § 45.1-240; 1983, c. 92; 1986, c. 615; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1016. 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 the 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 plans to initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As each succeeding increment of coal surface mining and reclamation operations is initiated and conducted within the permit area, the permittee shall file with the Director an additional bond to cover such increment in accordance with this section. The amount of the bond required for each bonded area shall be determined by the Director and shall (i) depend upon the reclamation requirements of the approved permit and (ii) reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work is 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 a performance 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 adopted pursuant to § [45.2-1017](#). 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 or 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. Cash or securities deposited pursuant to subsection B 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.

D. 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. Such letter of credit shall be irrevocable and unconditional, shall be payable to the Department upon demand, and shall afford the Department protection equivalent to a corporate surety's bond. Such letter of credit shall be provided on a form and in a format established by the Director. Nothing in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

E. The issuer of a letter of credit pursuant to subsection D 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 violation of a regulatory requirement that could result in the suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any of 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 the 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. The Department shall then issue a notice to the permittee specifying a reasonable period not exceeding 90 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 its reclamation plan. No coal extraction or coal processing operation shall 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 an acceptable bond is posted.

F. The Director may develop and adopt an alternative system to achieve the objectives and purposes of the bonding program established under this section.

G. 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, § 45.1-241; 1984, c. 590; 1997, c. [285](#); 1998, c. [692](#); 2014, cc. [111](#), [135](#); 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1017. Performance standards

A. The Director shall by regulation establish performance standards that meet the requirement of § 515 of the federal act, are consistent with regulations adopted thereunder by the Secretary, and are 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 a coal surface mining operation shall require that such operation meets all applicable performance standards established by the Director.

C. The Director shall include in such regulations special procedures and standards, consistent with regulations adopted by the Secretary, for the issuance of permits for mountaintop removal operations, without regard to requirements to restore to approximate original contour, and for variances from such requirements for steep-slope operations.

D. The Director may adopt, 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 adopted under this section and § [45.2-1018](#).

1979, c. 290, § 45.1-242; 1984, c. 590; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1018. Surface effects of underground coal mining operations

A. The Director shall adopt regulations directed toward the surface effects of underground coal mining operations and 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 any surface operation or surface impact 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 differences between surface and underground coal mining. Nothing in § 720(a)(1) of the federal act shall be construed to prohibit or interrupt any underground coal mining operation.

B. The regulations adopted by the Director shall require that each permit applicant submit hydrologic reclamation plans that include measures to prevent the sudden release of accumulated water from underground workings.

C. The Director shall suspend underground coal mining under any elementary or secondary school, institution of higher education, urbanized area, city, town, or community, and adjacent to any industrial or commercial building, major impoundment, or permanent stream, if he finds imminent danger to people from such underground coal mining.

1979, c. 290, § 45.1-243; 1984, c. 590; 1993, c. 582; 1996, cc. [409](#), [410](#); 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1019. Inspections and monitoring

A. For the purpose of administering and enforcing any permit issued under this chapter or determining whether any person is in violation of any requirement of this chapter or any regulation adopted 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 and intervals and in such manner as the Director prescribes; and (v) provide other information relative to a coal surface mining and reclamation operation as the Director deems reasonable and necessary;

2. For any coal surface mining and reclamation operation that removes or disturbs strata that serve as aquifers and thereby significantly ensure the hydrologic balance of water use, either on or off the mining site, the Director shall specify monitoring sites at which the permittee shall record (i) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence; (ii) the level, amount, and characteristics of samples of groundwater and aquifers that are potentially affected by mining or are located directly below the deepest coal seam to be mined; and (iii) amount of precipitation. The Director shall specify certain 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 adopted by the Director in order to assure their reliability and validity; and

3. Any authorized representative of the Director, without advance notice and upon presentation of appropriate credentials, has (i) the right of entry to, upon, or through any coal surface mining and reclamation operation and (ii) the right to inspect any monitoring equipment, method of exploration, method of operation, or records required by this chapter and 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. 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 operation covered by each permit, (ii) occur without prior notice to the permittee or any agent or employee of the permittee except for necessary on-site meetings with the permittee, and (iii) include the filing of inspection reports adequate to enforce the requirements of this chapter and carry out its terms and purposes.

C. Each permittee shall conspicuously maintain at the entrance to each coal surface mining and reclamation operation a clearly visible sign setting forth such information as is prescribed by regulation.

D. Each inspector, upon detection of a violation of any requirement of this chapter or of a regulation adopted hereunder, shall promptly inform the operator in writing and shall report such violation to the Director in writing.

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 that pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content that is potentially toxic in the environment, shall be kept confidential and be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1979, c. 290, § 45.1-244; 1984, cc. 323, 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1020. Enforcement of chapter generally

A. If the Director determines that any condition or practice or any violation by a permittee of any requirement of this chapter, regulation adopted hereunder, or permit condition (i) creates an imminent danger to the health or safety of the public or (ii) is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Director shall immediately order a cessation of the 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 determines that the condition, practice, or violation has been abated or until such order is modified, vacated, or terminated by the Director. Whenever the Director finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, is not expected to 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 ordering the cessation of the operation, impose

affirmative obligations on the operator and require such operator to take whatever steps the Director determines necessary to abate the imminent danger or the significant environmental harm.

B. If the Director determines that a permittee is in violation of any requirement of this chapter, any regulation adopted hereunder, 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 shall issue a notice of violation to the permittee or his agent setting a reasonable period of not more than 90 days for the abatement of the violation and shall provide an opportunity for public hearing.

C. Upon expiration of the period of time originally set pursuant to subsection B or subsequently extended for good cause shown upon the written finding of the Director, if the Director 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 determines that the violation has been abated or until such order is modified, vacated, or terminated by the Director pursuant to subsection E. The Director shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

D. Whenever the Director determines that a pattern of violations of the requirements of this chapter, any regulation adopted hereunder, or any permit condition exists or has existed, and if the Director also finds that such violations are (i) caused by the unwarranted failure of the permittee to comply with any such requirements or (ii) willfully caused by the permittee, the Director shall promptly 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 shall promptly suspend or revoke the permit.

E. Each notice or 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 and shall be in writing and signed by the Director. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Director. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless an informal public hearing is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing. Such informal public hearing may be waived by the operator.

F. 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 or fails or refuses to comply with any order or decision issued by the Director;
2. Interferes with, hinders, or delays the Director in carrying out the provisions of this chapter or the regulations adopted hereunder;

3. Refuses to admit the Director to a mine;
4. Refuses to permit inspection of a mine;
5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations adopted hereunder;
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 adopted hereunder; or
7. Conducts any coal surface mining or coal exploration operation without first obtaining a permit, after a permit has lapsed, or after suspension or revocation of a permit.

1979, c. 290, § 45.1-245; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1021. Civil and criminal penalties

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations adopted hereunder 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. After such 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 that is warranted, incorporating therein, when appropriate, an order requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearing 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 (§ [2.2-4000](#) et seq.). If the person charged with such 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 has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. Such permittee shall, within 30 days of being so informed, pay the proposed penalty in full or, if the permittee contests 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 treasury. Failure to forward the money to the Director within 30 days constitutes a waiver of all legal rights to contest the violation or the amount of the penalty. If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty will be reduced, the Director shall within 30 days of such determination remit the appropriate amount to the permittee with accrued interest

thereon.

D. If a permittee 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 sent shall record such final order, as a judgment is required by law to be recorded, and index it in the name of the Commonwealth and the name of the person owing the penalty. Upon such recording and indexing, 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 that 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 treasury 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, created pursuant to Chapter 60 (§ 15.2-6000 et seq.) of Title 15.2, for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Heart of Appalachia Tourism 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 any coal surface mining or coal exploration operation without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards or fails or refuses to comply with any regulation adopted or order issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B, 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 or fails or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal is subject to the same civil penalties, fines, and confinement in jail to which a person may be subject under subsections A and E.

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, any regulation adopted hereunder, or any order or decision issued by the Director under this chapter 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.

H. Any operator who within the period permitted for the correction of such violation fails to correct a violation for which a notice or order has been issued shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation occurs. Such period for the correction of a violation shall not end until the entry of (i) 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 is likely to suffer irreparable loss or damage from the application of such requirements or (ii) 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.

1979, c. 290, § 45.1-246; 1980, c. 510; 1993, c. 663; 2005, c. 3; 2021, Sp. Sess. I, cc. 384, 387.

§ 45.2-1022. Citizen suits; rights of citizens to accompany inspectors

A. Except as provided in subsection B or C, any person having an interest that is or could 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, any other governmental instrumentality or agency, or any person alleged to be in violation of any provision of this chapter or of any 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 that is not a discretionary act on the part of the Director.

B. No action shall be commenced under subdivision A 1:

1. Prior to 60 days after the plaintiff has given written notice of the violation to the Secretary, the Director, and any alleged violator; or
2. If the Commonwealth or the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or the Commonwealth to require compliance with the provisions of this chapter, or any regulation, order, or permit issued pursuant to this chapter, so long as in any such action in a court of the Commonwealth, any person is entitled to intervene as a matter of right.

C. No action shall be commenced under subdivision A 2 prior to 60 days after the plaintiff has given written notice of such action to the Director in a manner prescribed by regulation. However, 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 a regulation adopted hereunder 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 the Director is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A, may award costs of litigation, including attorney and expert witness fees, to any party if 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 of any person or class of persons to seek enforcement of any provision of this chapter or the regulations adopted hereunder 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 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 shall 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 the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

H. Whenever information provided to 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, § 45.1-246.1; 2021, Sp. Sess. I, c. 387.

§ 45.2-1023. Forfeiture or release of performance bond

A. The Director shall adopt regulations, consistent with regulations adopted 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 adopted hereunder are fully met.

B. Any person with a valid legal interest that could be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency that (i) has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or (ii) is authorized to develop and enforce environmental standards with respect to such operations, has the right to file written objections to the proposed release from bond by the Director within 30 days after the last publication of notice, as required by regulation. If a written objection is 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, either in the locality of the coal surface mining operation proposed for bond release or in Richmond, at the option of the objector, within 30 days of the request for such hearing.

C. Without prejudice to the rights of any objector or the applicant or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations adopted pursuant to § 45.2-1014, to resolve written objections.

D. For the purpose of the hearing specified in subsection B, the Director may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of materials, and take evidence, including 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 shall be made available on the motion of any party or by order of the Director.

1979, c. 290, § 45.1-247; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1024. 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 treasury 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 enter into contracts for performance of such reclamation with any person, 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, § 45.1-248; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1025. Administrative review of notice or order issued under § 45.2-1020

A. A permittee who is issued a notice or order pursuant to § 45.2-1020, or any person having an interest that is or could be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of such notice or order within 30 days of the receipt thereof or within 30 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. Such investigation shall, at the request of the applicant or the person having an interest that is or could be adversely affected, include a public formal hearing 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. Such order shall incorporate the Director's findings of fact. If 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 C of § 45.2-1020, the Director shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C or by a court pursuant to § 45.2-1027.

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 § 45.2-1020, together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. If the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or C of § 45.2-1020, 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 the Director prescribes, 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 the applicant; 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 § 45.2-1020, 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 60 days following the formal hearing, the Director shall issue and furnish to the permittee and every other party 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 may adopt 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 may assess such costs and expenses against any other party as the Director deems proper. For the purpose of this subsection, "party" includes the Commonwealth or any of its agents, officers, or employees.

1979, c. 290, § 45.1-249; 1983, c. 93; 2021, Sp. Sess. I, c. 387.

§ 45.2-1026. Hearings

Every formal hearing shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, such officer shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless the Director 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, § 45.1-250; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1027. Judicial review of final order or decision or decision under § 45.2-1035

A. Any party aggrieved by a final order, decision, or decision for entry upon property pursuant to § 45.2-1035, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, has the right to the judicial review thereof in the circuit court of the county or city in which the land at issue or a major portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 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 prescribes, 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. The court may award costs and expenses, including attorney fees, to any party to any proceeding under this section and may assess such costs and expenses against any other party as the court deems proper. For the purpose of this subsection, "party" includes the Commonwealth or any of its agents, officers, or employees.

1979, c. 290, § 45.1-251; 1983, c. 93; 1984, c. 590; 1986, c. 615; 2021, Sp. Sess. I, c. 387.

§ 45.2-1028. Designating areas unsuitable for coal surface mining

A. 1. The Director shall establish a planning process that enables objective decisions, based on

competent and scientifically sound data and information, regarding which land areas of the Commonwealth, if any, are unsuitable for coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3. Such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

2. Upon petition pursuant to subsection C, the Director shall designate a land area as unsuitable for all or certain types of coal surface mining operations if the Director determines that reclamation pursuant to the requirements of this chapter is not technologically and economically feasible.

3. Upon petition pursuant to subsection C, the Director may designate a surface area as unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, or aesthetic values or natural systems; (iii) affect renewable resource lands, including aquifers and aquifer recharge areas, in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products; or (iv) affect natural hazard lands, including areas subject to frequent flooding and areas of unstable geology, in which such operations could substantially endanger life and property.

4. Any determination of the unsuitability of a land area for coal surface mining made pursuant to 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 any land area (i) on which a coal surface mining operation was being conducted on August 3, 1977; (ii) on which a coal surface mining operation was being conducted under a permit issued pursuant to the provisions of the federal act; or (iii) where substantial legal and financial commitments in either such operation were in existence prior to January 4, 1977.

B. Prior to designating any land area as unsuitable for a coal surface mining operation, 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 that is or could be adversely affected has 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 petition shall contain allegations of facts with supporting evidence that would tend to establish the allegations. Within 10 months after receipt of the petition, the Department shall hold a public hearing in the locality in which the affected area is located, after appropriate notice and publication of the date, time, and location of the hearing. After a person having an interest that is or could be adversely affected has filed a petition but before the hearing required by this subsection has taken place, any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within 60 days after such hearing, a written decision regarding the petition and the reasons therefor. In the event that all petitioners stipulate agreement prior to the hearing and withdraw their requests, such hearing need not be held.

D. Subject to valid existing rights, no coal surface mining operation, except an operation that

existed on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of any unit of the National Park System, the National Wildlife Refuge System, the National Trails System, the National Wilderness Preservation System, or the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act; any National Recreation Area designated by act of Congress; or any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;
2. That will adversely affect any publicly owned park or any site listed in the National Register of Historic Places unless approved jointly by the Director and the 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 a mine access road or haulage road joins such right-of-way line. However, the Director may permit such mine access or haulage road to be relocated or the area affected to lie within 100 feet of such public 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 of any occupied dwelling, unless waived by the owner thereof; within 300 feet of any public building, school, church, community or institutional building, or public park; or within 100 feet of a cemetery.

1979, c. 290, § 45.1-252; 1984, c. 590; 2021, Sp. Sess. I, c. [387](#).

Article 3. National Pollutant Discharge Elimination System Permit; Replacement of Water Supply

§ 45.2-1029. National Pollutant Discharge Elimination System permits

A. For the purpose of this section:

"Board" means the State Water Control Board.

"Industrial wastes" means the same as that term is defined in § [62.1-44.3](#).

"NPDES" means the National Pollutant Discharge Elimination System.

"Other wastes" means the same as that term is defined in § [62.1-44.3](#).

"Sewage" means the same as that term is defined in § [62.1-44.3](#).

B. 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 in this section. 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.

C. The Director shall transmit to the State Water Control Board a copy of each application for an NPDES permit received by the Director and provide written notice to the Board of every action related to the consideration of such permit application.

D. Prior to the issuance or reissuance of a permit, each applicant shall submit an application on a form approved by the Director and a fee of \$300 for each discharge outfall point under such 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 such 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.

E. No NPDES permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed NPDES permit, the Board objects in writing to the issuance of such permit. Whenever the 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 that such permit would include if it were issued by the Board.

F. An applicant who is aggrieved by an objection made under subsection E has the right to a hearing before the Board pursuant to § 62.1-44.25. If the 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 Board made pursuant to this subsection has the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

G. Whenever, on the basis of any information available to it, the Board finds that any person is in violation of any condition or limitation contained in a NPDES permit issued by the Director, it shall notify the person allegedly in violation and the Director. If after the thirtieth day following notification by the Board, the Director has not commenced appropriate enforcement action, the Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

H. The Director shall adopt regulations deemed necessary for the issuance, administration, monitoring, and enforcement of NPDES permits for coal surface mining operations.

I. The Director, by examining the available and relevant data, shall determine whether a discharge could 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 Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge could 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 could 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, § 45.1-254; 1986, c. 615; 2008, c. 275; 2011, cc. 252, 290; 2021, Sp. Sess. I, c. 387.

§ 45.2-1030. 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 such owner's 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 mining operation.

B. Every underground coal mining operation shall promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for a surface coal mining and reclamation permit and that has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. 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 one or more mine maps maintained at the mine site or in the company office. Such map shall, at a minimum, include information on the daily progress of mining operations and be maintained until the completion of the mining. The operator shall provide such map to the Division upon completion of mining and upon request of the Director.

D. If the Director has ordered replacement of a water supply under subsection B and the operator subject to the order has failed to provide the required map in accordance with subsection C, then the Director's replacement 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 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.

1979, c. 290, § 45.1-258; 1993, c. 582; 2021, Sp. Sess. I, c. 387.

Article 4. Abandoned Mine Reclamation

§ 45.2-1031. 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, the Abandoned Mine Reclamation Fund created pursuant to § 45.2-1032, and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for 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 may:

1. Prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;
2. Enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;
3. Administer the State Reclamation Plan and annual reclamation projects and receive and

administer grants from the Secretary therefor; and

4. Prepare and submit such information and reports as the Secretary requests.

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, § 45.1-260; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1032. Abandoned Mine Reclamation Fund

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director.

B. All funds granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects; use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted; moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article; moneys recovered from sale of lands acquired by the Director pursuant to this article; and donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes shall be paid into the state treasury and credited to the Fund.

C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

D. Moneys in the Fund shall be used solely for the purpose of carrying out the State Reclamation Program as approved by the Secretary. 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.

1979, c. 290, § 45.1-261; 2021, Sp. Sess. I, c. 387.

§ 45.2-1033. Operator may perform reclamation; bidding; conditions; adjustment of required bonds; regulations

A. Notwithstanding any licensing requirement under Title 54.1, an operator is 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 (§ 45.2-1043 et seq.) if 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 this chapter and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11 (§ 11-1 et seq.), the Director may adjust the amounts 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 adopt regulations to implement this section.

1983, c. 77, § 45.1-261.1; 1984, c. 590; 1991, c. 495; 2013, cc. 47, 129; 2021, Sp. Sess. I, c. 387.

§ 45.2-1034. Eligible lands and water; priorities for expenditures

A. Lands and water eligible for reclamation or drainage abatement expenditures under this article are those that were (i) mined for coal or (ii) affected by coal mining, waste banks, coal processing, or other coal mining processes, and were abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under state or federal law.

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, § 45.1-262; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1035. 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. The provisions of subsection C shall apply if the Director, pursuant to an approved state program, makes findings of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;
2. The adverse effects are significant enough that, in the public interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and
3. The owners of the land or water resources where entry will be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices (i) are not known or readily available or (ii) 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.

C. Upon making the findings of fact required by subsection B and 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 county or city 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 or 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 § 45.2-1036 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. Such provision regarding the mitigation or offsetting of a claim or action by an owner is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

D. The Director and 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 or trespass thereon.

E. 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 determinations that acquisition of such land is necessary for 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 recreational, historical, conservation, or reclamation purposes or provide open space benefits; and
2. Either (a) 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 (b) 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.

F. 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.

G. 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 terms that will ensure that the use of the land is consistent with the authorization under which the land was acquired;
2. Sell land acquired under this section that 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 regulations adopted to ensure that such lands are put to proper use consistent with local, state, or federal land use plans, 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. After such 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 purpose upon such terms as the Secretary requires.

H. Prior to the disposition of any land acquired under this section, the Director, pursuant to the State Reclamation Plan, when requested and after appropriate public notice, shall hold a public hearing in the county or city or counties or cities where the land is located. The hearing shall be held at a time that 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.

I. 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 that 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 the Director finds in writing that a waiver is in the public interest.

J. Any state, regional, or local agency, department, or institution may purchase or otherwise acquire and develop lands that the Secretary is authorized to dispose of pursuant to § 407(h) of the federal act.

1979, c. 290, § 45.1-263; 2021, Sp. Sess. I, c. 387.

§ 45.2-1036. Commonwealth to have lien for reclamation work

The Commonwealth shall have a lien, if perfected as provided in § 45.2-1037, 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. However, no such 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 did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this article. Nor shall any such lien attach to or be filed against any property if the Director waives the lien as provided in § 45.2-1037.

1979, c. 290, § 45.1-264; 2021, Sp. Sess. I, c. 387.

§ 45.2-1037. Perfection of lien; waiver of lien

A. The Director shall perfect the lien given under the provisions of § 45.2-1036 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 located, a statement consisting of the name of the owner of record of the property sought to be charged; an itemized account of moneys expended for the reclamation work; 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 exceed 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. If reclamation is necessitated by an unforeseen occurrence, the Director shall waive a lien if he determines that the reclamation will not result in a significant increase in the market value of the land.

1979, c. 290, § 45.1-265; 2021, Sp. Sess. I, c. 387.

§ 45.2-1038. Recordation and indexing of lien; notice

It is the duty of the clerk in whose office the statement described in § 45.2-1037 is filed to record such statement in the deed books of such office and to index such recording in the general index of deeds. Such indexing shall be made in the name of the Commonwealth as well as the owner of the property and shall show 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, § 45.1-266; 2021, Sp. Sess. I, c. 387.

§ 45.2-1039. Priority of lien

Any lien 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, § 45.1-267; 2021, Sp. Sess. I, c. 387.

§ 45.2-1040. Hearing to determine amount of lien

Any party having an interest in the real property against which a lien has been filed may, within 60 days of such filing, petition the circuit court 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 the amount of 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, § 45.1-268; 2021, Sp. Sess. I, c. 387.

§ 45.2-1041. Satisfaction of lien

Any lien 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 in this article, the Director may proceed to enforce the lien by a petition filed in a circuit court having jurisdiction wherein the property or some portion thereof is located.

1979, c. 290, § 45.1-269; 2021, Sp. Sess. I, c. 387.

§ 45.2-1042. 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 interceptors and other facilities appurtenant to such plants. No such control or treatment shall in any way be less than that required under the federal Clean Water 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, § 45.1-270; 2021, Sp. Sess. I, c. 387.

Article 5. Coal Surface Mining Reclamation Fund

§ 45.2-1043. Coal Surface Mining Reclamation Fund

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, referred to in this article as "the Fund." The Fund shall be established on the books of the Comptroller. All payments made into the Fund in accordance with the provisions of this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any

moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. 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.

1982, c. 334, § 45.1-270.1; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1044. Participation in Fund

A. Participation in the Fund is open to any operator applying for a permit under this chapter who can demonstrate to the Director a history of at least three consecutive years of compliance under this chapter or any other comparable state or federal act.

B. Participation in the Fund is 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 § [45.2-1016](#) and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing in this article shall preclude compliance with § [45.2-1016](#) in lieu of participation in the Fund, prior to commencement of such participation. Commencement of participation in the Fund, as to the applicable permit, constitutes an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For any mining operation 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 the applicant (i) can demonstrate to the Director a history of at least seven consecutive years of compliance with this chapter or with any other comparable state or federal act or (ii) 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, multiplied by an approved cost estimate of reclamation prepared for the permit.

1982, c. 334, § 45.1-270.2; 1983, c. 131; 1989, c. 432; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1045. Initial payments into Fund; renewal payments; bonds

A. Any operator filing a permit application for a coal surface mining operation participating in the pool fund shall 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 each operator who elects to participate in the Fund if the Director has determined that the total balance of the Fund is less than \$1.75 million. 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 each permittee 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 any forfeiture on which engineering cost estimates have been prepared but no money from the Fund has actually been expended.

2. If the actual expenditures from the Fund are less than the engineering cost estimate, 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, every operator who participates in the Fund shall furnish to the Fund a bond that meets the criteria of § 45.2-1016 and regulations issued pursuant thereto as follows:

1. For an underground mining operation 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 a permit that has completed all mining and for which a completion report was approved prior to July 1, 1991, the total bond shall not be less than \$10,000.
2. For an underground mining operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded after such date, the amount of \$3,000 per acre. In no event shall the total bond for such underground operation entering the Fund on or after July 1, 1991, be less than \$40,000.
3. For any other coal mining operation 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 a permit that has completed all mining and for which a completion report was approved prior to July 1, 1991, the total bond shall not be less than \$25,000.
4. For any other coal mining operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded after such date, the amount of \$3,000 per acre. In no event shall the total bond for such operation 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 § 45.2-1010 or any other payments required in compliance with this chapter.

D. Each Fund participant shall be allowed to post incremental bonds as set forth in § 45.2-1016. Such bonds shall 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 that are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation for 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 that 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 that 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 if the permittee has posted bond pursuant to subsection B.

1982, c. 334, § 45.1-270.3; 1983, c. 131; 1989, c. 432; 1991, c. 495; 2014, cc. 111, 135; 2021, Sp. Sess. I, c. 387.

§ 45.2-1046. Assessment of reclamation tax revenues for Fund

A. There is hereby levied a reclamation tax upon the production of coal by each operator participating in the Fund under a permit issued under this chapter as set forth in this article.

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, each operator 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; and
3. One and one-half cents per clean ton of coal processed or loaded by a preparation or loading facility 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, § 45.1-270.4; 1983, c. 131; 1987, c. 468; 1991, c. 495; 2014, cc. [111](#), [135](#); 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1047. Special assessment

A. In addition to the tax assessed pursuant to § [45.2-1046](#), and in order to ensure Fund solvency, the Director of the Division shall require each permittee to pay any special assessment made pursuant to subsection B.

B. On and after July 1, 1990, the Director of the Division shall assess each permit in the Fund the amount of \$500. Such 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.

C. On or after July 1, 1991, the Director of the Division shall assess an amount not to exceed \$500,000. The amount of the assessment shall be \$250 for each permit participating in the Fund that 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 prior to July 1, 1991. The assessments under subsection B and 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 subsection B and 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.

D. Failure to tender moneys assessed pursuant to the provisions of this section within 30 calendar days of assessment shall constitute a violation of this chapter. Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

1990, c. 427, § 45.1-270.4:1; 1991, c. 495; 2021, Sp. Sess. I, c. 387.

§ 45.2-1048. Collection of reclamation tax and penalties for nonpayment

A. Payment of taxes under this section shall be made no later than 30 days after the end of each calendar quarter when taxes are applicable in accordance with § 45.2-1046. The Division shall notify each operator holding a permit under this chapter of those periods during which the taxes are applicable, provide forms for reporting coal production figures subject to taxes, and collect all taxes for the Fund.

B. Pursuant to regulations adopted by the Director, and consistent with the provisions of § 45.2-1024, 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 § 45.2-1011. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also adopt 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 subsection B of § 45.2-1020. The notice of violation shall state that upon failure of payment within 15 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 pursuant to subsection C of § 45.2-1020, the enforcement procedures set forth in Article 2 (§ 45.2-1008 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, § 45.1-270.5; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

§ 45.2-1049. Forfeiture of bonds on operations participating in the Fund; alternative remedies

A. Forfeiture of bonds of an operation participating in the Fund shall be accomplished as set forth in § 45.2-1023 and the regulations adopted by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of a surface coal mining operation under the provisions of subsection F of § 45.2-1020 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 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 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, § 45.1-270.5:1; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1050. 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 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 obligation 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 a reclamation. Such expenditures shall include construction costs, engineering costs, administrative costs, and legal costs. In any action to recover such costs, the defendant shall not relitigate the facts giving rise to the forfeiture or defend by claiming the forfeiture was improper.

1982, c. 334, § 45.1-270.6; 1987, c. 468; 2021, Sp. Sess. I, c. [387](#).

§ 45.2-1051. Coal Surface Mining Reclamation Fund Advisory Board

A. The Coal Surface Mining Reclamation Fund Advisory Board (the Advisory Board) is established as an advisory board in the executive branch of state government. The purpose of the Advisory Board is to formulate recommendations for the Director concerning oversight of the general operation of the Fund.

B. The Advisory Board shall have a total membership of eight members that shall consist of seven nonlegislative citizen members and one ex officio member. Nonlegislative citizen members shall be appointed by the Governor and subject to confirmation by the General Assembly as follows: at least four shall represent the coal industry, one shall be a representative of the Director, and two shall represent conservation interests and any other public or private interests as are appropriate in accordance with Article V of the Interstate Mining Compact (§ [45.2-201](#)). The Director of the Division or his designee shall serve ex officio with nonvoting privileges and shall serve as Secretary to the Advisory Board. Nonlegislative citizen members of the Advisory Board shall be citizens of the Commonwealth.

C. The ex officio member of the Advisory Board shall serve a term coincident with his term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

D. The nonlegislative citizen members of the Advisory Board shall be appointed for five-year staggered terms. No person shall serve more than two consecutive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

E. The Advisory Board shall annually elect a chairman and vice-chairman from among its membership and shall formulate rules for its organization and procedure. A majority of the members shall constitute a quorum.

F. The nonlegislative citizen members of the Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

G. The Advisory Board shall meet not less than twice each year, with such meetings held at the

call of the chairman or whenever the majority of the members so request.

H. The Advisory Board shall have the following powers and duties:

1. Report biannually to the Director and the Governor on the status of the Fund; and
2. Recommend to the Director regulations or changes to the Fund for the administration or operation of the Fund.

I. The Department shall provide staff support to the Advisory Board. All agencies of the Commonwealth shall provide assistance to the Advisory Board, upon request.

J. The Director may adopt the recommendations of the Advisory Board through regulatory action from time to time in accordance with the provisions of this chapter and otherwise in accordance with law.

K. The Advisory Board shall serve as the advisory body required by Article V of the Interstate Mining Compact (§ [45.2-201](#)).

1982, c. 334, § 45.1-270.7; 1985, c. 448; 2018, c. [67](#); 2021, Sp. Sess. I, c. [387](#).