

**REPORT OF THE  
VIRGINIA CODE COMMISSION**

**Revision of Titles 45.1 and  
67 of the Code of Virginia**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT NO. 8**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
2020**

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# COMMONWEALTH of VIRGINIA

Senator John S. Edwards  
Chairman

VIRGINIA CODE COMMISSION  
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*Report of the  
Virginia Code Commission  
The Revision of Titles 45.1 and 67 of the Code of Virginia*

**Richmond, Virginia  
November 2020**

**To: The Honorable Ralph S. Northam, Governor of Virginia  
and  
The General Assembly of Virginia**

In accordance with its authority granted pursuant to § 30-152 of the Code of Virginia, the Virginia Code Commission (the Commission) undertook the revision of Title 45.1 (Mines and Mining) in May 2018. Since the title has not been revised since 1966 and there was a major revision of the Mine Safety Act in 1994 in which the original 15 chapters of Title 45 were repealed and new chapters were adopted, the current revision presents an opportunity to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to mines, minerals, and energy in the Commonwealth. The current revision also presents an opportunity to include in the proposed title additional laws dealing with the closely related subject matter of energy policy currently in nine chapters of Title 67 (Virginia Energy Plan) and to move the five remaining chapters of Title 67 to other titles in the Code more appropriate for their subject matter.

The Commission was assisted by a work group composed of Brandon Bull, Department of Environmental Quality; Harry Childress, Metallurgical Coal Producers Association; David W. Clarke, Virginia Oil and Gas Association; Larry Corkey, Department of Mines, Minerals and Energy; Carroll Courtenay, Southern Environmental Law Center; Kristin Davis, Southern Environmental Law Center; Angela Jenkins, Department of Environmental Quality; Patrick McCrady, Titan America; Miles Morin, Virginia Petroleum Council; Doug Palmore, Luck Companies; and Michael Skiffington, Department of Mines, Minerals and Energy.

The contributions of the work group were invaluable, and the Commission wishes to express its sincere gratitude to the members of the work group for the significant time and effort they devoted to the revision of Titles 45.1 and 67. These contributors represent a cross section of stakeholders and interested groups, and their expertise proved to be a key resource for the Commission and its staff.

The Commission recommends that the General Assembly enact legislation during the 2021 Session to implement the revisions proposed in this report.

Respectfully submitted,

Senator John S. Edwards, Chairman

Delegate Marcus B. Simon, Vice-Chairman

Senator Jennifer L. McClellan

Delegate Don L. Scott, Jr.

The Honorable Malfourd W. Trumbo

The Honorable Ward L. Armstrong

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## **EXECUTIVE SUMMARY**

### **Introduction**

Title 45.1 (Mines and Mining) contains provisions of the Code of Virginia that address mining, drilling, and energy-related matters in the Commonwealth, including the mining of coal, the mining of minerals, the drilling of gas and oil wells, exploration for uranium ore, geothermal energy, and solar energy. Closely related to these provisions are the laws establishing an energy policy for the Commonwealth, addressing topics that include offshore and coastal energy, that can be found in certain chapters of Title 67 (Virginia Energy Plan).

Title 45.1 has not been completely revised since 1966, at which time the title consisted of 15 chapters. In the ensuing 54 Regular Sessions of the General Assembly, 29 chapters have been added and 20 have been repealed, including the 15 original chapters, which were repealed in a 1994 revision of the Mine Safety Act. The result is the existing title, which comprises 24 current chapters. Neither the one chapter proposed to be relocated from Title 11 to the current revision nor the two sections proposed to be relocated from Title 62.1 to the current revision were in existence when the Code of 1950 was adopted. In the years intervening since 1966, the original organizational scheme has been compromised by the insertion of new chapters within or at the end of the title and by the insertion of new sections within or at the end of existing chapters, often with cumbersome section numbers.

Title 67 was created in 2006 and initially consisted of 10 chapters. Later sessions of the General Assembly added seven chapters for a total of 17 chapters. One chapter of Title 67 has expired since 2006, and two have failed to become effective since their enactment in 2006. Of the 14 other chapters currently in Title 67, nine relate to topics covered in Title 45.1 and would be appropriately located in a revision of Title 45.1. The other five chapters remaining in Title 67 would be more appropriately located in other titles of the Code of Virginia that correspond to their subject matters.

It has become appropriate to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to mines, minerals, and energy in the Commonwealth.

### **Organization of Proposed Title 45.2**

Title 45.1 is renamed from Mines and Mining to Mines, Minerals, and Energy in the proposed title to more accurately describe the proposed title's scope. Title 67 (Virginia Energy Plan) is repealed in its entirety, and its chapters are relocated to proposed Title 45.2 and other titles of the Code of Virginia as appropriate.

Proposed Title 45.2 consists of 21 chapters that are drawn from both existing Title 45.1 and existing Title 67 and are divided into five proposed subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy).

Subtitle I (Administration) contains proposed Chapters 1 through 4, all of which pertain to the administration of the mines, minerals, and energy laws of the Commonwealth.

Proposed Chapter 1 (Administration) includes provisions relating to the Department of Mines, Minerals and Energy. It contains existing Chapters 14.1 (Administration) and 25 (Division of Geology and Mineral Resources).

Proposed Chapter 2 (Interstate Mining Compact) contains provisions found in existing Chapter 20 of the same name and is an interstate compact with 15 other states that became effective in Virginia in 1977 and addresses the conservation and use of mined land.

Proposed Chapter 3 (Interstate Compact to Conserve Oil and Gas) contains the provisions from existing Chapter 24 of the same name and is an interstate compact with 14 other states that became effective in Virginia in 1982 and addresses the conservation of oil and gas by preventing the physical waste of such substances.

Proposed Chapter 4 (Presumptions Regarding Ownership) contains the provisions of existing Chapter 14.7:3 (Mineral Rights), which addresses presumptions regarding ownership of underground substances including coal, minerals, gas, and oil.

Subtitle II (Coal Mining) contains proposed Chapters 5 through 10, relating to coal mining. The subtitle is divided into three parts: Part A (Coal Mines Generally), containing proposed Chapters 5 and 6; Part B (Underground Coal Mines), containing proposed Chapters 7 and 8; and Part C (Surface Coal Mines), containing proposed Chapters 9 and 10.

Proposed Chapter 5 (Coal Mine Safety Act) contains the provisions of existing Chapter 14.2 of the same name, which governs the safe operation of surface and underground coal mines.

Proposed Chapter 6 (Coal Mining Property, Interests, Adjacent Owners, and Dams) contains several miscellaneous provisions found in existing Chapters 14.7 (Rights of Owners of Land Adjacent to Coal Mines), 14.7:2 (Trust for Coal Interests), 14.8 (Emergency Seizure of Coal Properties by Commonwealth), and 18 (Coal Mining Refuse Piles, Water and Silt Retaining Dams), all of which pertain to matters related to the mining of coal. The topics in the proposed chapter include the rights of an owner of land adjacent to a coal mine; the establishment of a trust for a missing owner of an interest in coal that is being produced; the seizure and operation by the Commonwealth of a coal business under certain circumstances; and the design, construction, and operation of certain retaining dams at coal mines.

Proposed Chapter 7 (Requirements Applicable to Underground Coal Mines; Mine Construction) contains Articles 1, 2, 3, 5 through 8, 15, and 16 of existing Chapter 14.3 (Requirements Applicable to Underground Coal Mines), pertaining to duties of miners; proximity of mining to gas or oil wells; roof, face, and rib control; explosives and blasting; mine openings and escapeways; hoisting; transportation; and surface areas.

Proposed Chapter 8 (Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc.) contains Articles 4 and 9 through 14 of existing Chapter 14.3 (Requirements Applicable to Underground Coal Mines), pertaining to mechanical equipment; electricity; fire prevention and control; ventilation, mine gases, and other hazardous conditions; personal safety and smoking; and first aid equipment, medical care, and emergency medical services providers.



Proposed Chapter 9 (Requirements Applicable to Surface Coal Mines) contains the provisions of existing Chapter 14.4 of the same name, pertaining to general provisions; work area examinations, recordkeeping, and reporting; personal protection; first aid equipment, medical care, and emergency medical services providers; fire prevention and control; surface equipment; travel ways and loading and haulage areas; dust control; electricity; explosives and blasting; ground control; auger and highwall mining; and proximity of mining to gas or oil wells or vertical ventilation holes.

Proposed Chapter 10 (Virginia Coal Surface Mining Control and Reclamation Act of 1979) contains the provisions of existing Chapter 19 of the same name. The topics in the proposed chapter include general and administrative provisions; regulation of mining activity; National Pollutant Discharge Elimination System Permit; replacement of water supply; abandoned mine reclamation; and the Coal Surface Mining Reclamation Fund.

Subtitle III (Mineral Mines) contains proposed Chapters 11 through 15, all of which pertain to the operation of mineral mines in the Commonwealth. The subtitle is divided into three parts: Part A (Mineral Mines Generally), containing proposed Chapters 11, 12, and 13; Part B (Underground Mineral Mines), containing proposed Chapter 14; and Part C (Surface Mineral Mines), containing proposed Chapter 15.

Proposed Chapter 11 (Mineral Mine Safety Act) contains the provisions of existing Chapter 14.4:1 of the same name, which provides for the appointment of the Director of the Department of Mines, Minerals and Energy and of mining inspectors, the certification of mineral mine workers, the licensing of mineral mines, and the establishment of mine rescue teams; and includes the topics of mine explosions, fires, and accidents; mine inspections; enforcement of mining laws and penalties and reports of violations; and miner training.

Proposed Chapter 12 (Permits for Certain Mining Operations; Reclamation of Land) contains the provisions of existing Chapter 16 of the same name, which governs the regulation of mining activity, orphaned lands, and the Minerals Reclamation Fund.

Proposed Chapter 13 (Mineral Mining Dams; Adjacent Owners) contains the provisions of existing Chapters 14.7:1 (Rights of Owners of Land Adjacent to Mineral Mines) and 18.1 (Mineral Mining Refuse Piles, Water and Silt Retaining Dams), which deal with the rights of adjacent land owners and the regulation of mineral mining retaining dams and refuse piles, respectively.

Proposed Chapter 14 (Requirements Applicable to Underground Mineral Mines) contains the provisions of existing Chapter 14.5 of the same name, which governs the regulation of underground mineral mines in the Commonwealth and mining in proximity to gas and oil wells, as well as the use of flame safety lamps.

Proposed Chapter 15 (Requirements Applicable to Surface Mineral Mines) contains the provisions of existing Chapter 14.6 (Requirements Applicable to Surface Mineral Mining), which governs the regulation of surface mineral mining in the Commonwealth, as well as mining in proximity to gas and oil wells, health regulations, and respiratory equipment.

Subtitle IV (Gas and Oil) contains proposed Chapter 16 (Virginia Gas and Oil Act), which contains the provisions of existing Chapter 22.1 (The Virginia Gas and Oil Act) governing gas

and oil conservation and regulation of gas and oil development and production. In addition, two existing sections found in Title 62.1 (§§ 62.1-195.1 and 62.1-195.3), which govern gas and oil drilling in the Chesapeake Bay and Tidewater Virginia and certain uses of hydraulic fracturing, are relocated to proposed Chapter 16.

Subtitle V (Other Sources of Energy; Energy Policy) contains proposed Chapters 17 through 21, pertaining to other sources of energy, including wind, solar, geothermal, and nuclear, and to the energy policy of the Commonwealth.

Proposed Chapter 17 (Other Sources of Energy Generally) contains the provisions of existing Chapter 26 (Energy Division, Etc.), a one-section chapter, to which the provisions of a definitions section from Title 67 (§ 67-200) has been added. The proposed chapter also contains several provisions from other titles of the Code of Virginia. It includes existing Chapter 6.1 of Title 11 (Energy and Operational Efficiency Performance-Based Contracting Act), which is administered by the Department of Mines, Minerals and Energy and addresses investment in energy conservation measures and facility technology infrastructure upgrades and modernization in facilities owned by state and local government, as well as four chapters from Title 67: existing Chapters 1 (Energy Policy of the Commonwealth) and 2 (Virginia Energy Plan), which establish policies for the Commonwealth and require a plan to carry them out; existing Chapter 6 (Virginia Coastal Energy Research Consortium), which establishes a research entity dealing with coastal energy issues; and existing Chapter 16 (Southwest Virginia Energy Research and Development Authority), which establishes an authority to promote opportunities for energy development in Southwest Virginia.

Proposed Chapter 18 (Wind Energy) contains existing § 45.1-161.5:1, which establishes the Division of Offshore Wind within the Department of Mines, Minerals and Energy, as well as the provisions of two chapters from Title 67: existing Chapter 3 (Offshore Wind Energy Resources), a one-section chapter that states the policy of the Commonwealth regarding offshore wind energy, and existing Chapter 12 (Virginia Offshore Wind Development Authority), which establishes an authority to support the development of the offshore wind energy industry.

Proposed Chapter 19 (Solar Energy) contains the provisions of existing § 45.1-391, establishing the Virginia Solar Energy Center in the Department of Mines, Minerals and Energy; existing Chapter 15 (Virginia Solar Energy Development and Energy Storage Authority) of Title 67, which creates an authority to support the development of the solar energy and energy storage industries; and existing Chapter 27 (Clean Energy Advisory Board) of Title 45.1, which establishes an advisory board for the purpose of starting a pilot program for disbursing loans or rebates for the installation of solar energy infrastructure in low-income and moderate-income households.

Proposed Chapter 20 (Geothermal Energy) contains the provisions of existing Chapter 15.1 of the same name, which fosters the development of geothermal resources, prevents waste of such resources, and carries out other policies related to geothermal resources.

Proposed Chapter 21 (Nuclear Energy) contains the provisions of existing Chapter 21 (Exploration for Uranium Ore), which promotes the safe and efficient exploration for uranium resources within the Commonwealth and ensures that uranium mining and milling will be subject to statutes and regulations that protect the environment and the

health and safety of the public. The proposed chapter also contains the provisions of two chapters from Title 67: existing Chapters 14 (Virginia Nuclear Energy Consortium), which establishes the Virginia Nuclear Energy Consortium Authority to promote the Commonwealth as a leader in nuclear energy and to serve as an interdisciplinary information resource on nuclear energy issues, and 17 (Nuclear Energy Planning), a one-section chapter that directs the development of a strategic plan for nuclear energy as part of the Commonwealth's overall goal of carbon-free energy.

### **Statutory Provisions Proposed for Repeal**

During the revision process, the Virginia Code Commission became aware of a number of existing sections and two existing chapters that are either unnecessary or obsolete and have been stricken in this report; these are recommended for repeal and thus not included in the proposed title. Chapter drafting notes in the body of the report describe the reasons for the recommended repeal of the following sections and chapters:

- §§ 11-34.1, 45.1-179.1, 45.1-226, 45.1-227, 45.1-228, 45.1-272, 45.1-285.1 through 45.1-285.10, and 67-1206 (individual sections scattered throughout, usually short titles or legislative findings).
- Chapter 9 (§§ 67-900 through 67-903) of Title 67.
- Chapter 10 (§§ 67-1000 through 67-1003) of Title 67.

### **Other Affected Titles**

No provision of existing Title 45.1 is proposed for relocation to another title of the Code of Virginia.

The following chapters are relocated from existing Title 67 to other titles of the Code of Virginia:

- Chapter 4 (§ 67-400 et seq.) (Clean Coal Projects), a chapter containing two effective sections, is combined into a single section and relocated as proposed Article 5 (§ 10.1-1332) of Chapter 13 of Title 10.1 (Conservation).
- Chapter 5 (§ 67-500 et seq.) (Biodiesel Fuel), a two-section chapter, is combined into a single section and relocated as proposed § 33.2-221.1 in Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2. (Highways and Other Surface Transportation Systems).
- Chapter 7 (§ 67-700 et seq.) (Covenants Restricting Solar Energy Collection Devices), a two-section chapter, is combined into a single section and relocated to three places in Subtitle IV of Title 55.1 (Property and Conveyances) as proposed § 55.1-1820.1 in Chapter 18, proposed § 55.1-1951.1 in Chapter 19, and proposed § 55.1-2133.1 in Chapter 21, so that the section applies to the Property Owners' Association Act, the Virginia Condominium Act, and the Virginia Real Estate Cooperative Act.
- Chapter 8 (§ 67-800 et seq.) (Motor Vehicle Fuel Efficiency Standards), a two-section chapter, is combined into a single section and relocated as proposed § 33.2-120 in Chapter 1 (§ 33.2-100 et seq.) of Title 33.2 (Highways and Other Surface Transportation Systems).

- Chapter 11 (§ 67-1100 et seq.) (Renewable Energy Co-Location of Distribution Facilities) is relocated as Chapter 29 (§ 56-614 et seq.) of Title 56 (Public Service Companies).

The following provisions are relocated from other titles of the Code of Virginia to proposed Title 45.2:

- The provisions of existing § 62.1-195.1, which deals with drilling for gas or oil in (i) the waters of the Chesapeake Bay or (ii) Tidewater Virginia, are moved to proposed §§ 45.2-1645 and 45.2-1646, respectively, of proposed Chapter 16 (Virginia Gas and Oil Act).
- The provisions of existing § 62.1-195.3, which deals with hydraulic fracturing in a groundwater management area, are moved to proposed § 45.2-1647 of proposed Chapter 16 (Virginia Gas and Oil Act).
- The provisions of existing Chapter 6.1 (§ 11-34.1 et seq.) of Title 11, comprising the Energy and Operational Efficiency Performance-Based Contracting Act, are moved to proposed Article 2 (§ 45.2-1702 et seq.) of Chapter 17 (Other Sources of Energy Generally). The first section of the chapter is repealed as noted above.

The relocation of sections, articles, and chapters to other titles of the Code of Virginia is not intended to have any substantive effect on their interpretation.

An outline of the organization of proposed Title 45.2 is included as Appendix A.

## **Technical Changes Made Throughout Title 45.2**

Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering the section. If a drafting note states "technical changes," the section contains technical changes to the text ranging from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When a section contains structural or substantive changes, such as the deletion or addition of language, the drafting note describes the reason for the proposed change.

Many of the technical changes arise from the Code Commission's determination that terminology should be clear, consistent, and modern. The following list provides a representative sample of the most significant and most widely implemented technical changes made in the proposed title.

The following technical changes are made in order to maintain consistency with changes made in previous title revisions, to update antiquated language, to provide clarity, and to bring Title 45.2 into accordance with Title 1 rules of construction for the Code:

- § 1-218. Includes. "Includes" means includes, but not limited to.
- § 1-227. Number. A word used in the singular includes the plural, and a word used in the plural includes the singular.
- § 1-244. Short title citations. Short titles have been eliminated as unnecessary in light of the title-wide application of § 1-244, which states that the caption of a subtitle, chapter, or article operates as a short title citation.

- Purpose statements and legislative findings have been stricken in accordance with the Code Commission's policy that purpose statements and legislative findings do not have general and permanent application and thus are not to be included in the Code.
- Nonreverting fund language is updated to reflect current language requested by the Department of the Treasury for such funds in the Code.
- The corporate language for authorities and advisory boards is updated to reflect current language for political subdivisions in the Code.
- Provisions establishing the initial staggering of terms for the members of corporate bodies are removed.

The following changes are made to remove and update antiquated terminology or clarify terms with general application, in accordance with Code Commission policies:

- To the extent feasible, several sets of clauses within paragraphs are labeled for the sake of clarity.
- To the extent feasible, "shall be" is stricken in favor of "is."
- To the extent feasible, phrases in the passive voice are changed to the active voice.
- When grammatically feasible, "will" or "must" is changed to "shall" or other appropriate term.
- When grammatically feasible, prohibitory language is recast in affirmative form.
- "Virginia" is replaced with "the Commonwealth."
- "This Commonwealth" is replaced with "the Commonwealth."
- To the extent feasible, unclear references to "herein," "therefor," "thereof," and "thereon" are replaced with more specific references.
- Definitions are moved to the beginning of the section, article, chapter, etc., to provide the reader better clarity and context.
- In the context of the regulations of an administrative agency, the word "promulgate" is replaced with the word "adopt" because "adopt" is more widely used and includes the promulgation process.
- In the context of an administrative agency adopting regulations, the words "rules and" are stricken prior to the word "regulations" because an administrative agency adopts regulations, not rules.
- § 1-221. Locality. "Locality" means a county, city, or town as the context may require.
- "Shall have the authority to" and similar variants of this term are changed to "may."
- House and Senate committee names that were changed in the 2020 Session of the General Assembly are updated.
- When the meaning of the text requires it and in accordance with title-wide conventions, the conjunction "and" is replaced with "or" because the meaning of "or" encompasses both "or" and "and."

The following technical changes are made or not made, as the case may be, throughout proposed Title 45.2 and apply more specifically to the subject matter found in this title:

- Obsolete date references are deleted, including obsolete deadlines and references to dates associated with the approval of state primacy by the federal government on December 15, 1981, and the adoption by Virginia of a mining regulatory program. Sections from which dates related to state primacy are deleted include proposed §§ 45.2-1000, 45.2-1001, 45.2-1017, and 45.2-1030. Six particular sections that authorized the adoption of interim regulations prior to state primacy, §§ 45.1-161.298 through 45.1-161.303, are significantly reduced and combined as proposed § 45.2-1402.
- Date references are clarified, including by the substitution of the enactment date of proposed § 45.2-1621 for a reference to the date of "the enactment of this provision." Unclear or ambiguous references to time periods, such as "more than six months" in proposed § 45.2-500 or "additional two-year periods" in proposed § 45.2-2118, are rephrased for clarity.
- Obsolete references to agencies, organizations, and standards are updated. In proposed § 45.2-577, an outdated reference to the Virginia Coal and Energy Alliance is updated to refer to the Metallurgical Coal Producers Association. In proposed Chapters 5 (§ 45.2-500 et seq.) and 21 (§ 45.2-2100 et seq.), outdated references to the Chief of the Division of Mines, predating the formation of the Department in 1985, are changed to refer to the Director of the Department. In proposed Chapter 12 (§ 45.2-1200 et seq.), outdated references to the Division of Mined Land Reclamation, also predating the formation of the Department, are changed to refer to the Division of Mineral Mining.
- Terms are updated to those currently in use by the Department, including by changing "certificate of inspection" to "inspection report" in proposed § 45.2-566 and by changing "mine rescue crew" to "mine rescue team" throughout proposed Article 5 (§ 45.2-544 et seq.) of Chapter 5 and proposed Article 5 (§ 45.2-1133 et seq.) of Chapter 11.
- Terms for mining-related devices and practices are updated to reflect changes. In proposed §§ 45.2-549 and 45.2-1139, reference to the depletion of the atmospheric pressure of a breathing apparatus are replaced with reference to the safety standard currently in use, a low-oxygen alarm, while in proposed § 45.2-847, outdated references to methane indicators are removed as duplicative of references to methane detectors. Outdated provisions related to certain paper records are updated, including requirements for "a copy of parts of" certain maps in proposed §§ 45.2-707, 45.2-939, 45.2-1405, and 45.2-1503 that are clarified to require only "copies of" such maps. In proposed § 45.2-2112, the outdated requirement that an affidavit be submitted in triplicate is omitted and a mailing requirement is replaced by a requirement that a copy be "sent."
- References to the regulations of the Board of Coal Mining Examiners are expanded by adding references to the mining laws of the Commonwealth and vice versa. References to the authority of the Chief to make certain determinations are added in proposed §§ 45.2-561, 45.2-564, and 45.2-743.
- Outdated references in proposed §§ 45.2-615, 45.2-1040, 45.2-1041, 45.2-1219, and 45.2-1220 to courts of equity and to particular terms in equity pleading practice are updated to reflect the 2006 merger of common-law and equity pleading in Virginia.

- In subsection A of proposed § 45.2-708, "flammable gas" is replaced with "explosive or hazardous gas" for consistency with the reference in subsection B of proposed § 45.2-708 to "hazardous quantities of" certain gases.
- The term "miners" replaces "men" in proposed §§ 45.2-735 and 45.2-748, and "mantrip" is used instead of "man-trip" or "personnel carrier" in proposed §§ 45.2-754, 45.2-760, 45.2-761, and 45.2-762.
- Idiosyncratic or jargon terms are replaced with terms in broader use that are consistent with the rest of the title, including in proposed § 45.2-755, where the term "blocked or spragged" in reference to a standing car on a track is replaced with "blocked to prevent movement." In proposed § 45.2-928, the phrase "become 'alive' through failure" in reference to an electrical circuit is changed to "become electrified through failure." In proposed § 45.2-1100, the unique term "bodily injury" is replaced by the defined term "serious personal injury" and "individual" is replaced with "person." The term "fatality" is replaced with "death" in proposed § 45.2-1147.
- In proposed § 45.2-904, the text is clarified so that it cannot be read to allow an operator to convey the authority of a supervisor to another person.

### **Substantive Changes Proposed in Title 45.2**

When the Virginia Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include the following:

- A substantive change is made in proposed § 45.2-107 to remove the requirement that the State Geologist "receive such compensation as may be provided in accordance with law" because such provision is unnecessary. All such appointed officers and employees receive compensation unless otherwise noted.
- The requirement in proposed § 45.2-110 that the United States Geological Survey expend at least as much money as the Department of Mines, Minerals and Energy when the two agencies work cooperatively is removed because it is obsolete.
- A list of localities west of the Blue Ridge Mountains that are subject to a presumption that no coal, minerals, ore, or oil exists in certain lands is deleted from proposed § 45.2-400 as an unconstitutional special law in violation of Article IV, Section 14(3) of the Constitution of Virginia pursuant to *H. D. Riddleberger, Jr., et al. v. Chesapeake Western Railway*, 229 Va. 213 (1985).
- Substantive changes are made to the provisions setting out certain fees for mining licenses and drilling permits. The license fees for operation of a coal mine in proposed § 45.2-534, license fees for operation of a mineral mine in proposed § 45.2-1124, and permit fees for oil or gas well drilling or related activities in proposed § 45.2-1631 are updated to reflect the current fees as established in the state budget adopted during the 2010 Session of the General Assembly and in each subsequent biennial budget.
- A provision requiring that an email address be included on a notice is added to proposed § 45.2-540.

- A substantive change in the requirements for construction of a surface magazine resolves an inconsistency by substituting "bullet-resistant," an accurate descriptive term that appears in subdivision B 1 of proposed §§ 45.2-719 and 45.2-931, for the term "bulletproof" as that term appears throughout both sections.
- In subsection A of proposed §§ 45.2-504 and 45.2-1104, references to a warning sign or barricade are added to a prohibition on entering a mine "against caution," while in proposed § 45.2-830 the requirement that an area "be dangered off" is replaced with a requirement that the area be "posted with conspicuous danger signs."
- In subsection D of proposed § 45.2-574, a provision stating that certain information is "excluded from access" under the Virginia Freedom of Information Act (FOIA) is replaced by a provision, using terms drawn from FOIA, stating that such information is "exempt from disclosure." In subsection B of proposed § 45.2-1008, a prohibition against making certain information "available for public examination" is changed to prohibit disclosure of such information and to exempt such disclosure from FOIA.
- In proposed § 45.2-848, a provision allowing "any other" methane monitor to be disconnected is changed to clarify its reference only to a methane monitor that is not otherwise required by law.
- In subsection A of proposed § 45.2-1003, which authorizes the adoption of regulations in accordance with the Administrative Process Act and the Virginia Register Act, a substantive change is made by adding the proviso "unless otherwise directed by law" in order to accommodate any future exception contained in this title.
- A substantive change is made in proposed § 45.2-1130 by deleting the first sentence of existing subsection B, which exempts certain maps from a filing requirement. The deletion of the exemption reflects current Department of Mines, Minerals and Energy practice and removes a conflict with proposed § 45.2-1205, which requires that every mining permit application be accompanied by an accurate map of the area to be mined.
- A substantive change is made in proposed § 45.2-1201 where existing legislative findings and a declaration of policy are removed.
- In proposed § 45.2-1234, creating the Minerals Reclamation Fund, a standard provision requiring the retention of interest earned on moneys in the fund is stricken to resolve a potential conflict with proposed § 45.2-1228, which credits to a separate fund an amount equal to the interest earned on moneys in the Minerals Reclamation Fund.
- In proposed § 45.2-1401, a requirement of adequate air quality is changed to also include air quantity.
- Consistent with current drafting practice, a substantive change is made in proposed § 45.2-2119 by adding a provision requiring that any civil penalties collected pursuant to proposed Article 3 (§ 45.2-2108) of Chapter 21 be paid to a particular fund, in this case the Minerals Reclamation Fund.



## **MEMBERS OF TITLES 45.1 AND 67 REVISION WORK GROUP**

Brandon Bull  
Department of Environmental Quality

Harry Childress  
Metallurgical Coal Producers Association

David W. Clarke  
Virginia Oil and Gas Association

Larry Corkey  
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Southern Environmental Law Center

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Patrick McCrady  
Titan America

Miles Morin  
Virginia Petroleum Council

Doug Palmore  
Luck Companies

Michael Skiffington  
Department of Mines, Minerals and Energy



## **PROPOSED ENACTMENT CLAUSES TO TITLE 45.1 RECODIFICATION BILL**

2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 45.1, Title 67, or any other title of the Code of Virginia as such title existed prior to October 1, 2021, are transferred in the same or modified form to a new section or chapter of Title 45.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 45.2 or any other title, all references to any such former section or chapter of Title 45.1, Title 67, or any other title appearing in this Code shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 45.1 or such other titles of the Code of Virginia as are in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of proposed Title 45.2 and repeal of Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia so as to give effect to other laws enacted by the 2021 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect any act or offense done or committed, or any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that day. Except as otherwise provided in this act, neither the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), § 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, nor the enactment of Title 45.2 shall apply to offenses committed prior to October 1, 2021, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2021, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2021, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 45.2 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, or section of Title 45.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 45.2 are declared severable.

8. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity,

enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.

9. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.

10. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.

11. That Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia are repealed.

12. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2021, shall be made in accordance with the provisions of this act.

13. That the provisions of this act shall become effective on October 1, 2021.

## ORGANIZATION OUTLINE

Proposed Title 45.2.  
Mines, Minerals, and Energy.

### SUBTITLE I. ADMINISTRATION.

<b>Chapter 1</b>		<b>Administration.</b>
	Article 1	Department of Mines, Minerals and Energy.
	Article 2	Division of Geology and Mineral Resources.
<b>Chapter 2</b>		<b>Interstate Mining Compact.</b>
<b>Chapter 3</b>		<b>Interstate Compact to Conserve Oil and Gas.</b>
<b>Chapter 4</b>		<b>Presumptions Regarding Ownership.</b>

### SUBTITLE II. COAL MINING.

<b>PART A</b>		<b>COAL MINES GENERALLY.</b>
<b>Chapter 5</b>		<b>Coal Mine Safety Act.</b>
	Article 1	General Provisions.
	Article 2	Chief of the Division of Mines of the Department and Mine Inspectors.
	Article 3	Certification of Coal Mine Workers.
	Article 4	Licensing for Operation of Coal Mines.
	Article 5	Mine Rescue Teams.
	Article 6	Mine Explosions; Mine Fires; Accidents.
	Article 7	Mine Inspections.
	Article 8	Enforcement and Penalties; Reports of Violations.
	Article 9	Virginia Coal Mine Safety Board.
	Article 10	Miner Training.
<b>Chapter 6</b>		<b>Coal Mining Property, Interests, Adjacent Owners, and Dams.</b>
	Article 1	Rights of Owners of Land Adjacent to Coal Mines.
	Article 2	Trusts for Coal Interests.
	Article 3	Emergency Seizure of Coal Property by the Commonwealth.
	Article 4	Coal Mine Refuse Impoundments and Retaining Dams.

<b>PART B</b>		<b>UNDERGROUND COAL MINES.</b>
<b>Chapter 7</b>		<b>Requirements Applicable to Underground Coal Mines; Mine Construction.</b>
	Article 1	General Provisions.
	Article 2	Additional Duties of Certified Persons and Other Miners.
	Article 3	Proximity of Mining to Gas or Oil Wells or Abandoned Areas.
	Article 4	Roof, Face, and Rib Control.
	Article 5	Explosives and Blasting.
	Article 6	Mine Openings and Escapeways.
	Article 7	Hoisting.
	Article 8	Transportation.
	Article 9	Surface Areas.
<b>Chapter 8</b>		<b>Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc.</b>
	Article 1	Mechanical Equipment.
	Article 2	Electricity.
	Article 3	Fire Prevention and Fire Control.
	Article 4	Ventilation, Mine Gases, and Other Hazardous Conditions.
	Article 5	Personal Safety; Smoking.
	Article 6	First Aid Equipment; Medical Care; Emergency Medical Services Providers.

<b>PART C</b>		<b>SURFACE COAL MINES.</b>
<b>Chapter 9</b>		<b>Requirements Applicable to Surface Coal Mines.</b>
	Article 1	General Provisions.
	Article 2	Work Area Examinations, Recordkeeping, and Reporting.
	Article 3	Personal Protection.
	Article 4	First Aid Equipment; Medical Care; Emergency Medical Services Providers.
	Article 5	Fire Prevention and Fire Control.
	Article 6	Surface Equipment.
	Article 7	Travel Ways and Loading and Haulage Areas.
	Article 8	Dust Control.
	Article 9	Electricity.
	Article 10	Explosives and Blasting.
	Article 11	Ground Control.
	Article 12	Auger and Highwall Mining.
	Article 13	Proximity of Mining to Gas or Oil Wells or Vertical Ventilation Holes.

<b>Chapter 10</b>		<b>Virginia Coal Surface Mining Control and Reclamation Act of 1979.</b>
	Article 1	General and Administrative Provisions.
	Article 2	Regulation of Mining Activity.
	Article 3	National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.
	Article 4	Abandoned Mine Reclamation.
	Article 5	Coal Surface Mining Reclamation Fund.

**SUBTITLE III.  
MINERAL MINES.**

<b>PART A</b>		<b>MINERAL MINES GENERALLY.</b>
<b>Chapter 11</b>		<b>Mineral Mine Safety Act.</b>
	Article 1	General Provisions.
	Article 2	Director and Mining Inspectors.
	Article 3	Certification of Mineral Mine Workers.
	Article 4	Licensing of Mineral Mines.
	Article 5	Mine Rescue Teams.
	Article 6	Mine Explosions; Mine Fires; Accidents.
	Article 7	Mine Inspections.
	Article 8	Enforcement and Penalties; Reports of Violations.
	Article 9	Miner Training.
<b>Chapter 12</b>		<b>Permits for Certain Mining Operations; Reclamation of Land.</b>
	Article 1	General Provisions.
	Article 2	Regulation of Mining Activity.
	Article 3	Orphaned Lands.
	Article 4	Minerals Reclamation Fund.
<b>Chapter 13</b>		<b>Mineral Mining Retaining Dams; Adjacent Owners.</b>
	Article 1	Mineral Mining Retaining Dams and Refuse Piles.
	Article 2	Rights of Owners of Land Adjacent to Mineral Mines.

<b>PART B</b>		<b>UNDERGROUND MINERAL MINES.</b>
<b>Chapter 14</b>		<b>Requirements Applicable to Underground Mineral Mines.</b>

<b>PART C</b>		<b>SURFACE MINERAL MINES.</b>
<b>Chapter 15</b>		<b>Requirements Applicable to Surface Mineral Mines.</b>

**SUBTITLE IV.  
GAS AND OIL.**

<b>Chapter 16</b>		<b>Virginia Gas and Oil Act.</b>
	Article 1	General Provisions.
	Article 2	Gas and Oil Conservation.
	Article 3	Regulation of Gas and Oil Development and Production.
	Article 4	Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia; Hydraulic Fracturing.
	Article 5	Replacement of Water by Gas Well Operators.

**SUBTITLE V.  
OTHER SOURCES OF ENERGY; ENERGY POLICY.**

<b>Chapter 17</b>		<b>Other Sources of Energy Generally; Energy Policy.</b>
	Article 1	General Provisions.
	Article 2	Energy and Operational Efficiency Performance-Based Contracting Act.
	Article 3	Energy Policy of the Commonwealth.
	Article 4	Virginia Energy Plan.
	Article 5	Virginia Coastal Energy Research Consortium.
	Article 6	Southwest Virginia Energy Research and Development Authority.
<b>Chapter 18</b>		<b>Wind Energy.</b>
	Article 1	General Provisions.
	Article 2	Virginia Offshore Wind Development Authority.
<b>Chapter 19</b>		<b>Solar Energy.</b>
	Article 1	Virginia Solar Energy Center.
	Article 2	Virginia Solar Energy Development and Energy Storage Authority.
	Article 3	Clean Energy Advisory Board.
<b>Chapter 20</b>		<b>Geothermal Energy.</b>
	Article 1	General Provisions.
	Article 2	Resource Regulation.
<b>Chapter 21</b>		<b>Nuclear Energy.</b>
	Article 1	General Provisions.
	Article 2	Virginia Nuclear Energy Consortium Authority.
	Article 3	Exploration for Uranium Ore.



TITLE 45.2: MINES, MINERALS, AND ENERGY

~~TITLE 45.1 45.2.~~

~~MINES AND MINING~~ MINES, MINERALS, AND ENERGY.

**Drafting note:** Title 45.1 (Mines and Mining) is renamed as Mines, Minerals, and Energy in the proposed title to more accurately describe its scope. Title 67 (Virginia Energy Plan) is repealed in its entirety and its chapters are relocated to proposed Title 45.2 and other titles of the Code of Virginia as appropriate.

Proposed Title 45.2 consists of 21 chapters that are drawn from both existing Title 45.1 and existing Title 67 and are divided into five proposed subtitles: Subtitle I (Administration), Subtitle II (Coal Mining), Subtitle III (Mineral Mines), Subtitle IV (Gas and Oil), and Subtitle V (Other Sources of Energy; Energy Policy).

Title 45.1 has not been completely revised since 1966. The 15 original chapters were repealed in a 1994 revision of the Mine Safety Act.

~~CHAPTER 1.~~

~~GENERAL AND ADMINISTRATIVE PROVISIONS.~~

~~§§ 45.1-1 through 45.1-33. Repealed.~~

**Drafting note:** Repealed by Acts 1994, c. 28, effective July 1, 1994.

~~CHAPTER 1.1.~~

~~MINE RESCUE AND FIRST-AID STATIONS.~~

~~§§ 45.1-33.1 through 45.1-33.6. Repealed.~~

**Drafting note:** Repealed by Acts 1994, c. 28, effective July 1, 1994.

~~CHAPTER 1.2.~~

~~COAL MINE HEALTH AND SAFETY ADVISORY COMMITTEE.~~

~~§§ 45.1-33.7 through 45.1-33.12. Repealed.~~

**Drafting note:** Repealed by Acts 1990, c. 963.

~~CHAPTER 2.~~

~~SURFACE STRUCTURES AND CONDITIONS.~~

~~§§ 45.1-34 through 45.1-39. Repealed.~~

**Drafting note:** Repealed by Acts 1994, c. 28, effective July 1, 1994.

~~CHAPTER 3.~~

~~ROOF, FACE AND RIBS.~~

~~§§ 45.1-40 through 45.1-43. Repealed.~~

**Drafting note:** Repealed by Acts 1994, c. 28, effective July 1, 1994.

~~CHAPTER 4.~~

~~EXPLOSIVES AND BLASTING.~~

~~§§ 45.1-44 through 45.1-53.1 Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 5.  
VENTILATION AND MINE GASES.~~

~~§§ 45.1-54 through 45.1-67. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 6.  
TRANSPORTATION.~~

~~§§ 45.1-68 through 45.1-74. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 7.  
ELECTRICITY.~~

~~§§ 45.1-75 through 45.1-86. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 8.  
MECHANICAL EQUIPMENT.~~

~~§§ 45.1-87 through 45.1-88.1. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 9.  
FIRE PREVENTION, FIRE CONTROL AND MINE DISASTERS.~~

~~§§ 45.1-89 through 45.1-101.2. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 10.  
RIGHTS OF ADJACENT OWNERS.~~

~~§§ 45.1-102, 45.1-103. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 11.  
ENFORCEMENT; VIOLATIONS AND PENALTIES.~~

~~§§ 45.1-104, 45.1-105. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 12.  
OIL AND GAS.~~

~~§§ 45.1-106 through 45.1-144. Repealed.~~

**Drafting note: Repealed by Acts 1982, c. 347.**

~~CHAPTER 13.~~

~~EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH.~~

~~§§ 45.1-145 through 45.1-157. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

~~CHAPTER 14.~~

~~TRANSITION PROVISIONS.~~

~~§§ 45.1-158 through 45.1-161. Repealed.~~

**Drafting note: Repealed by Acts 1994, c. 28, effective July 1, 1994.**

SUBTITLE I.

ADMINISTRATION.

**Drafting note: Proposed Subtitle I is created to logically organize provisions relating to the administration of the Department of Mines, Minerals and Energy and is divided into proposed Chapters 1 (Administration), 2 (Interstate Mining Compact), 3 (Interstate Compact to Conserve Oil and Gas), and 4 (Presumptions Regarding Ownership).**

~~CHAPTER 14.1~~ 1.

ADMINISTRATION.

**Drafting note: Existing Chapters 14.1 (Administration) and 25 (Division of Geology and Mineral Resources) are retained as proposed Chapter 1, Administration.**

Article 1.

Department of Mines, Minerals and Energy.

**Drafting note: Existing Chapter 14. 1 relating to the Department of Mines, Minerals and Energy, is retained as proposed Article 1.**

~~§ 45.1-161.1~~ 45.2-100. Definitions.

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

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

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

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

"State Geologist" means the Commissioner of Mineral Resources and State Geologist appointed pursuant to § 45.2-107.

**Drafting note: The short reference to the term "State Geologist" in existing § 45.1-383 is relocated to this title-wide definitions section.**

~~§ 45.1-161.1:1~~ 45.2-101. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this title the Chief, the Director, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent by certified mail, return receipt

requested, then any subsequent, identical mail or notice that is sent by the Chief, the Director, or the Department may be sent by regular mail.

**Drafting note: Technical change.**

~~§ 45.1-161.2~~ 45.2-102. Department ~~continued~~ of Mines, Minerals and Energy; appointment of Director.

The Department of Mines, Minerals and Energy is ~~continued as an agency established in the executive branch~~ within the Secretariat of Commerce and Trade. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at ~~his~~ the pleasure of the Governor for a term coincident with ~~his own~~ the Governor's term.

**Drafting note: Technical changes.**

~~§ 45.1-161.3~~ 45.2-103. Powers of Department.

The Department shall have the following powers, ~~all~~ and duties, any of which, with the approval of the Director, may be exercised by any division of the Department with respect to matters assigned to that division:

1. To employ the personnel required to carry out the purposes of this title;
2. To make and enter into ~~all contracts and agreements~~ any contract or agreement necessary or incidental to the performance of its duties and the execution of its powers under this title, including, ~~but not limited to~~, reciprocal agreements with responsible officers of other states and contracts with the private sector, the United States, other state agencies, and governmental subdivisions of the Commonwealth;
3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department ~~shall have the power to~~ may comply with any ~~conditions~~ condition and execute any ~~agreements~~ agreement that ~~are~~ is necessary, convenient, or desirable;
4. To ~~promulgate~~ adopt regulations necessary or incidental to the performance of its duties or execution of its powers ~~conferred~~ under this title ~~and other relevant chapters, which or any other provision of law~~. Such regulations shall be ~~promulgated~~ adopted by the Department, the Chief, or the Director, as appropriate, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; and
5. To do all acts necessary or convenient to carry out the purposes of this title.

**Drafting note: The phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In accordance with title-wide conventions, the phrase "shall have the power to" is replaced with "may." With reference to regulations, the term "promulgated" is changed to "adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage and clarity.**

~~§ 45.1-161.4~~ 45.2-104. Powers and duties of Director.

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

**Drafting note: Technical change.**

~~§ 45.1-161.5~~ 45.2-105. Establishment of divisions; division heads.

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Reclamation, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, ~~and~~ a Division of Energy, and a Division of Offshore Wind. The Director may establish other divisions as he deems necessary. Except as provided in ~~§ 45.1-161.15~~ 45.2-508 with respect to the Chief of the Division of Mines, the Director shall appoint persons to direct the various functions and programs of ~~the divisions,~~ each division and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

**Drafting note: Language is updated for clarity.**

~~§ 45.1-161.6~~ 45.2-106. Department to serve as lead agency for inspections undertaken subsequent to the issuance of a permit.

Following the issuance of any permit under Chapter ~~16 10~~ (~~§ 45.1-180~~ 45.2-1000 et seq.) or ~~19 12~~ (~~§ 45.1-226~~ 45.2-1200 et seq.) ~~of this title,~~ the Department shall serve as the lead agency for enforcement of the provisions of the permit. Any other agency ~~which that~~ has reviewed and approved, or not disapproved, a permit application prior to its approval by the Director shall contact the Director or his designee prior to making any routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be made, to schedule the inspection and shall accompany any employee of any agency other than the Department during any inspection by such other agency. However, nothing in this section shall apply in the event of a blackwater discharge, a failure of a waste treatment facilities facility, or ~~other~~ any situation that in the judgment of the State Water Control Board requires an inspection on an emergency or expedited basis.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

## ~~CHAPTER 25.~~

### ~~DIVISION OF GEOLOGY AND MINERAL RESOURCES.~~

#### Article 2.

#### Division of Geology and Mineral Resources.

**Drafting note: Existing Chapter 25, relating to the Division of Geology and Mineral Resources, is retained as proposed Article 2.**

~~§ 45.1-383~~ 45.2-107. Division of Geology and Mineral Resources; State Geologist.

~~In~~ There is established in the Department ~~there shall be~~ a Division of Geology and Mineral Resources. The ~~chief executive and head officer of the Division shall be called~~ Director shall appoint a geologist of established reputation as the Commissioner of Mineral Resources and State Geologist, hereinafter referred to as the State Geologist. The State Geologist shall be appointed by the Director, shall be a geologist of established reputation, and shall receive such compensation as may be provided in accordance with law for the purpose to serve as chief executive and head officer of the Division. As used in this article, unless the context requires a different meaning, "Division" means the Division of Geology and Mineral Resources.

**Drafting note: The short reference to the term "State Geologist" is relocated to the title-wide definitions section, § 45.2-100. Reference to receiving compensation is removed as unnecessary in Code text since all such appointed officers and employees receive compensation unless otherwise noted. The definition of "Division" is applied for the article. Language is updated for modern usage.**

~~§ 45.1-384~~ 45.2-108. General powers and duties of State Geologist.

The State Geologist shall exercise ~~such of the~~ those powers and perform ~~such of the~~ those duties, in relation to mineral resources, geology, and geophysical matters, ~~which that~~ are conferred or imposed upon the Director by the provisions of this title, including powers and duties ~~that involve the exercise of discretion, as may be delegated to him by the Director.~~ The State Geologist may also exercise and perform such other powers and duties as ~~may be~~ are lawfully delegated to him; and such powers and duties as ~~may be~~ are conferred or imposed upon him by law.

**Drafting note: The unnecessary phrase "that involve the exercise of discretion" is stricken and language is updated for modern usage and clarity.**

~~§ 45.1-385~~ 45.2-109. Using or revealing proprietary information ~~gathered.~~

Notwithstanding any provision of law to the contrary, neither the State Geologist, nor any employee or agent of the Division, shall make use of or reveal any proprietary information or ~~statistics~~ statistic gathered from any source for any purpose ~~or purposes~~ other than ~~those that~~ of this chapter, except with the express written consent of the source of such information or ~~statistics~~ statistic. ~~Neither shall the~~ The State Geologist shall not reveal such information to the Director or any other employee of the Department who is not employed within the Division.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-386~~ 45.2-110. ~~Responsibilities~~ Powers and duties of the Division.

The Division ~~shall have for its responsibilities~~ has the following powers and duties ~~the following:~~

1. ~~An examination~~ Examination of the geological formations of the Commonwealth and the resources contained therein, with special reference to both economic products and energy

resources, ~~namely, coals, ores, clays~~ including coal, ore, clay, feldspar, lime, natural gas, oil, cement, sand and gravel, stone, materials suitable for use in building and road construction, mineral waters water, other mineral substances, and geothermal energy resources.

2. ~~An examination~~ Examination of latent resources and waste minerals to determine the best methods of utilizing ~~the same, studies~~ them and study of the soils and weathered residuum as related to parent rock.

3. ~~The maintenance~~ Maintenance of repositories for representative rock and mineral materials from various wells, mines, excavations, and naturally occurring exposures.

4. Maintenance of records and statistics of the mineral industry and geological conditions of the Commonwealth.

5. Performance of ~~such~~ chemical and physical tests, including test borings, to acquire subsurface information relative to mineral deposits masked by soils and rock overburden.

6. ~~An examination~~ Examination of the physical features of the Commonwealth with reference to their practical bearing upon the occupation and well-being of the people.

7. ~~The preparation~~ Preparation of special geological and economic maps and displays to illustrate the resources of the Commonwealth.

8. ~~The preparation~~ Preparation of regular and special reports, with necessary illustrations and maps, ~~which shall that~~ embrace both a general and detailed description of the geology and mineral resources of the Commonwealth.

9. ~~The consideration~~ Consideration of such other scientific and economic questions ~~as that~~ in the judgment of the Director shall be are deemed of value to the people of the Commonwealth.

10. ~~To arrange~~ Arrangement for the investigation and reporting of the geology of the Commonwealth with the Director or the representative of the United States Geological Survey (USGS) in regard to cooperation between the ~~United States Geological Survey~~ USGS and the Department in topographic and geologic work ~~in such instances as may be~~ when deemed necessary and of advantage to the Commonwealth. ~~In all cooperative work, a sum of money shall be expended by the United States Geological Survey at least equivalent to that expended by the Department.~~ The Director may accept or reject the work of the ~~United States Geological Survey~~ USGS.

11. ~~The participation~~ Participation in matters requiring ~~geological and mineral resources,~~ advice and guidance ~~as related to state lands and~~ sought by state agencies and institutions concerning geological and mineral resources as related to state lands.

12. ~~The provision~~ Provision of basic research and the development of methods utilized in the determination of characteristics, structure, and origin for geological formations and economic mineral deposits.

**Drafting note: Language is updated for modern usage, clarity, and consistency and the short reference "USGS" is provided to reduce redundant text. The term "namely" in subdivision 1 is changed to "including" to better reflect the current operation of the Division. Changes are made pursuant to § 1-227, which states that throughout the Code**

any word used in the singular includes the plural and vice versa. The requirement that the USGS expend at least as much money as the Department on cooperative work is removed to reflect the current practice of the Department.

~~§ 45.1-387~~ 45.2-111. Printing and distribution Publication of regular and special reports.

The ~~regular and special~~ Director may direct the publication of the reports of the Division, with proper illustrations and maps, ~~shall be printed as the Director may direct~~, and the reports shall be distributed as the interests of the Commonwealth and of science ~~may~~ indicate.

**Drafting note: Language is updated for clarity and modern usage. The obsolete distinction between "regular" and "special" reports is removed. The requirement to "print" reports is changed to "may direct the publication of the reports" in recognition that most reports are published in electronic form and posted on the Department's website rather than in print form. The term "publication" includes both print and electronic options.**

~~§ 45.1-388~~ 45.2-112. Disposition of materials that have served purpose of the Division.

Materials collected, after having served the purpose of the Division, shall be distributed to the educational institutions of the Commonwealth, ~~in such the manner as that~~ the Director ~~may determine~~ determines to be of the greatest advantage to the educational interests of the Commonwealth.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-389~~ 45.2-113. Immunity from prosecution for trespass.

No criminal action for trespass shall lie against the State Geologist, or any agent or employee of the State Geologist, ~~on account of~~ pursuant to any lawful acts act done in the performance of ~~their~~ his duties, including entry upon the lands of any person ~~or persons~~ for the purpose of performing such duties.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Technical changes are made and language is updated for modern usage.**

## CHAPTER ~~20~~ 2.

### INTERSTATE MINING COMPACT.

**Drafting note: Existing Chapter 20 is retained as proposed Chapter 2, Interstate Mining Compact, with changes made to reflect Code of Virginia style.**

§ 45.2-200. Governor authorized to execute Interstate Mining Compact.

The Governor is hereby authorized to execute, on behalf of the Commonwealth, a compact that is in form substantially as provided in § 45.2-201.

**Drafting note: This section, containing standard provisions relating to the authority of the Governor, is added preceding the interstate compact.**



§ ~~45.1-271~~ 45.2-201. Interstate Mining Compact.

INTERSTATE MINING COMPACT.

ARTICLE I

FINDINGS AND PURPOSES

~~(a)~~ A. The party ~~States~~ states find that:

1. Mining and the contributions thereof to the economy and well-being of every ~~State~~ state are of basic significance.

2. The effects of mining on the availability of land, water, and other resources for other uses present special problems ~~which~~ that properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

3. Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

4. Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from ~~State state~~ State state for all mining ~~operation~~ operations similarly situated.

5. The ~~States~~ states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

~~(b)~~ B. The purposes of this compact are to:

1. Advance the protection and restoration of land, water, and other resources affected by mining.

2. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.

3. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party ~~States~~ states ~~which~~ states that will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

4. Assist the party ~~States~~ states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.

5. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II  
DEFINITIONS

As used in this compact, ~~the term~~:

(~~a~~) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface; and shall not include excavation or grading when conducted solely in aid of ~~on-site~~ onsite farming or construction.

(~~b~~) "State" means a ~~State~~ state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a ~~Territory~~ territory or ~~Possession~~ possession of the United States.

ARTICLE III  
STATE PROGRAMS

Each party ~~State~~ state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV  
POWERS

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, ~~such~~ the Commission shall have power to:

1. Study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such ~~operation~~ operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

2. Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.

3. Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

4. Gather and disseminate information relating to any of the matters within the purview of this compact.

5. Cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact.

6. Consult, upon the request of a party ~~State~~ state and within resources available ~~therefore~~ therefor, with the officials of such ~~State~~ state in respect to any problem within the purview of this compact.

7. Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

8. Study and make recommendations relating to the safeguarding of access to resources ~~which~~ that are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

## ARTICLE V

### THE COMMISSION

~~(a)~~ A. There is hereby created an agency of the party ~~States~~ states to be known as the "Interstate Mining Commission," ~~hereinafter called~~ "(the Commission)." The Commission shall be composed of one commissioner from each party ~~State~~ state who shall be the Governor thereof. Pursuant to the laws of his party ~~State~~ state, each Governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his ~~State~~ state on the Commission. In any instance where a Governor is unable to attend a meeting of the Commission or perform any other function in connection with the business ~~of the business~~ of the Commission, he shall designate an alternate; from among the members of the advisory body required by this ~~paragraph~~ subsection who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.

~~(b)~~ B. The commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to ~~Article IV 3, IV 7, and IV 8~~ subdivision 3, 7, or 8 of Article IV or requesting, accepting, or disposing of funds, services, or other property pursuant to this ~~paragraph~~ subsection, ~~Article V (g), V (h)~~ subsection G or H of this article, or Article VII shall be valid unless taken at a meeting at which a majority of the

total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.

~~(c)~~ C. The Commission shall have a seal.

~~(d)~~ D. The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Commission shall appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission. The Executive Director, the Treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.

~~(e)~~ E. Irrespective of the civil service, personnel, or other merit system laws of any of the party ~~States~~ states, the Executive Director with the approval of the Commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the Commission's functions; and shall fix the duties and compensation of such personnel.

~~(f)~~ F. The Commission may establish and maintain independently or in conjunction with a party ~~State~~ state, a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance, provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States; to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

~~(g)~~ G. The Commission may borrow, accept, or contract for the services of personnel from any ~~State~~ state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

~~(h)~~ H. The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any ~~State~~ state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the Commission pursuant to this ~~paragraph subsection~~ or services borrowed pursuant to ~~paragraph (g) subsection G~~ of this ~~Article~~ article shall be reported in the annual report of the Commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

~~(i)~~ I. The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in

convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party ~~States~~ states.

~~(j)~~ J. The Commission annually shall make to the Governor, legislature, and advisory body required by ~~Article V (a)~~ subsection A of this article of each party ~~State~~ state a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

## ARTICLE VI

### ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The Commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations ~~which~~ that the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party ~~States~~ states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the Commission.

## ARTICLE VII

### FINANCE

~~(a)~~ A. The Commission shall submit to the Governor or designated officer or officers of each party ~~State~~ state a budget of its estimated expenditures for such period as may be required by the laws of that party ~~State~~ state for presentation to the legislature thereof.

~~(b)~~ B. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party ~~States~~ states. The total amount of appropriations requested under any such budget shall be apportioned among the party ~~States~~ states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the Commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party ~~States~~ states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning the value of minerals, ores, and other solid matter mined.

~~(c)~~ C. The Commission shall not pledge the credit of any party ~~State~~ state. The Commission may meet any of its obligations in whole or in part with funds available to it under subsection H of Article V ~~(h) of this compact~~, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under subsection H of Article V ~~(h) hereof~~, the Commission shall not incur any obligation prior to the allotment of funds by the party ~~States~~ states adequate to meet the same.

~~(d)~~D. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

~~(e)~~E. The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party ~~States~~ states and by any persons authorized by the Commission.

~~(f)~~F. Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the Commission.

## ARTICLE VIII

### ENTRY INTO FORCE AND WITHDRAWAL

~~(a)~~A. This compact shall enter into force when enacted into law by any four or more ~~States~~ states. Thereafter, this compact shall become effective as to any other ~~State~~ state upon its enactment thereof.

~~(b)~~B. Any party ~~State~~ state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing ~~State~~ state has given notice in writing of the withdrawal to the Governors of all other party ~~States~~ states. No withdrawal shall affect any liability already incurred by or chargeable to a party ~~State~~ state prior to the time of such withdrawal.

## ARTICLE IX

### EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party ~~State~~ state.

## ARTICLE X

### CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any ~~State~~ state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any ~~State~~ state participating herein, the compact shall remain in full force and effect as to the remaining party ~~States~~ states and in full force and effect as to the ~~State~~ state affected as to all severable matters.

**Drafting note: Technical changes made to conform the compact text to Code style include the reformatting of paragraph designations to subsection designations and the alteration of the capitalization of the word "state." The phrase "of the business," apparently an error, is deleted from subsection A of Article V.**

CHAPTER ~~24~~ 3.

INTERSTATE COMPACT TO CONSERVE OIL AND GAS.

**Drafting note: Existing Chapter 24 is retained as proposed Chapter 3, Interstate Compact to Conserve Oil and Gas, with changes made to reflect Code of Virginia style.**

~~§ 45.1-381~~ 45.2-300. Governor authorized to execute ~~compact~~ Interstate Compact to Conserve Oil and Gas.

The Governor ~~of the Commonwealth~~ is hereby authorized and requested to execute, on behalf of the Commonwealth ~~of Virginia~~ with any other state ~~or states~~ legally joining therein, a compact ~~which shall be~~ that is in form substantially as ~~follows:~~ provided in § 45.2-301.

**Drafting note: Existing § 45.1-381 is divided into two proposed sections to separate two distinct topics, with this section containing only provisions relating to the authority of the Governor and omitting any text that is part of the interstate compact. Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~An~~ § 45.2-301. Interstate Compact to Conserve Oil and Gas.

INTERSTATE COMPACT TO CONSERVE OIL AND GAS.

Article I.

This agreement may become effective within any compacting state at any time as prescribed by that state; and shall become effective within those states ratifying it whenever any three of the ~~States~~ states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II.

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III.

Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, to continue the same in force, to accomplish within reasonable limits the prevention of:

- ~~(a)~~ 1. The operation of any oil well with an inefficient gas-oil ratio.
- ~~(b)~~ 2. The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.
- ~~(c)~~ 3. The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.
- ~~(d)~~ 4. The creation of unnecessary fire hazards.
- ~~(e)~~ 5. The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

~~(f)~~ 6. The inefficient, excessive, or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

#### Article IV.

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

#### Article V.

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or to create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

#### Article VI.

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission (the Commission), the duty of which shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as the Commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of the states and to recommend measures for the maximum ultimate recovery of oil and gas. The Commission shall adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except: ~~(1)~~ ~~By~~ (i) by the affirmative vote of the majority of the whole number of the compacting states represented at any meeting; and ~~(2)~~ (ii) by a concurring vote of a majority in interest of the compacting states at the meeting, such interest to be determined as follows: the vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during that period.

#### Article VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject that state to financial responsibility to the other states joining herein.



## Article VIII.

This compact shall continue in effect until Congress withdraws its consent. Any state joining herein may, upon ~~sixty (60)~~ 60 days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original ~~which~~ that shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party thereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

**Drafting note: Existing § 45.1-381 is divided into two proposed sections to separate two distinct topics, with this section containing only text that is part of the interstate compact and omitting provisions relating to the authority of the Governor. Technical changes made to conform the compact text to Code style include the reformatting of subdivision and clause designations and the alteration of the capitalization of the word "states."**

~~§ 45.1-382~~ 45.2-302. Governor to act as representative to Interstate Oil Compact Commission.

A. The Governor is hereby designated as the official representative of the Commonwealth ~~of Virginia~~ on the Interstate Oil Compact Commission (the Commission) provided for in the compact ratified by this chapter. The Governor shall exercise and perform for the Commonwealth all powers and duties imposed by the compact upon representatives to the ~~Interstate Oil Compact~~ Commission.

B. The Director of the Department of Mines, Minerals and Energy is hereby designated ~~to be~~ as the assistant representative and shall act as the official representative of the Commonwealth on the ~~Interstate Oil Compact~~ Commission when the authority to so act is delegated to him by the Governor.

**Drafting note: Technical changes.**

### CHAPTER ~~14.7:3~~ 4.

#### MINERAL RIGHTS PRESUMPTIONS REGARDING OWNERSHIP.

**Drafting note: Existing Chapter 14.7:3 is retained as proposed Chapter 4, Presumptions Regarding Ownership, with the name changed from Mineral Rights to Presumptions Regarding Ownership to better reflect the content.**

~~§ 45.1-161.311:9~~ 45.2-400. Presumption that no coal, minerals, ~~coals~~, ~~oils~~, ore, or ~~ores~~ exist oil exists in certain lands.

~~In~~ A. Subject to the provisions of subsection B, in any case ~~when~~ in which either (i) a claim to coal, minerals, ~~coals~~, ~~oils~~, ~~ores~~ ore, oil, or subsurface substances; in, on, or under lands in the Commonwealth, ~~it shall be prima facie presumed that no minerals, coals, oils, ores, or subsurface substances existing in, on, or under such lands, except lands lying west of the Blue~~

Ridge Mountains other than in Amherst, Augusta, Bland, Botetourt, Craig, Giles, Nelson, Page, Rockingham, Roanoke, Shenandoah Counties or counties having a population of more than 16,500 but less than 16,900, of more than 32,000 but less than 32,940, of more than 30,000 but less than 31,000, of more than 15,700 but less than 16,000, of more than 60,000 but less than 70,000, of more than 5,000 but less than 5,350, and of more than 26,670 but less than 26,800, of more than 26,300 but less than 27,525, of more than 6,200 but less than 6,750, of 17,500 but less than 18,200, of 56,000 but less than 57,500, of 53,000 but less than 54,500, or in any county having population of more than 21,950 but less than 22,000, or in the case of manganese ores only in counties having a population of more than 21,300 and less than 21,900 or in any county having a population of more than 43,000 but less than 50,000, or (ii) the right to enter such land for the purpose of exploring, mining, boring, and sinking shafts for such coal, minerals, ~~coals~~, ~~oils~~, ~~ores~~ ore, oil, or subsurface substances is derived or reserved by any writing made 35 years or more prior to the institution of the action pursuant to § ~~45.1-161.311:11~~, and 45.2-401, it shall be prima facie presumed that no coal, minerals, ore, oil, or subsurface substances exist in, on, or under such lands, except lands lying west of the Blue Ridge Mountains.

B. The provisions of subsection A shall apply only if (i) for a period of 35 years or more, such right to explore or mine has not for a like period been exercised and for a like period, the person having such claim or right has never been charged with taxes thereon but, all the taxes on the land have been charged to and paid by the person holding the land subject thereto to such right to explore or mine, and for a like period no deed of bargain and sale of such claim or reservation in such mineral rights in the lands embraced in such claim has been recorded in the clerk's office of the county wherein the lands are located; or (ii) when the right to explore and mine has been exercised and, the coal, minerals, ~~coals~~, ~~oils~~, ~~ores~~ ore, oil, and or subsurface substances in or on the land have been exhausted, and the right of mining or boring has been abandoned for a like period of 35 years or more.

**Drafting note:** The list of subsurface resources is reordered for consistency. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity and the word "existing," apparently an error, is corrected to "exist" when it is moved to the final sentence of proposed subsection A. In subsection A, the list of localities that are subject to the statute notwithstanding the exception for lands west of the Blue Ridge Mountains is deleted as an unconstitutional special law in violation of Article IV, Section 14(3) of the Constitution of Virginia. See *H. D. Riddleberger, Jr., et al. v. Chesapeake Western Railway*, 229 Va. 213, 222 (1985) ("[W]e hold unconstitutional those provisions in Code § 55-154 which create exceptions to the general provision that the presumption concerning extinguishing mineral rights does not apply west of the Blue Ridge" (citing former § 55-154, renumbered as § 45.1-161.311:9 by Acts 2019, c. 712)). The *Riddleberger* plaintiffs sought to extinguish mineral rights to land in Augusta County, one of the counties listed by name in the statute. *Id.* at 219. Because "the pattern of inclusion and exclusion evident in the operation of Code § 55-154 as it applies to lands west of the Blue Ridge is without rhyme or reason," *id.* at 221, the court determined that the entire list of exceptions, comprising both named

counties and population brackets, was unconstitutional. Page and Shenandoah Counties, which were added to the statute after *Riddleberger* was filed but before it was decided, are also deleted.

~~§ 45.1-161.311:11~~ 45.2-401. Actions to extinguish certain claims.

A. The owner or owners of the land subject to ~~such~~ a claim or right pursuant to § 45.2-400 separately or jointly may bring an action ~~praying for~~ requesting the extinguishment of such claim or right, ~~to which action shall be made party defendant the~~. The person by whom such claim by such writing was derived or reserved, or his successors in title, shall be made a defendant by name so far as known, ~~and or~~ as defendants unknown, ~~so far as if~~ such successors in title are unknown. The venue for such action shall be as specified in subdivision 3 of § 8.01-261.

B. The court shall allow a period of not less than six months from the time the cause is docketed and set for hearing to elapse ~~within which~~. During such time, the defendant may explore and discover any commercial ~~minerals, coals, oils, ores~~ coal, mineral, ore, oil, or subsurface ~~substances, if any, and in substance~~.

C. In the absence of satisfactory evidence to the contrary, it shall be presumed that ~~there are~~ no commercial ~~minerals, coals, oils, ores~~ coal, mineral, ore, oil, or subsurface ~~substances~~ substance exists in or on the land, and the court shall enter an order declaring the claim or right to be a cloud on the title and releasing the land therefrom and extinguishing ~~the same; but such claim or right~~. However, if the defendant or defendants ~~shall thereupon~~ prove that ~~there are~~ a commercial ~~minerals, coals, oils, ores~~ coal, mineral, ore, oil, or subsurface ~~substances~~ substance exists in or on the land, the court shall require such ~~minerals, coals, oils, ores~~ coal, mineral, ore, oil, or subsurface ~~substances~~ substance to be charged with taxes according to law.

**Drafting note: The list of subsurface resources is reordered for consistency. Technical changes are made, including the addition of subsection designations and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.311:10~~ 45.2-402. Presumption regarding ~~estate of owner of mineral rights~~ use of underground space.

A. Except as otherwise provided in the deed by which the owner of minerals derives title, the owner of minerals shall be presumed to be the owner of the shell, container chamber, passage, ~~and or~~ space opened underground for the removal of the minerals, with full right to haul and transport minerals from other lands and to pass ~~men~~ people, materials, equipment, water, and air through such space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage, or space opened underground by the owner of minerals for ~~the purposes herein described~~ any such purpose. The provisions of this subsection shall not affect any contractual ~~obligations and agreements~~ obligation or agreement entered into prior to July 1, 1981.

B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate, unless expressly excepted by the instrument creating the mineral ownership or lease interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal.

1. Any such shell, container chamber, passage, space, or void opened underground that is within the boundaries of a mine permit issued under this title may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

2. Any such shell, container chamber, passage, space, or void opened underground that is located in a sealed mine for which a mining permit no longer exists may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved only with the consent of the owner of such shell, container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use. In determining whether an offer of compensation is reasonable, a court shall be guided by the compensation set forth in other leases for the use of mine voids as is customary in the area.

C. ~~The provisions~~ No provision of ~~subdivisions~~ subdivision B 1 ~~and or~~ 2 ~~(i)~~ shall ~~not~~ (i) affect any provision contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; (ii) ~~shall not~~ alter any contract entered into prior to July 1, 2012, that provides for the payment of compensation from the lessee to the lessor expressly for the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; ~~and or~~ (iii) ~~shall have no~~ any bearing on or application to any determination of ownership rights in natural gas or coalbed methane.

**Drafting note: The prohibitory language of subsection C is recast in affirmative form consistent with current drafting practice. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the conjunction "and" is replaced with "or" in subsections A and C because the meaning of "or" encompasses both "or" and "and." Other technical changes are made and language is updated for modern usage.**

SUBTITLE II.  
COAL MINING.

**Drafting note: Proposed Subtitle II is created to logically organize provisions relating to coal mining and contains proposed Parts A (Coal Mines Generally), B (Underground Coal Mines), and C (Surface Coal Mines).**

PART A.  
COAL MINES GENERALLY.

**Drafting note: In proposed Subtitle II, proposed Part A (Coal Mines Generally) is created to logically organize provisions relating to coal mines generally and contains the following two chapters: Chapter 5 (Coal Mine Safety Act) and Chapter 6 (Coal Mining Property, Interests, Adjacent Owners, and Dams).**

~~CHAPTER 14.2~~ 5.  
COAL MINE SAFETY ACT.

**Drafting note: Existing Chapter 14.2, designated as the Coal Mine Safety Act, is retained as proposed Chapter 5. As indicated in proposed § 45.2-500, four chapters make up the Coal Mine Safety Act: this chapter plus proposed Chapters 7, 8, and 9. The articles in existing Chapter 14.2 are retained in proposed Chapter 5 as follows: Article 1 (General Provisions), Article 2 (Chief of the Division of Mines of the Department and Mine Inspectors), Article 3 (Certification of Coal Mine Workers), Article 4 (Licensing for Operation of Coal Mines), Article 5 (Mine Rescue Teams), Article 6 (Mine Explosions; Mine Fires; Accidents), Article 7 (Mine Inspections), Article 8 (Enforcement and Penalties; Reports of Violations), Article 9 (Virginia Coal Mine Safety Board), and Article 10 (Miner Training).**

Article 1.  
General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1.**

~~§ 45.1-161.7~~ 45.2-500. ~~Short title~~ Coal Mine Safety Act.

~~This~~ ~~For purposes of this title, this chapter and Chapters 14.3~~ 7 (~~§ 45.1-161.105~~ 45.2-700 et seq.), 8 (§ 45.2-800 et seq.), and ~~14.4~~ 9 (~~§ 45.1-161.253~~ 45.2-900 et seq.) ~~of this title shall be known as the "Coal~~ Coal Mine Safety Act." Act.

**Drafting note: The catchline of this section is changed to more accurately reflect its content. Technical changes are made.**

~~§ 45.1-161.8~~ 45.2-501. Definitions.

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

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine

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

"Active ~~areas~~ area" means ~~all places~~ any place in a mine that ~~are~~ is ventilated, if underground, and examined regularly.

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

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

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

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

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

"Board" means the Board of Coal Mining Examiners established pursuant to Article 3 (§ 45.2-515 et seq.).

"Cable" means (i) a stranded conductor ~~(, known as single-conductor cable),~~ or (ii) a combination of conductors insulated from one another ~~(, known as multiple-conductor cable).~~

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

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

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

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

"Coal Mine Safety Act" or "~~the Act~~" ~~shall mean~~ means this chapter and Chapters ~~14.3~~ 7 (§ ~~45.1-161.105~~ 45.2-700 et seq.), 8 (§ 45.2-800 et seq.), and ~~14.4~~ 9 (§ ~~45.1-161.253~~ 45.2-900 et seq.)

~~of this title, and shall include~~ includes any regulations ~~promulgated~~ adopted thereunder, where applicable.

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

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

"Experienced underground miner" means a person with ~~more than~~ or more of underground coal mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 91-173, as amended by 95-164), and regulations ~~promulgated~~ adopted thereunder.

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

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

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

"Hazardous condition" means ~~conditions~~ a condition that ~~are~~ is likely to cause death or serious personal injury to ~~persons~~ any person exposed to such ~~conditions~~ condition.

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

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

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

"Intake air" means air that has not passed through the last active working place of the split of any working section or any worked-out area, whether pillared or nonpillared, and by analysis contains ~~not less than nineteen and one-half~~ at least 19.5 percent oxygen ~~nor~~ and not more than ~~one-half of one~~ 0.5 percent of carbon dioxide, ~~nor any~~ and does not contain a hazardous ~~quantities~~ quantity of flammable gas ~~nor any or a harmful amounts~~ quantity of poisonous gas.

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

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

"Mine" means any underground coal mine or surface coal mine. Mines that are adjacent to each other and under the same management and ~~which that~~ are administered as distinct units ~~shall be~~ are considered ~~as~~ separate mines. A site ~~shall is not be~~ is not be considered a mine unless the coal extracted or excavated ~~therefrom~~ from it is offered for sale or exchange, or used for any other commercial ~~purposes~~ purpose. The area in which coal is excavated under an exemption to the permitting requirements of § ~~45.1-234 shall~~ 45.2-1009 is not be a mine.

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

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

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

"Miner" means any individual working in a mine.

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

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

"Mine Safety and Health Administration" or "MSHA" means the federal Mine Safety and Health Administration.

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

"Panel entry" means a room entry.

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

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

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

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



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

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

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

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

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

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

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

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

"Working place" means the area of an underground coal mine in by the last open crosscut.

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

**Drafting note: The term "Coal Mine Safety Act" is substituted for references to the chapters that comprise the Coal Mine Safety Act in accordance with the definition of that term. In the definition of "authorized person," the words "or duties" and "or locations" are stricken pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In the definitions of "Coal Mine Safety Act" and "Federal mine safety law," the term "promulgated" with regard to regulations is changed to "adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. In the definitions of "experienced surface miner" and "experienced underground miner," "more than six months" is changed to "six months or more" because the definition of "inexperienced underground miner" means a person with "less than six months" of experience. The change accounts for exactly six months. The language applying the definition of "work area" to proposed Chapter 9 is stricken as unnecessary because this definitions section already applies specifically to that chapter and there are no uses of the term in other chapters of the Act. A definition of the term "Mine Safety and Health Administration" is added and technical changes are made.**

~~§ 45.1-161.9~~ 45.2-502. Safety and health.

In safety and health matters, all miners are to be governed by ~~this the~~ Act and Chapter 18, Article 4 (~~§ 45.1-221~~ 45.2-400 et seq.) of ~~this title~~ Chapter 6, and any other sections of the Code relating to the safety and health of miners and ~~rules and regulations promulgated~~ adopted by the Department.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes to modernize language.**

~~§ 45.1-161.10~~ 45.2-503. Special safety rules.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.11~~ 45.2-504. ~~Persons not permitted~~ Age requirement to work in mines.

A. No person under ~~eighteen~~ 18 years of age shall be permitted to work in or around any mine, and in ~~all cases~~ any case of doubt, the operator, agent, or mine foreman shall obtain a birth

certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources ~~source~~ as to the age of such person.

B. No operator, agent, or mine foreman shall make a false statement as to the age of any person under ~~eighteen~~ 18 years of age applying for work in or around any mine.

**Drafting note: Catchline is changed to better reflect the subject of the section. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.12~~ 45.2-505. Prohibited acts by miners or other persons; miners to comply with law.

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

B. Each miner at any mine shall comply fully with the provisions of ~~this~~ the Act and other mining laws of the Commonwealth, including regulations adopted by the Department or the Board, that pertain to his duties.

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

**Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth. A reference to a warning sign or barricade is added to clause (v) of subsection A and technical changes are made.**

§ ~~45.1-161.13~~ 45.2-506. Safety materials and supplies.

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

**Drafting note: Technical changes.**

§ ~~45.1-161.14~~ 45.2-507. Notifying miners of violations; compliance with Act.

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

B. The operator of any mine or his agent shall operate each of his mines at all times in full conformity with ~~this the~~ Act and any other mining law of the Commonwealth ~~at all times, including regulations adopted by the Department or the Board~~. This requirement shall not relieve any other person who is subject to the provisions of ~~this the~~ Act from his duty to comply with the requirements of ~~this the~~ Act.

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

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

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

**Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made.**

## Article 2.

Chief, ~~Director~~ of the Division of Mines of the Department and Mine Inspectors.

**Drafting note: Existing Article 2, relating to the Chief of the Division of Mines of the Department of Mines, Minerals and Energy and mine inspectors, is retained as proposed Article 2. The reference to the Director is removed from the article title because it does not represent the content of the article. The Director is appointed and his duties are prescribed in proposed Chapter 1.**

§ ~~45.1-161.15~~ 45.2-508. Appointment of Chief.

The Chief of the Division of Mines of the Department of Mines, Minerals and Energy shall be appointed by the Governor. The Chief ~~shall be~~ is the head of the Division of Mines; and ~~shall be~~ is under the direction of and ~~shall report reports~~ to the Director.

**Drafting note: The full name of the Chief is added because this is the appointing language. Technical changes are made.**

§ ~~45.1-161.16~~ 45.2-509. Qualification of Chief.

The Chief shall have a thorough knowledge of the various systems of working and ventilating coal mines, the nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and mine haulage. The Chief shall possess such experience or educational background in management as determined necessary by the Governor and shall be ~~not less than thirty~~ at least 30 years of age.

**Drafting note: Technical changes.**

~~§ 45.1-161.17~~ 45.2-510. Affiliations of Department personnel with labor union, coal company, etc.; interest in coal mine; inspections of mines where inspector previously employed.

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

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

**Drafting note: Technical changes are made.**

~~§ 45.1-161.18~~ 45.2-511. Appointment and general qualifications of mine inspectors.

~~Mine inspectors~~ A. Each mine inspector shall be appointed by the Director.

~~§ 45.1-161.19~~. Qualifications of mine inspectors generally.

B. Each mine inspector shall (i) be ~~not less than twenty-five~~ at least 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued by the Board ~~of Coal Mining Examiners~~.

**Drafting note: Existing §§ 45.1-161.18 and 45.1-161.19 are combined. A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.20~~ 45.2-512. Qualifications of coal mine inspectors ~~of coal mines~~.

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

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

**Drafting note: Technical changes.**

~~§ 45.1-161.21~~ 45.2-513. Duties of the Chief; penalty.

A. The Chief shall (i) supervise execution and enforcement of all laws, including regulations adopted by the Department or the Board, pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth; and the protection of property used in connection therewith; and ~~to~~ (ii) perform all other duties required pursuant to ~~this~~ the Act.

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

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

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

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

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

**Drafting note: Technical changes are made, including organizational changes in subsection A relating to the duties of the Chief, and the regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth. In accordance with title-wide conventions, the phrases "is authorized to" and "shall have the power to" are replaced with "may." The term "Coal Mine Safety Act" is shortened to "the Act" in subsection F pursuant to the definitions section of this chapter.**

~~§ 45.1-161.22~~. Repealed.

**Drafting note: Repealed by Acts 1997, c. 390.**

~~§ 45.1-161.23~~ 45.2-514. Technical specialists.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

Article 3.

Certification of Coal Mine Workers.

**Drafting note: Existing Article 3, relating to the certification of coal mine workers, is retained as proposed Article 3.**

§ 45.1-161.24 45.2-515. Board of Coal Mining Examiners; purpose.

The Board of Coal Mining Examiners (the Board) is established as a policy board in the executive branch of state government. The purpose of the Board is to issue certificates authorizing the performance of certain tasks.

**Drafting note: The Board of Coal Mining Examiners is established, a statement of the purpose of the Board is added, and the language establishing the board is updated to reflect current language preferred in the Code. The remainder of existing § 45.1-161.24 is retained in the following section as proposed § 45.2-516.**

§ 45.2-516. Board membership; terms; meetings.

A. ~~There is hereby created the~~ The Board of Coal Mining Examiners ~~which shall consist shall have a total membership~~ of five members. ~~One member shall be the Chief, and that shall consist of four nonlegislative citizen members and one ex officio member. The four nonlegislative citizen members shall be appointed by the Governor. One appointed member shall be as follows: one who is a miner holding who holds a first-class first-class mine foreman's certificate with at least five years of experience in underground coal mining and who is employed at an underground coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be; one who is a miner with at least five years of experience in surface coal mining and who is employed at a surface coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be an individual holding; one who holds a first-class first-class mine foreman's certificate with at least five years of experience in the operation of underground coal mines, who and is (i) an operator of an underground coal mine, (ii) an officer or director of a corporation operating an underground coal mine, (iii) a general partner of a partnership operating an underground coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of an underground coal mine in the Commonwealth at the time of appointment. One appointed member shall be an individual with; and one who has at least five years of experience in the operation of surface coal mines, who and is (i) (a) an operator of a surface coal mine, (ii) (b) an officer or director of a corporation operating a surface coal mine, (iii) (c) a general partner of a partnership operating a surface coal mine, or (iv) (d) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth at the time of appointment. All appointed Nonlegislative citizen members of the Board shall be residents of the Commonwealth. The Chief or his designee shall serve ex officio with voting privileges.~~

~~B. The terms of office of the appointed members~~ Members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an initial term of two years; one shall be appointed for an initial term of three years; and one shall be appointed for an initial term of four years. Thereafter, the members shall be appointed for terms of four years. The Chief shall serve a term coincident with his term of office. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term. All members may be reappointed.

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

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

D. The Board of Coal Mining Examiners shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at ~~such a~~ place ~~or places~~ and at ~~such~~ times as ~~may be~~ designated by the Chief, and the Board shall remain in session until its work is completed, but no one session of the Board shall continue more than three days.

**Drafting note: All but part of the first sentence of existing § 45.1-161.24 is retained and is combined with the first two sentences of existing § 45.1-161.25. The membership language for the Board of Coal Mining Examiners is updated to reflect current language preferred in the Code, and obsolete language establishing the initial staggering of terms is proposed for deletion. Technical changes are made. The remaining sentence in existing § 45.1-161.25 is retained as proposed § 45.2-517.**

§ 45.2-517. Board compensation; expenses.

~~Out of Nonlegislative citizen members of the Board of Coal Mining Examiners shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All such nonlegislative citizen members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of such members shall be provided by the Coal Mining Examiners' Fund, there shall be paid to each member of the Board, except the established in § 45.2-523. Chief who shall serve without extra pay, reimbursement for expenses and compensation as is provided by § 2.2-2813.~~

**Drafting note: The third sentence in existing § 45.1-161.25 is retained as proposed § 45.2-517. The compensation and expenses language for the Board of Coal Mining Examiners is updated to reflect current language preferred in the Code, the cross-reference to the Coal Mining Examiners' Fund is added, and technical changes are made. The first two sentences of existing § 45.1-161.25 are retained as proposed § 45.2-516. The final sentence about the ex officio member not receiving extra pay is proposed for deletion as unnecessary.**

~~§ 45.1-161.26~~ 45.2-518. Records of the Board of Coal Mining Examiners.

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

**Drafting note: Catchline is shortened.**



~~§ 45.1-161.27~~ 45.2-519. Nominations for ~~the Board of Coal Mining Examiners~~.

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

**Drafting note: Catchline is shortened.**

~~§ 45.1-161.28~~ 45.2-520. Certification of certain persons employed in coal mines; powers and duties of ~~the Board of Coal Mining Examiners~~.

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

1. ~~First class~~ First-class mine foreman;
2. ~~First class~~ First-class shaft or slope foreman;
3. Surface foreman;
4. Preparation plant foreman;
5. Electrical maintenance foreman;
6. Dock foreman;
7. Top person;
8. Underground shot firer;
9. Surface blaster;
10. Hoisting engineer;
11. Electrical repairman;
12. Automatic elevator operator;
13. Mine inspector;
14. Qualified gas detector;
15. Diesel engine mechanic;
16. Diesel engine mechanic instructor;
17. First aid instructor;
18. Advanced first aid;
19. Chief electrician; and
20. General coal miner.

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

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

D. The Board ~~is authorized to promulgate~~ may adopt regulations ~~establishing guidelines for regarding~~ on-site examinations of mine foremen conducted by mine inspectors pursuant to § ~~45.1-161.35~~ 45.2-528.

**Drafting note: The catchline is shortened and updated to reflect the content of the statute. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. In accordance with title-wide conventions, the phrases "shall have the power to" and "is authorized to" are replaced with "may." Technical changes are made to modernize language.**

§ ~~45.1-161.29~~ 45.2-521. Examinations required for Coal Mining Certifications.

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

B. Any certificate issued by the Board shall be valid from the date of issuance unless and until it has been suspended pursuant to § ~~45.1-161.34~~, 45.2-527 or ~~has been~~ revoked by the Board pursuant to § ~~45.1-161.35~~ 45.2-528.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes to modernize language.**

§ ~~45.1-161.30~~ 45.2-522. Performance of certain tasks by uncertified persons; penalty.

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

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

**Drafting note: Subsection B is proposed for deletion because it is an obsolete provision. Technical changes are made.**

~~§ 45.1-161.31 45.2-523. Examination fees; Coal Mining Examiners' Fund.~~

~~A. A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of examination. There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mining Examiners' Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All such fees collected pursuant to § 45.2-524, together with moneys collected pursuant to §§ 45.1-161.32 45.2-525 and 45.1-161.34 45.2-526, shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute credited to the Coal Mining Examiners' Fund. 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 administered by the Chief to cover used solely for the purposes of covering the costs of administering the miner certification, for which purposes such moneys are hereby appropriated.~~

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

~~§ 45.2-524. Examination fees.~~

~~A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of the examination. Fees collected shall be deposited in the Coal Mining Examiners' Fund created by § 45.2-523.~~

**Drafting note: Existing § 45.1-161.31 is divided into two proposed sections to separate two distinct topics. The nonreverting fund language for the Coal Mining Examiners' Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.**

~~§ 45.1-161.32 45.2-525. Replacement of lost or destroyed certificates.~~

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

**Drafting note: Language is updated for modern usage.**

§ ~~45.1-161.33~~ 45.2-526. Reciprocal acceptances of other certifications.

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

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

**Drafting note: Technical changes are made and language is updated for modern usage.**

§ ~~45.1-161.34~~ 45.2-527. Continuing education requirements.

A. The Board of Coal Mining Examiners shall ~~promulgate~~ adopt regulations establishing requirements for programs of continuing education for holders of ~~certifications~~ certificates. The Board shall establish (i) the content and amount of continuing education to be required for maintaining certification; (ii) ~~guidelines~~ parameters for the content of continuing education programs; (iii) procedures for approving continuing education programs and sponsors; (iv) distribution to holders of certificates of appropriate information regarding continuing education requirements; (v) provisions allowing surplus hours of continuing education to be carried forward from one period to meet the requirements for the next period; (vi) procedures for determining compliance with continuing education requirements; (vii) requirements for a certificate holder to provide the Board with his current address and such further administrative information as may be reasonable; and (viii) the length of time a certificate may be suspended for failure to comply with continuing education requirements before such certificate shall be revoked. The Board may also establish by regulation a fee to recover the reasonable costs of reissuing certificates or otherwise ascertaining that the requirements of this section have been satisfied.

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

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A technical change is made to modernize language.**

~~§ 45.1-161.35~~ 45.2-528. Revocation of certificates Board action; suspend, revoke, or take other action.

A. The Board of Coal Mining Examiners may suspend, revoke, or take other action regarding any certificate upon finding that (i) the holder has ~~(i)~~ (a) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in ~~§ 45.1-161.34~~ 45.2-527; ~~(ii)~~ (b) been intoxicated while ~~in~~ on duty ~~status~~; ~~(iii)~~ (c) neglected his duties; ~~(iv)~~ (d) violated any provision of ~~this the~~ Act or any other coal mining law of the Commonwealth; ~~(v)~~ (e) used any controlled substance without the prescription of a licensed prescriber; or ~~(vi)~~ (ii) other sufficient cause exists. The Board shall also suspend, revoke, or take other action regarding the ~~first-class~~ first-class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine ~~for which~~ that he is responsible for implementing, when examined on-site by a mine inspector in accordance with guidelines ~~promulgated~~ adopted by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

B. The Board may act to suspend, revoke, or take other action regarding any certificate upon the presentation of written charges alleging prohibited conduct set forth in subsection A by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such person is employed; or (iii) ~~ten~~ 10 persons employed at the mine at which such person is employed, or, if ~~less~~ fewer than ten 10 persons are employed at the mine, a majority of the employees at the mine. The Board may act on its own initiative to suspend, revoke, or take other action on any certificate for grounds set forth in ~~item~~ clause (i) (a) of subsection A.

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

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

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

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

G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as provided in Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to ~~§ 45.1-161.78~~ 45.2-556, (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to ~~§ 45.1-161.87, 45.2-565~~ shall be conducted within 60 days of the temporary suspension. The Board shall make every effort to hold the hearing within 40 days of the temporary suspension.

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

**Drafting note: The catchline is updated to more accurately reflect the content of the section. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. The term "Coal Mine Safety Act" is shortened to "the Act" in subsection D pursuant to the definitions section of this chapter. Technical changes are made, including in subsection A, where the organization of the list of findings is clarified.**

~~§ 45.1-161.36~~ 45.2-529. Reexamination.

The holder of a certificate revoked pursuant to ~~§ 45.1-161.35~~ 45.2-528 shall be entitled to examination by the Board of Coal Mining Examiners after three months have elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist. However, no person convicted of violating § 45.2-848 or 45.2-849, subsection A of ~~§ 45.1-161.177~~ 45.2-856, or ~~§§ 45.1-161.178, 45.1-161.232, or § 45.1-161.233~~ § 45.2-857 shall be eligible for examination for a period of not less than one year nor more than three years following such conviction, such period to be set by the Board in its discretion at the time of revocation of the certificate.

**Drafting note: Technical changes.**

~~§ 45.1-161.37~~ 45.2-530. General coal miner certification.

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

Mining Examiners shall issue a general coal miner ~~certification~~ certificate upon submittal of a complete application.

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

**Drafting note: An obsolete provision is proposed for deletion and technical changes are made.**

§ ~~45.1-161.38~~ 45.2-531. First-class mine foreman certification.

A. The operator of any coal mine where three or more persons work during any part of a 24-hour period shall employ a mine foreman. The operator shall employ as a mine foreman only ~~persons~~ a person holding a first-class mine foreman certificate. The holder of such ~~a~~ certificate shall present the certificate, or a ~~photostatic~~ copy thereof, to the operator where he is employed; ~~who~~. Such operator shall file the certificate or its copy in the office at the mine; and ~~the operator shall~~ make it available for inspection by interested persons.

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

C. ~~Applicants~~ An applicant for a first-class mine foreman certificate shall be ~~not less than~~ at least 23 years of age and shall have had at least five years of experience in a coal mine ~~(, at least three years of which shall have been in an underground coal mine)~~. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes 85 percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; the nature and properties of noxious, poisonous, and explosive gases; and methods for their detection and control; the requirements of the coal mining laws of ~~this~~ the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners; and the responsibilities and duties of a mine foreman under state law.

D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § ~~45.1-161.104~~ 45.2-579 and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

**Drafting note: The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made,**

**including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.39~~ 45.2-532. Surface foreman certification.

~~A. Applicants~~ An applicant for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience in a coal mine ~~with~~, at least three years of ~~such experience~~ which shall have been in a surface coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of required practical experience. ~~Applicants~~ Each applicant shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making 85 percent or more on the written examination. In addition, each applicant shall pass the examination in gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

B. Each candidate for certification as a surface foreman shall complete, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of ~~§ 45.1-161.101, 45.2-579~~ and pass an examination relating thereto approved by the ~~Board of Coal Mining Examiners~~. No course or examination shall be required of ~~candidates~~ a candidate holding a current higher level of emergency medical certification from the ~~Virginia State~~ Virginia State Department of Health.

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

**Drafting note: An obsolete provision is proposed for deletion and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.40~~ 45.2-533. Chief electrician certification.

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

**Drafting note: In accordance with title-wide conventions, the phrase "shall be authorized to" is replaced with "may."**



~~§ 45.1-161.41~~ 45.2-534. Top person ~~certificate~~ certification.

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

**Drafting note: In accordance with title-wide conventions, the phrase "shall be authorized to" is replaced with "may."**

~~Article 4:~~

~~Certification of Mineral Mine Workers.~~

~~45.1-161.42 through 45.1-161.56. [Repealed.]~~

**Drafting note: Repealed by Acts 1997, c. 390.**

~~Article 5~~ 4.

~~Licensing for Operation of Coal Mines.~~

**Drafting note: Existing Article 5, relating to licensing for operation of coal mines, is retained as proposed Article 4. This article and all subsequent articles are renumbered to reflect the repeal of existing Article 4 in 1997. The article title is revised to better reflect the subject of the article.**

~~§ 45.1-161.57~~ 45.2-535. License required for operation of ~~coal mines~~ a coal mine; term.

A. No person shall engage in the operation of any coal mine within ~~this the~~ the Commonwealth without first obtaining a license for the operation of a coal mine from the Department. A license for the operation of a coal mine shall be required prior to commencement of the operation of a mine. A separate license ~~shall be secured~~ is required for each mine operated. Licenses shall be in ~~such a form as that~~ such a form as the Director ~~may prescribe~~ prescribes. The license shall be posted in a conspicuous place near the main entrance to the mine. The license shall not be transferable, and every change in ownership of a mine shall be reported to the Department as provided in subsection B of ~~§ 45.1-161.62~~ 45.2-540.

B. ~~Licenses~~ Each license for the operation of a coal mines mine shall be valid for a period of no more than one year following the date of issuance ~~and~~. License renewal shall be ~~renewed~~ obtained annually ~~within fifteen days following~~ by the anniversary of the date ~~the mine began operations~~ of issuance.

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

C. Each application for a license for the operation of a coal mine or a renewal or transfer of a license for the operation of a coal mine shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, ~~in the amount of \$180~~ \$350.

**Drafting note: Existing § 45.1-161.57 and the first sentence of existing § 45.1-161.58 are combined. License renewal provisions in subsection B are reworded for consistency with proposed § 45.2-1124. The fee amount is updated from \$180 to \$350 to reflect the current fee as established in the state budget adopted during the 2010 Session of the General Assembly**

and in each subsequent biennial budget. Technical changes are made and language is updated for modern usage.

§ 45.2-536. Coal Mine Operator License Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mine Operator License Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All such fees collected pursuant to the provisions of subsection C of § 45.2-535 shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for 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 of purchasing or commissioning safety equipment, safety training, safety education, or for any expenditure to further the safety program in the mining industry. All expenditures and disbursements from this fund must be approved the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**Drafting note: Provisions in existing § 45.1-161.58 relating to fee collection and fund expenditures are retained as proposed subsection C of § 45.2-535 with the nonreverting fund language for the Coal Mine Operator License Fund updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.**

§ 45.1-161.59 45.2-537. Application for license for the operation of a coal mine.

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

1. ~~Identity regarding~~ The identity of the operator of the mine.

a. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a ~~twenty~~ 20 percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record, and telephone number of the proprietorship.

b. If the operator is a partnership, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a ~~twenty~~ 20 percent or greater ownership interest; (v) the ~~full name~~ names and ~~address~~ addresses of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the

federal mine identification numbers of all other mines in which any partner has a ~~twenty~~ 20 percent or greater ownership interest.

c. If the operator is a corporation, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a ~~twenty~~ 20 percent or greater ownership interest; (v) the full name, address of record, and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) ~~if the corporation is a subsidiary corporation, the operator shall state~~ the full name, address, and state of incorporation of the parent corporation if the corporation is a subsidiary corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a ~~twenty~~ 20 percent or greater ownership interest.

d. If the operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a ~~twenty~~ 20 percent or greater ownership interest; (vi) the full name, address of record, and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the ~~name names and address addresses~~ of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a ~~twenty~~ 20 percent or greater ownership interest;

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

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

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

~~5, 6. [Repealed.]~~

~~7-5.~~ 5. For any license renewal, the annual report required pursuant to § ~~45.1-161.62~~ 45.2-540. When no change has occurred to the information required by subdivision 1, 2, or 3 ~~of this subsection~~, the operator of the mine shall only be required to certify that such information on the current license application is accurate and complete.

B. The application shall be certified as being ~~complete~~ accurate and ~~accurate~~ complete by the applicant; if an individual, ~~or~~ by the agent of a corporate applicant; or by a general partner of

an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within ~~thirty~~ 30 days after the occurrence of any change in the information required by subsection A, the operator shall notify the Department, in writing, of such change.

**Drafting note: Technical changes.**

~~§ 45.1-161.60~~ 45.2-538. Denial or revocation of license for the operation of a coal mine.

A. The Chief may ~~deny an application for, or may~~ revoke a license for the operation of a coal mine or deny an application for the issuance of a license for the operation of a coal mine upon determining that the applicant, the operator, or ~~his~~ the operator's agent has committed violations of the mine safety laws of the Commonwealth ~~which, including regulations adopted by the Department or the Board of Coal Mining Examiners, that~~ demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of ~~§ 45.1-161.233~~ 45.2-849.

C. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of violating subsection A of ~~§ 45.1-161.177~~ 45.2-856 or ~~§ 45.1-161.178~~ 45.2-857.

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

**Drafting note: Technical changes are made, including changes that make the form of subsection A parallel to that of subsections B and C, and the regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth. Language is updated for modern usage.**

~~§ 45.1-161.61~~ 45.2-539. Operating without license; penalty.

A. In addition to any other power conferred by law, the Chief; or his designated representative, ~~shall have the authority to~~ may issue an order closing any coal mine ~~which that~~ is operating without a license. The procedure for issuing a closure order shall be as provided in ~~§ 45.1-161.91~~ 45.2-569.

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

**Drafting note: In accordance with title-wide conventions, the phrase "shall have the authority to" is replaced with "may." Technical changes are made.**

§ ~~45.1-161.62~~ 45.2-540. Annual reports; condition to issuance of license following transfer of ownership.

A. The operator ~~or his agent of every each~~ mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding ~~twelve~~ 12 months, ending with December 31. Such report shall state: (i) the names of the operator, any agent, and ~~their~~ any officers, of the mine; (ii) the ~~quantity~~ amount of coal mined; and (iii) ~~such~~ other information, not of a private nature, ~~as may that~~ from time to time ~~be is~~ required by the Department on ~~blank~~ forms furnished or approved by the Department.

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

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

**Drafting note: Technical changes are made, including the reconfiguration of the phrase "operator or his agent of every mine" to be consistent with language in existing § 45.1-161.14. Language is updated for modern usage.**

§ ~~45.1-161.63~~ 45.2-541. ~~Notices~~ Discontinuance of the working of a mine; notices to Department; resumption of mining following discontinuance.

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

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

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

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

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

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

**Drafting note: The catchline is changed to better reflect the content of the section. "Email address" is added to the information included on notice required by this proposed section. Technical changes are made.**

~~§ 45.1-161.64~~ 45.2-542. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

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

B. Underground coal mine maps shall show:

1. The active workings;
2. All pillared, worked out, and abandoned areas, except as provided in this section;
3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by arrows, and ventilation controls;
4. Contour lines of all elevations;
5. Dip of the coalbed;

6. Escapeways;

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

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

9. ~~Such other~~ Other information as the Chief ~~may require~~ requires.

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

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

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

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

3. The property or boundary lines of the mine;

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

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

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

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

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

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

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

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

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

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

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

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators, and permanent stoppings, and the direction of air currents indicated; and
4. Escapeways designated by means of symbols.

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

G. Surface coal mine maps shall show:

1. ~~Name~~ The name and address of the mine;
2. The property or boundary lines of the active areas of the mine;
3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may approve alternate means of delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;
4. The general elevation of ~~the each~~ each coalbed ~~or coalbeds~~ being mined; and the general elevation of the surface;
5. ~~Either~~ Each producing or abandoned gas or oil and gas wells and well or gas transmission lines line located on the mine property;
6. The location and elevation of any body of water dammed or held back in any portion of the mine: ~~provided;~~ however, such ~~bodies~~ body of water may be shown on overlays or tracings attached to the mine maps;
7. ~~All~~ Every prospect drill ~~holes~~ hole that ~~penetrate the~~ penetrates a coalbed ~~or coalbeds~~ being mined on the mine property;
8. ~~All~~ Every auger ~~and surface mined areas~~ or surface-mined area of ~~the a~~ coalbed ~~or coalbeds~~ being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;
9. All worked out and abandoned areas;



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

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

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

13. The scale of the map; and

14. ~~Such other~~ Other information required by the Chief.

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

1. The location of each working pit ~~or pits~~;

2. Auger or highwall miner workings; and

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

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

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

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

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

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

**Drafting note: In subsections D and I, the name of the United States Coast and Geodetic Survey is updated to its current name: the National Geodetic Survey. In subdivision H 1, language is removed pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subdivision H 3, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.65~~ 45.2-543. When the Chief may cause maps to be made; payment of expense by operator.

A. If the operator, ~~or his agent~~, of any mine ~~shall neglect or his agent neglects or fail fails~~ to furnish to the Chief a copy of any map or extension thereof, as provided in ~~§ 45.1-161.64~~ 45.2-542, the Chief ~~is authorized to~~ may cause a correct survey and map of ~~said such~~ mine, or extension ~~thereof of the map~~, to be made at the expense of the operator of ~~such the~~ mine, the cost of which shall be recovered from the operator as other debts are recoverable by a civil action at law.

B. If at any time the Chief has reason to believe that ~~such a~~ map, or ~~extensions~~ extension thereof, furnished pursuant to ~~§ 45.1-161.64~~ 45.2-542 is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the operator. The expense shall be recovered from the operator as other debts are recoverable by a civil action at law. However, if the map filed by the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

**Drafting note: Subsection designations are added and technical changes are made, including the reconfiguration of the phrase "operator or his agent of any mine" to be consistent with language in existing § 45.1-161.14. In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may."**

~~§ 45.1-161.66~~ 45.2-544. Making false statements; penalty.

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

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

**Drafting note: Technical changes.**

#### ~~Article 6~~ 5.

~~Rescue Crews; Mine~~ Rescue Teams.

**Drafting note: Existing Article 6, relating to mine rescue teams, is retained as Article 5 and renamed to better reflect the terminology used in the article.**

~~§ 45.1-161.67~~ 45.2-545. Mine rescue and first aid stations.

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

**Drafting note: In accordance with title-wide conventions, the phrase "is hereby authorized to" is replaced with "may." Technical changes are made and language is updated for modern usage.**

§ ~~45.1-161.68~~ 45.2-546. Mine rescue ~~crews~~ teams.

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team." In accordance with title-wide conventions, the phrase "is hereby authorized to" is replaced with "may." Technical changes are made.**

§ ~~45.1-161.69~~ 45.2-547. Duty to train ~~crew~~ teams.

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.70~~ 45.2-548. Qualification for ~~crew~~ team membership; direction of ~~crews~~ teams.

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

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity.**

~~§ 45.1-161.71~~ 45.2-549. ~~Crew Team~~ members to be considered employees of the mine where emergency exists; compensation; workers' compensation.

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team."**

~~§ 45.1-161.72~~ 45.2-550. Requirements of recovery work.

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

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

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

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

E. A mine rescue ~~crew team~~ shall immediately return to the fresh air base ~~should if~~ if any ~~crew team~~ member's breathing apparatus ~~malfunction~~ malfunctions or the ~~atmospheric pressure of any apparatus deplete to sixty atmospheres~~ low-oxygen alarm activates.

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and a reference to the depletion of the atmospheric pressure of a breathing apparatus is replaced with a reference to the safety standard currently in use, a low-oxygen alarm. Language is updated for modern usage.**

~~§ 45.1-161.73~~ 45.2-551. State-designated mine rescue teams.

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

**Drafting note: Technical changes are made and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501.**

~~§ 45.1-161.74~~ 45.2-552. Mine Rescue Fund.

The Mine Rescue Fund, referred to in this section as "the Fund," is hereby created as a special nonreverting fund in the ~~office of the State Treasurer~~ state treasury. The Fund shall be established on the books of the Comptroller. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the ~~Mine Rescue~~ state treasury and credited to the Fund. Moneys in the ~~Mine Rescue~~ Fund shall be used only for mine rescue services under such agreements. No interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Mine Rescue Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

**Drafting note: The Mine Rescue Fund statute is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.**

~~§ 45.1-161.75~~ 45.2-553. Inspections; Mine Rescue Coordinator.

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

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

**Drafting note: Technical changes.**

~~§ 45.1-161.76~~ 45.2-554. Workers' compensation; liability.

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

mine disaster or training exercise shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is ~~to be or was~~ conducted.

B. ~~Any~~ No member of a state-designated mine rescue team engaging in rescue work at a mine shall ~~not~~ be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. ~~Any~~ No operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall ~~not~~ be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

**Drafting note: Technical changes are made. The prohibitory language in subsections B and C is recast in affirmative form consistent with current drafting practice.**

#### Article ~~7~~ 6.

Mine Explosions; Mine Fires; Accidents.

**Drafting note: Existing Article 7, relating to mine explosions, mine fires, and accidents, is retained as proposed Article 6.**

§ ~~45.1-161.77~~ 45.2-555. Reports of explosions and mine fires; procedure.

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

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

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

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

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

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

**Drafting note: Technical changes are made, including the replacement of "may" with "shall" in a directive provision in subsection B, the deletion of redundant elements from the phrases "attempted or started" and "until and unless" in subsection B, and the change of**

**plural construction to singular in subsection C pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.78~~ 45.2-556. Operators' reports of accidents; investigations; reports by Department.

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

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

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

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

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

**Drafting note: Technical changes are made, including the replacement of "will" with "shall" in directive provisions throughout the section. Language is updated for modern usage.**

~~§ 45.1-161.79~~ 45.2-557. Reports of other accidents and injuries.

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

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

**Drafting note: Technical changes.**

~~§ 45.1-161.80~~ 45.2-558. Duties of mine inspectors.

Each mine inspector shall:

1. Report to his supervisor immediately, ~~and~~ by the quickest available means; any mine fire, ~~mine or explosion, and or~~ any accident involving that results in loss of life or serious personal injury or death to his supervisor;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury; and to the scene of any mine fire or explosion regardless of whether there is loss of life or serious personal injury. ~~He shall make;~~

3. Make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees; and make a complete report to his supervisor as soon as practicable; ~~and~~

~~3.4.~~ Provide assistance to mine rescue and recovery operations whenever a mine fire, ~~mine or explosion, or other serious~~ any accident that results in loss of life or serious personal injury occurs; ~~and shall monitor~~

5. Monitor the reopening of ~~all mines~~ every mine or ~~sections~~ section thereof that ~~have~~ has been sealed or abandoned on account of mine fire or explosion, serious accident, or any other cause in accordance with a plan approved by the Chief.

**Drafting note: Language is updated for clarity and technical changes are made, including the clarification of the list of a mine inspector's duties and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article ~~8~~ 7.

Mine Inspections.

**Drafting note: Existing Article 8, relating to mine inspections, is retained as proposed Article 7.**

~~§ 45.1-161.81~~ 45.2-559. Frequency of mine inspections.

The Chief shall conduct a complete inspection of ~~every~~ each underground coal mine ~~not less frequently than~~ at least every 180 days; and of ~~every~~ each surface coal mine ~~not less frequently than~~ at least once per year. Additional inspections of coal mines shall be made when deemed



appropriate by the Chief based on an evaluation of risks at each mine, or if requested by miners employed at a mine or the operator of a mine.

**Drafting note: Technical changes.**

§ ~~45.1-161.82~~ 45.2-560. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made ~~not less frequently than~~ at least annually, of the comparative risks at each underground coal mine and surface coal mine. ~~The Department's Department shall prepare its~~ procedural policy ~~shall be prepared~~ with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables ~~to that shall~~ shall be included in the risk assessment measures ~~shall include, but not be limited to:~~ (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners, at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost.

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

**Drafting note: Language is updated for clarity. In subsection A, the phrase "but not be limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The regulations of the Board of Coal Mining Examiners are included in the reference to the mining laws of the Commonwealth and technical changes are made.**

§ ~~45.1-161.83~~ 45.2-561. Review of inspection reports and records.

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

**Drafting note: Language is updated for clarity, including deletion of the redundant phrase "but shall not be required to" as it follows "may." The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Technical changes are made.**

~~§ 45.1-161.84~~ 45.2-562. Advance notice of inspections; confidentiality of trade secrets.

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

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

**Drafting note: The authority of the Chief to allow advance notice of an inspection is specified in subsection A. Technical changes are made.**

~~§ 45.1-161.85~~ 45.2-563. Scheduling of mine inspections.

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

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

**Drafting note: Technical change are made and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501.**

~~§ 45.1-161.86~~ 45.2-564. Denial of entry.

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

**Drafting note: Language is updated for clarity. Technical changes are made.**

~~§ 45.1-161.87~~ 45.2-565. Duties of operator.

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

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

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

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

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

- a. Amphetamines;
- b. Cannabinoids/THC;
- c. Cocaine;
- d. Opiates;
- e. Phencyclidine (PCP);
- f. Benzodiazepines;
- g. Propoxyphene;
- h. Methadone;
- i. Barbiturates; and
- j. Synthetic narcotics.

Samples shall be collected by providers who are certified as complying with standards and procedures set out in the ~~United States~~ U.S. Department of Transportation's rule, 49-~~CFR~~ C.F.R. Part 40. Collected samples shall be tested by laboratories certified by the ~~United States Department of Health and Human Services~~, Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services for collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program; and

2. ~~Review~~ The review of the substance abuse screening program ~~with all miners~~ each miner at the time of employment and annually thereafter.

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

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

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

**Drafting note: Authority of the Chief spelled out in subsections B and C to make those subsections parallel to subsection A. Technical changes are made.**

~~§ 45.1-161.88~~ 45.2-566. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions ~~may~~ might exist; electric installations and equipment; haulage facilities; ~~first aid~~ first aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice, or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place ~~which~~ that he is required to inspect in an underground coal mine. In ~~mines~~ a mine operating more than one shift in a ~~twenty-four hour~~ 24-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.89~~ 45.2-567. ~~Certificates of inspection~~ Inspection reports.

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

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

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

**Drafting note: "Certificate of inspection" is replaced by the term currently in use, "inspection report," and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Technical changes are made.**

Article ~~9~~ 8.

Enforcement and Penalties; Reports of Violations.

**Drafting note: Existing Article 9, relating to enforcement and penalties and reports of violations, is retained as proposed Article 8.**

~~§ 45.1-161.90~~ 45.2-568. Notices of violations.

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

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

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

D. The notice of violation shall be deemed ~~to be~~ the final order of the Department and shall not be subject to review by any court or agency unless, within ~~twenty~~ 20 days following its issuance, the person to whom the notice of violation ~~has been~~ was issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding ~~has been~~ is waived, or if it ~~has failed~~ fails to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of ~~the~~ such decision ~~shall be~~ is entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

**Drafting note: Language is updated for modern usage. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.91~~ 45.2-569. Closure orders.

A. The Director, the Chief, or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine ~~of~~ by all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of ~~this the~~ the Act has occurred, ~~which that~~ creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as ~~may be~~ necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, ~~as provided by~~ in violation of § ~~45.1-161.57~~ 45.2-535; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § ~~45.1-161.90~~ 45.2-568. ~~In addition, a~~

B. ~~A~~ technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

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

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

~~D.~~ E. The issuance of a closure order shall constitute a final order of the Department, and the owner or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within ~~ten~~ 10 days following the issuance of the order, bring a civil action in the circuit court of ~~the city or county~~ county or city in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action, the court shall receive the records of the Department with respect to the issuance of the order; ~~and shall receive any~~ additional evidence at the request of any party. In any proceeding under this section, the Attorney

General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department.

F. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

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

**Drafting note: Language is updated and subsection designations are added for clarity. Technical changes are made.**

~~§ 45.1-161.92~~ 45.2-570. Tolling of time for abating violations.

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

**Drafting note: Language is updated for clarity. Clause designations are added for clarity. Technical changes are made.**

~~§ 45.1-161.93~~ 45.2-571. Injunctive relief.

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage. Technical changes are made.**

~~§ 45.1-161.94~~ 45.2-572. Violations; ~~penalties~~ penalty.

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

**Drafting note: Technical changes.**

~~§ 45.1-161.95~~ 45.2-573. Prosecution of violations.

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

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

**Drafting note: Language is updated for clarity. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrase "shall have the authority to" is replaced with "may."**

~~§ 45.1-161.96~~ 45.2-574. Fees and costs.

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

**Drafting note: Language is updated for clarity.**

~~§ 45.1-161.97~~ 45.2-575. Reports of violations.

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

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

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

C. The operator of ~~every~~ each mine; or his agent; shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site; a notice containing the office addresses and office and home telephone numbers of mine inspectors and other Department



personnel, ~~and office addresses, which may be used to report~~ for the purpose of reporting any violation of ~~this the~~ the Act.

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

**Drafting note: Language is updated and subsection designations are reordered for clarity. Technical changes are made and the phrase "exempt from disclosure" is substituted for "excluded from access" in the Virginia Freedom of Information Act reference in subsection D.**

#### Article ~~10~~ 9.

#### Virginia Coal Mine Safety Board.

**Drafting note: Existing Article 10, relating to the Virginia Coal Mine Safety Board, is retained as proposed Article 9.**

~~§ 45.1-161.98~~ 45.2-576. Virginia Coal Mine Safety Board ~~continued; membership; appointments; expenses; purpose.~~

~~A. The Virginia Mine Safety Board is continued as the~~ Virginia Coal Mine Safety Board (the Board) is established as an advisory board in the executive branch of state government. The purpose of the Board is to advise the Chief on matters relating to the health and safety of persons working in the coal industry in the Commonwealth.

**Drafting note: A statement of the purpose of the Virginia Coal Mine Safety Board is added to reflect current board language preferred in the Code and obsolete language is removed. The remainder of existing § 45.1-161.98 is retained as proposed § 45.2-577.**

§ 45.2-577. Membership; terms; compensation; quorum; meetings.

A. The Virginia Coal Mine Safety Board shall be composed have a total membership of 10 members that shall consist of nine nonlegislative citizen members appointed by the Governor, subject to the confirmation of by the General Assembly, and one ex officio member. Nonlegislative citizen members shall be appointed as follows: three shall to be appointed from a list of individuals nominated by the Virginia Metallurgical Coal and Energy Alliance, Producers Association; three shall to be appointed from a list of individuals nominated by the United Mine Workers of America; and three shall to be appointed from the Commonwealth at large. All Nonlegislative citizen members of the Board shall serve at the pleasure of the Governor and shall be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall ~~receive reimbursement~~ be reimbursed for ~~actual~~ all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

~~§ 45.1-161.99. Meetings of the Virginia Coal Mine Safety Board; notices; quorum.~~

~~C. The Virginia Coal Mine Safety Board shall hold meetings at such times and places as shall be designated by the chairman. The chairman may call a meeting of the Board at any time and shall call a meeting of the Board within twenty 20 days of receipt by the chairman of a written request for a meeting by another member of the Board. Notification of each meeting of the Board shall be given in writing to each member by the chairman at least five days in advance of the meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.~~

**Drafting note: All but the first sentence of existing § 45.1-161.98 is retained and is combined with existing § 45.1-161.99 as proposed § 45.2-577. Language relating to the establishment, membership, etc., of the Virginia Coal Mine Safety Board is updated to reflect current language preferred in the Code, obsolete language is deleted, and technical changes are made.**

~~§ 45.1-161.100~~ 45.2-578. Powers and duties of the Virginia Coal Mine Safety Board.

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

**Drafting note: Technical change.**

~~Article 11~~ 10.

Miner Training.

**Drafting note: Existing Article 11, relating to miner training, is retained as proposed Article 10.**

~~§ 45.1-161.101~~ 45.2-579. First aid training of coal miners.

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

conduct of such training programs and may require the cooperation of operators in making such programs available to their employees.

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

**Drafting note: In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." Technical changes are made.**

~~§ 45.1-161.102~~ 45.2-580. Training programs.

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

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose; or are collected from fees charged to attendees.

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

**Drafting note: Technical change.**

~~§ 45.1-161.103~~ 45.2-581. Additional coal mining training programs.

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

**Drafting note: In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." Language is updated for modern usage and technical changes are made.**

~~§ 45.1-161.104~~. Repealed.

**Drafting note: Repealed by Acts 1997, c. 390.**

CHAPTER 6.

COAL MINING PROPERTY, INTERESTS, ADJACENT OWNERS, AND DAMS.

**Drafting note: Proposed Chapter 6, Coal Mining Property, Interests, Adjacent Owners, and Dams, retains existing Chapters 14.7 (Rights of Owners of Land Adjacent to Coal Mines), 14.7:2 (Trust for Coal Interests), 14.8 (Emergency Seizure of Coal Properties by Commonwealth), and 18 (Coal Mining Refuse Piles, Water and Silt Retaining Dams) as Articles 1 through 4, respectively, and their titles are changed as indicated with each article.**

~~CHAPTER 14.7.~~

~~RIGHTS OF OWNERS OF LAND ADJACENT TO COAL MINES.~~

Article 1.

Rights of Owners of Land Adjacent to Coal Mines.

**Drafting note: Existing Chapter 14.7, relating to the rights of owners of land adjacent to coal mines, is retained as proposed Article 1 of Chapter 6.**

§ ~~45.1-161.310~~ 45.2-600. Consent required before working mine near land of another.

No owner or tenant of any land containing coal within the Commonwealth, shall open or sink, dig, excavate, or work in any mine on such land within five feet of the line dividing such land from that of another person, without the written consent, ~~in writing~~, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion, or remainder, or of the guardian of any such person ~~that may be~~ if the person is under a disability. ~~If any~~ Any person who violates this section, ~~he~~ shall forfeit \$500 to any person injured by such activity and to anyone whose consent is required but not obtained.

**Drafting note: Technical changes are made.**

§ ~~45.1-161.311~~ 45.2-601. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

A. The owner, tenant, or occupant of any land or coal, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense ~~if he such person~~ has reason to believe his property is being trespassed, ~~to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the upon.~~ The purpose of ascertaining such survey shall be to ascertain whether a violation of § ~~45.1-161.310~~ 45.2-600 has occurred; ~~however.~~ However, such person ~~shall~~ is not be entitled to enter the property more often than once a month. Every owner, tenant, occupant, or agent who ~~shall refuse~~ refuses such permission, exploration, or survey, shall forfeit ~~twenty dollars~~ \$20 for each refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is located, before whom any complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant, or agent, to answer such complaint. On the return of the summons executed, and proof that (i) the complainant has a right of entry, and ~~that it~~ (ii) such right has been refused without

sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue ~~his~~ a warrant, commanding the sheriff of the county or city to attend and prevent ~~obstructions and impediments~~ any obstruction or impediment to such entry, exploration ~~and, or~~ survey. The costs of such summons, and a fee of ~~three dollars~~ \$3 to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by the party making the complaint.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~CHAPTER 14.7:2.~~  
~~TRUST FOR COAL INTERESTS.~~

~~Article 1~~ 2.

~~Unknown Trusts for Coal Owners Interests.~~

**Drafting note: Existing Chapter 14.7:2, Trust for Coal Interests, is renamed and retained as proposed Article 2, Trusts for Coal Interests, of Chapter 6. The two articles of existing Chapter 14.7:2 are combined to form this article.**

~~§ 45.1-161.311:3~~ 45.2-602. Petition to establish a trust for missing coal owners.

A. Any ~~person or persons~~ coal owner or lessee ~~with greater~~ who (i) has more than a 50 percent interest in the coal on a particular tract, who is seeking and (ii) seeks to impress a trust upon unknown or missing owners of such tract of coal, may petition the circuit court in the county or city containing the majority of the tract of coal to establish a trust to protect the interests of all coal owners and lessees.

B. The petition shall:

1. Describe the particular tract of coal at issue;

2. List all known owners, missing owners, and unknown owners of interests in such tract of coal and set forth the efforts to locate and identify the unknown or missing or unknown owners of the interests in the tract of coal and such provide any other information known to the petitioner that may could be helpful in identifying or locating the every present owners owner thereof; and

~~2-3.~~ Include the proposed terms of a lease to be offered to the trust, which. Such lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to identify and locate the present owners of such interests.

**Drafting note: Amendments are made for consistent use of "owners" and "lessees" and of "known," "missing," and "unknown" owners. The requirement that the petition describe the tract of coal at issue, implied in the following section, proposed § 45.2-603, is made express in proposed subdivision B 1.**

~~§ 45.1-161.311:4~~ 45.2-603. Advertisement upon filing of petition.

Immediately upon filing ~~of the petition~~ pursuant to § 45.2-602, the petitioner shall advertise a notice of the pending action, including a statement that the action is brought for the purpose of impressing a trust authorizing the execution of a valid and present coal lease for the development

of a tract of coal described in the petition pursuant to the provisions of subsection B of § 45.2-602. Such notice shall appear in a local newspaper of general circulation at least once a week for two consecutive weeks.

**Drafting note: Technical changes are made and a cross-reference to the prior section, proposed § 45.2-602, is added.**

~~§ 45.1-161.311:5~~ 45.2-604. Court may declare trust; trustee sale of lease.

A. If, upon presentation of a petition pursuant to § 45.2-602 to the circuit court ~~of the petition in the county or city containing the majority of the tract of coal~~, it appears to the court that development of the interests in ~~the~~ such tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests, and ~~shall~~ appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.

B. The trustee shall proceed in compliance with the provisions of the order to execute the lease, and after executing the lease shall submit a report thereof to the court.

C. The court shall not authorize a trustee's lease upon the coal interests of any owner whose identity and ~~whereabouts is~~ location are known, ~~or~~ can be ascertained, or ~~is~~ are discovered as a result of the action brought under this article. Any such owner may intervene as a matter of right at any time prior to the judgment approving the trustee's lease, for the purpose of establishing his title to the coal interests. If ~~the~~ such coal owner's claim is established to the satisfaction of the court, the court shall dismiss the action at the plaintiff's cost.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.311:6~~ 45.2-605. Duty of trustee; sale of lease; distribution of funds.

A. The trustee shall collect the proceeds from the sale of the lease and hold and invest such proceeds for the use and benefit of the unknown or missing owners. The court may authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by the trustee for the purpose of searching for the unknown or missing owners.

B. Five years after the date of first commercial production of the coal interests, the proceeds in the trust shall be disposed of pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

**Drafting note: No change.**

~~§ 45.1-161.311:7~~ 45.2-606. Payment of ~~attorney's~~ attorney fees, expenses, and court costs.

All ~~attorney's~~ attorney fees, expenses, and court costs incident to the original proceedings shall be paid by the lessee if a lease is executed, and by the plaintiff if for any reason no lease is executed. Subsequent to entry of judgment, all allowable attorney fees, expenses, and court costs shall be paid out of funds controlled by the trustee.

**Drafting note: Technical changes.**

Article 2.

~~Known Coal Owners.~~

**Drafting note: Articles 1 and 2 of existing Chapter 14.7:2 are combined to form proposed Article 2 of Chapter 6 so this article designation is no longer needed.**

~~§ 45.1-161.311:8~~ 45.2-607. Production of coal by majority interest owner; petition to establish trust for known coal owners.

A. Any ~~person or persons~~ coal owner or lessee ~~with who (i) has~~ at least a two-thirds interest in the coal on a particular tract of land, ~~who is seeking and (ii) seeks~~ to extract such coal; may petition the circuit court in the county or city containing the majority of the tract of coal to establish a trust for known coal owners and lessees.

B. The petition shall:

1. Describe the particular tract of coal at issue;

2. List all known owners of interests in the tract of coal; and

~~2-3.~~ Include the proposed terms of a lease to be offered to the each minority owners, which owner. Such lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to obtain the consent of each minority ~~owners' consent~~ owner to lease ~~their~~ his interest in the coal. The petitioner shall demonstrate to the court that (i) the production of the coal by the petitioner's lessee is of economic benefit to all parties; (ii) if the coal is not produced, ~~then~~ the economic value of the coal is lost and the economic benefit of owning the coal is decreased; and (iii) there is no practical method for dividing such coal among the owners without extracting the coal.

D. Immediately upon filing the petition, the petitioner shall send by registered or certified mail, with a return receipt requested, notice of the petition to the party subject to the petition.

E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to ~~§ 45.1-161.311:5~~ 45.2-604.

F. The court shall escrow or direct the trustee to escrow the proceeds of the lease attributable to each of the minority interests until ~~such time as the~~ such minority owner's claim is established to the satisfaction of the court.

**Drafting note: Amendments are made in subsection A for consistent use of "owners" and "lessees." The implicit requirement that the petition describe the tract of coal at issue is made express in proposed subdivision B 1. Technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

CHAPTER 14.8.

~~EMERGENCY SEIZURE OF COAL PROPERTIES BY COMMONWEALTH.~~

Article 3.

Emergency Seizure of Coal Property by the Commonwealth.

**Drafting note: Existing Chapter 14.8, Emergency Seizure of Coal Properties by Commonwealth, is renamed and retained as proposed Article 3, Emergency Seizure of Coal Property by the Commonwealth, of Chapter 6.**

~~§ 45.1-161.313. "Public uses" defined; declaration of policy.~~

~~A. As used in this chapter, "public uses" means the mining, production and marketing of coal for the purpose of providing and furnishing heat and power to the people of Virginia.~~

~~B. Any imminent threat of substantial interruption or existing substantial interruption of such service is hereby declared to be contrary to the public policy of the Commonwealth, and it is the duty of the government of the Commonwealth to exercise all available means and every power at its command to prevent the same so as to protect its citizens from any dangers, perils, calamities or catastrophes which would result therefrom.~~

**Drafting note: The definition of "public uses" is relocated to the following section, proposed § 45.2-608. The rest of this section is proposed for deletion as an unnecessary and nonstatutory policy statement in accordance with policies of the Code Commission. Subsections A through D, containing a statement of legislative findings and a declaration of policy, have been stricken in accordance with the Code Commission's policy that purpose statements do not have general and permanent application and thus are not to be included in the Code.**

~~§ 45.1-161.312 45.2-608. Mining, "Public uses" defined; mining, etc., of coal essential business; subject to seizure by Commonwealth.~~

~~A. As used in this article, "public uses" means the mining, production, or marketing of coal for the purpose of providing and furnishing heat or power to the people of the Commonwealth.~~

~~B. Any person engaged in the business of the mining, production ~~and~~, or marketing of coal, any portion of which is customarily used in the manufacture of heat ~~and~~ or power, is hereby declared to be engaged in a business essential to the ~~welfare, health and~~ safety, and welfare of the people of ~~Virginia, and, under~~ the Commonwealth. Under the conditions and in the manner ~~hereinafter~~ set forth in this article, such business may be seized and operated by the Commonwealth ~~of Virginia,~~ or any agency created and organized for such purpose, for public uses.~~

**Drafting note: The definition of "public uses" is relocated from existing § 45.1-161.313 as proposed subsection A, and proposed subsection B is divided into two sentences for clarity. The phrase "such business" is substituted for the implied "any person" as the entity subject to seizure. Technical changes are made.**

~~§ 45.1-161.314 45.2-609. Interruption of public uses; proclamation of emergency; seizure.~~

~~When in the judgment of the Governor there ~~is~~ exists a substantial interruption or an imminent threat of a substantial interruption ~~or there exists a substantial interruption~~ of the public~~



uses, he shall proclaim that an emergency exists in ~~this~~ the Commonwealth ~~endangering that endangers the welfare, health and, safety, and welfare~~ of its people and the enjoyment of the public and private property within its borders, ~~and it.~~ It shall then be the duty of the Governor to ~~forthwith~~ seize and operate the property of any person used in the mining, production ~~and, or~~ marketing of coal that ~~he~~ the Governor deems essential for the protection of the ~~welfare, health and, safety, and welfare~~ of the people of ~~Virginia~~ the Commonwealth.

**Drafting note: References to "interruption" and "threat of interruption" are reordered to match the first section in this article. Language is updated for modern usage and the section's single sentence is divided into two sentences for clarity. Technical changes are made.**

~~§ 45.1-161.315~~ 45.2-610. Additional powers of Governor to operate seized properties.

The Governor ~~shall, in addition to his inherent power as Governor, have and~~ may exercise the powers and authority to possess and operate ~~properties of for public uses any person person's property~~ used in the mining, production ~~and, or~~ marketing of coal ~~for public uses~~ in the manner ~~hereinafter~~ provided in this article.

**Drafting note: Language is simplified and updated for modern usage.**

~~§ 45.1-161.316~~ 45.2-611. Virginia Fuel Commission; purpose; membership; compensation; staff; powers and duties; report.

~~To~~ A. The Virginia Fuel Commission (the Commission) may be established by the Governor as a supervisory commission in the executive branch of state government. The purpose of the Commission is to act for and on behalf of the Governor in the enforcement of the powers and duties set forth in this chapter, the Governor may appoint a commission, known and designated as the Virginia Fuel Commission, hereafter the Commission article.

B. The Commission shall ~~be composed~~ have a total membership of three nonlegislative citizen members who are residents of the Commonwealth, one of whom. Each member of the Commission shall be appointed to serve at the pleasure of the Governor, and any vacancy shall be filled in the same manner as the original appointment. One member of the Commission shall be designated by the Governor as chairman. A majority of the members shall constitute a quorum. The meetings of the Commission shall be held at the call of the Governor or the chairman.

C. Members shall receive such compensation for the performance of their duties as fixed by the Governor. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

D. The Department shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

E. The Commission, subject to the approval of the Governor, shall have, in addition to ~~such the~~ powers and duties incident ~~hereto~~ as to this article that the Governor ~~may have and shall delegate~~ delegates to it, the ~~following powers~~ power and duties duty to:

1. ~~To promulgate~~ Adopt such ~~rules and~~ regulations and ~~to issue such orders as may are,~~ in the judgment of the Commission ~~be,~~ necessary to accomplish in full the purposes of this ~~chapter,~~

~~which~~ article. Such regulations and orders shall have the force and effect of law, and the violation thereof ~~shall be~~ is punishable as a Class 1 misdemeanor;

2. ~~To appoint~~ Appoint and employ such officers and personnel as are, in its judgment ~~may be~~, required to carry out the provisions of this ~~chapter and to~~ article; remove, in its discretion, any and all persons serving thereunder; ~~and to~~ fix, subject to approval by the Governor, the remuneration of all such officers and other personnel. Such personnel shall work subject to such safety provisions as are in force on the property at the time of acquisition;

3. ~~To acquire~~ Acquire under the power of eminent domain, or by purchase, lease, or otherwise, all of the property of any person used in the business of the mining, production ~~and, or~~ or marketing of coal, including all lands, tipples, mines, ores, rights-of-way, leaseholds, and every character and type of equipment deemed by the Commission necessary ~~and or~~ or incidental to the continuous mining and production of coal; ~~and~~

4. ~~To operate~~ Operate, manage, and control any ~~such properties~~ property so acquired; ~~to~~ purchase coal, coke ~~and, or~~ or other fuel and ~~to sell the same~~ such fuel, either at retail or at wholesale; ~~to~~ enter into contracts; ~~to~~ allocate and provide for the distribution of coal and other fuels so as to ensure ~~assure~~ a distribution deemed most likely to promote the ~~welfare, health and, safety, and~~ welfare of the people of ~~Virginia~~ the Commonwealth; and ~~to~~ do any and all things necessary ~~and incident~~ and incidental to the mining, production ~~and, or~~ or marketing of coal; and

5. In any year in which the Commission meets, submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. In any year in which the Commission meets, the chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of the next regular session of the General Assembly. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**Drafting note: The language that provides the Governor the option to establish the Virginia Fuel Commission is updated to reflect current language preferred in the Code for commissions, boards, and councils. The provisions of existing § 45.1-161.317, which relate to appointment and compensation of board members, are relocated to subsections B and C. Technical changes are made.**

~~§ 45.1-161.317. Terms and compensation of members of Commission.~~

~~Members of the Commission shall be appointed to serve at the pleasure of the Governor at a compensation fixed by the Governor.~~

**Drafting note: The provisions of this section are relocated to proposed § 45.2-611.**

~~§ 45.1-161.319~~ 45.2-612. Negotiating purchase or lease of coal properties.

~~Whenever the Governor shall have proclaimed~~ proclaims that an emergency exists under this ~~chapter, article~~ and the Governor has appointed appoints the Virginia Fuel Commission

pursuant to § 45.2-611, the Commission shall ~~forthwith~~ make a bona fide attempt to negotiate the purchase or lease of the coal ~~properties~~ property of ~~such persons~~ any person engaged in the mining, production ~~and, or~~ marketing of coal as the Commission deems necessary to accomplish the purposes of this ~~chapter~~ except article. However, where such negotiations cannot be promptly made due to the incapacity of the ~~owners, or one or more of them,~~ owner of the property, or for any other reason, ~~no~~ the Commission is not required to attempt to negotiate for the acquisition of such property ~~need be made~~.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and the section's single sentence is divided into two sentences for clarity. Technical changes are made.**

~~§ 45.1-161.320~~ 45.2-613. Proceedings for condemnation.

A. Proceedings for condemnation ~~hereunder~~ pursuant to this article shall be instituted and conducted in the name of the Commission, and the procedure shall, except ~~insofar~~ as altered ~~herein~~ by the provisions of this article, be carried out as provided in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1.

B. The proceedings for condemnation shall be by petition to the circuit court of the county or city in which the land, property ~~and, or~~ property rights right, or the major portion thereof sought to be temporarily acquired ~~are, is~~ located, ~~which~~. The petition shall set forth with reasonable particularity a description and designation of the ~~interests, rights and~~ interest, right, or property intended to be temporarily taken, the name ~~or names~~ of the ~~owners~~ owner of the interest, right, or property ~~which~~ that is to be taken or affected; and such other facts, ~~if any,~~ as ~~may be deemed~~ the Commission deems necessary ~~by the Commission, in order~~ to give adequate information to the court and all persons in interest, ~~which~~. The petition shall be verified by oath by a member of the Commission.

C. Upon (i) the filing of ~~said~~ the petition described in subsection B in the office of the clerk of the circuit court to which it is addressed, together with as many copies thereof as there are defendants upon which it is to be served, and (ii) the depositing with the clerk for the custody of the court, and for the benefit of the owners of the ~~properties~~ property taken or affected, ~~such~~ an amount of money ~~as~~ that the Commission ~~shall estimate~~ estimates to be just compensation for the property temporarily taken and ~~the~~ any damage done, ~~if any,~~ the Commission shall thereupon seize and take possession, custody, and control of ~~said~~ the property ~~or properties~~. The amount of money ~~so~~ deposited pursuant to clause (ii) shall not limit the amount of just compensation to be allowed to the ~~owners~~ owner of the property. ~~Service of said~~ The service of such petition upon the ~~defendants~~ defendant shall be made in the manner prescribed by the Rules of ~~the~~ Supreme Court of Virginia with respect to Practice and Procedure in Civil Actions ~~at Law~~ in effect at the time the petition is filed.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage, the new designation of subsection C is added in**

**existing subsection B for clarity, and the title of the relevant section of the Rules of Supreme Court of Virginia is updated.**

§ ~~45.1-161.321~~ 45.2-614. Expense of acquiring and operating coal ~~properties~~ property; funds derived from operation.

The expense of acquiring and operating any property ~~or properties~~ acquired under this ~~chapter~~ article shall be paid out of moneys transferred from the general fund ~~of the Commonwealth~~ that are not otherwise appropriated. Such transfer shall be made upon such ~~authorizations~~ authorization as the Governor ~~may prescribe~~ prescribes and shall be credited to the account of the Commission, and all funds and revenues derived from or received as a result of ~~said~~ such operations shall be paid into the state treasury and credited to the same account. Any ~~amounts~~ amount transferred upon authorization of the Governor from the general fund ~~of the Commonwealth~~ shall be ~~known and~~ designated as the "Capital Account" of the Commission; ~~which~~. Such amount, or the residue thereof, together with any surplus that ~~may accrue~~ accrues, shall be returned to the general fund ~~of the Commonwealth~~ in the event of liquidation or, in the absence of liquidation, in such installments and at such times as the Governor ~~may prescribe~~ prescribes.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-161.322~~ 45.2-615. Restoration of property to owner or operator.

A. Whenever (i) the owner or operator ~~of~~ engaged in the business of the mining, production ~~and, or~~ and, or marketing of coal, whose property has been acquired by the Commission, ~~shall notify~~ notifies the Commission in writing, ~~stating that he is in position to, and~~ can and will resume operation and render normal service, and ~~shall satisfy~~ satisfies the Commission of the correctness of such ~~statement~~ notice, or ~~whenever~~ (ii) in the judgment of the Governor, the emergency declared by him no longer exists, the Commission shall restore the possession of the property so acquired ~~by them~~ it to the such owner or operator upon his request. In the event the Commission refuses such restoration of possession, the owner or operator shall have the right to have a ~~rule~~ ruling issued requiring the Commission to show cause why such possession ~~should~~ shall not be restored, and the court shall determine the matter as provided in this section ~~provided~~.

B. Any such owner or operator shall be entitled to receive reasonable, proper, and lawful compensation for the use of the ~~properties~~ so property acquired by the Commonwealth pursuant to this article and shall be paid the same such compensation out of the state treasury. In the event the Commission has acquired such property by purchase, the ~~owners~~ owner or operator from whom it was acquired shall, upon reacquisition ~~shall~~, repay the purchase price less fair compensation for the use of such property. In the event the Commission and the owner or operator are unable to agree upon the amount of such compensation, either party in interest may file a petition in the circuit court for the county or city in which the property is located for the purpose of having the same amount of compensation judicially determined. The court shall, without a jury, hear such

evidence and argument of counsel as ~~may be deemed~~ it deems appropriate and (i) render judgment thereon or ~~may~~ (ii) refer to a commissioner such questions as are considered proper and act upon the commissioner's report as in any other equity proceedings civil proceeding. An appeal shall lie to the Supreme Court from any final judgment of the court rendered upon the provisions of this ~~chapter~~ article.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage. Language is updated to reflect the merger of law and equity pleading in Virginia.**

~~§ 45.1-161.318 45.2-616.~~ Chapter Article subject to provisions of general law.

~~This chapter shall be~~ The provisions of this article are subject to all of the provisions of general law applicable to coal mining operations.

**Drafting note: Technical changes.**

~~CHAPTER 15.  
STRIP MINING.~~

~~§§ 45.1-162 through 45.1-179.~~

**Drafting note: Repealed by Acts 1972, c. 785.**

~~CHAPTER 18.  
COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.~~

Article 4.

Coal Mine Refuse Impoundments and Retaining Dams.

**Drafting note: Existing Chapter 18, Coal Mining Refuse Piles, Water and Silt Retaining Dams, is renamed and retained as proposed Article 4, Coal Mine Refuse Impoundments and Retaining Dams, of Chapter 6.**

~~§ 45.1-221.~~ Repealed.

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

~~§ 45.1-221.1~~ 45.2-617. Definitions.

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

"Coal refuse" means waste material resulting from the mining and screening or processing of coal.

"Coal slurry" means waste water and impurities produced as the result of coal washing and preparation of coal for market, containing a combination of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings.

~~"Impounding water" means to impound~~ "Mine refuse impoundment" means a mine refuse pile that retains water that has been used in carrying out any part of the process necessary in the production or preparation of coal.

~~"Refuse pile"~~ "Mine refuse pile" means a pile of coarse or fine coal refuse that is a result of the mining or screening process that may be stacked, spread, or graded and covers ~~a minimum of~~ 20 acre-feet or more.

"Operator" means any person who operates, controls, or supervises ~~a water, coal slurry, or silt retaining dam or a~~ mine refuse pile impounding water impoundment.

~~"Dam"~~ "Retaining dam" means an artificial barrier or obstruction that is designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure; and has a storage volume of 20 acre-feet or more; ~~or is designed to impound water, coal slurry, or silt~~ (ii) to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

"Silt" means fine particles resulting from a mining operation, suspended in or deposited by water.

"Water" means liquid or slurry ~~as a result of~~ resulting from the processing of coal in mining operations.

**Drafting note: The term "dam" is renamed as "retaining dam" and moved into alphabetical order and the definition is clarified and shortened to reduce redundant text. The adjective phrase "impounding water," which is used in the existing article only to modify "mine refuse pile," is changed to the term "mine refuse impoundment" and incorporates "mine refuse pile" in its definition. The term "refuse pile" is renamed as "mine refuse pile" and moved into alphabetical order. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-222~~ 45.2-618. Design and construction of ~~water, coal slurry, or silt retaining dams~~ dam or mine refuse ~~piles impounding water impoundment~~; designs and other data to be submitted to the Chief.

~~A. New water, coal slurry, or silt~~ Any new retaining ~~dams, dam~~ or mine refuse ~~piles impounding water impoundment~~, or the modification of an existing ~~water, coal slurry, or silt retaining dams~~ dam or mine refuse ~~piles impounding water impoundment~~, shall be designed and constructed by, or under the direction of, a licensed professional engineer, ~~if such retaining dam or~~. Such requirement shall only apply to a mine refuse pile:

1. ~~Is impoundment if it is~~ designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure; and

2. ~~Has~~ has a storage volume of 20 acre-feet or more; or

3. ~~Is designed to impound water or silt~~ (ii) to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

The design, construction specifications, and other related data, including final abandonment plans for such retaining dam or mine refuse impoundment, shall be certified by the licensed professional engineer.

B. No person shall place, construct, enlarge, alter, repair, remove, or abandon ~~such water, coal slurry, or silt~~ any retaining dam or mine refuse ~~piles impounding water impoundment~~ until the

operator has filed an application for and received approval from the Chief for such construction or modification. However, routine repairs that do not affect the engineering design criteria ~~and or~~ safety of an approved ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile impounding water impoundment~~ are not subject to ~~the such~~ application and approval requirements.

**Drafting note: Language is updated for clarity and technical changes are made. The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-617. Requirements that control whether a new or modified impoundment shall be constructed under the direction of a licensed professional engineer are removed as redundant for retaining dams because, as defined, "retaining dam" includes only those structures that already meet the requirements.**

~~§ 45.1-223. Repealed.~~

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

~~§ 45.1-224~~ 45.2-619. Examination of ~~water, coal slurry, or silt~~ retaining ~~dams dam~~ or mine refuse ~~piles impounding water impoundment~~; potentially hazardous ~~conditions condition~~; plans to be submitted by operators.

A. ~~All water, coal slurry, or silt~~ Each retaining ~~dams dam~~ or mine refuse ~~piles impounding water impoundment~~ shall be examined by an authorized person, as defined in ~~§ 45.1-161.8~~ 45.2-501, at least every seven days or as otherwise approved by the Chief. Each such retaining dam or mine refuse pile impoundment shall be examined for compliance with approved design and maintenance requirements, visible structural weakness, volume overload, and other hazards.

B. After each examination, the authorized person, as defined in § 45.2-501, shall promptly record the results of the examination in a book that shall be available at the retaining dam or mine refuse pile impoundment, or other designated location, for inspection by the Chief or his authorized representative. ~~All~~ Each examination ~~records record~~ shall include a description of any potentially hazardous condition found and any action taken to abate ~~any such potentially hazardous condition~~. ~~Records~~ Each record shall be countersigned by the supervisor of the authorized person creating the ~~records record~~. ~~Where~~ If ~~such records disclose a record discloses a potentially hazardous conditions condition~~, the countersigning of the ~~records record~~ shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination was completed, and the person countersigning shall ensure that actions to eliminate or control the potentially hazardous conditions condition have been taken. The operator of the retaining dam or mine refuse pile impoundment may authorize ~~another a person with equivalent who possesses authority equivalent to that~~ of the supervisor to act in the supervisor's temporary absence to read and countersign the ~~records record~~ and ensure that action is taken to eliminate the potentially hazardous conditions condition disclosed in the ~~records record~~.

C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe design capacity of ~~the a retaining dam or mine refuse pile impoundment,~~ such the examination required by subsection A shall be made more often as required by the Chief or his authorized representative.

D. When a potentially hazardous condition exists, the operator shall immediately initiate procedures to:

1. Remove all persons from the area ~~which may~~ that can reasonably be expected to be affected by the potentially hazardous condition;
2. Eliminate the potentially hazardous condition; and
3. Notify the Chief and other governing agencies by the quickest available means following the protocol established in the site's ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan pursuant to § 45.2-620.

E. The operator of each coal site on which a ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile impounding water~~ impoundment is located shall submit a plan for carrying out the requirements of ~~§ 45.1-222 45.2-618~~ and subsections A, B, C, ~~and~~ through D for approval by the Chief. The plan shall include:

1. The designs, construction specifications, and other related data required ~~under~~ pursuant to § 45.1-222 45.2-618;
2. A schedule and procedures for inspection of the retaining dam or mine refuse impoundment by a qualified person under normal conditions and under conditions that could cause flooding;
3. Procedures for evaluating a potentially hazardous ~~conditions~~ condition;
4. Procedures for removing all persons from the area ~~which may~~ that can reasonably be expected to be affected by the potentially hazardous ~~conditions~~ condition;
5. Procedures for eliminating the potentially hazardous ~~conditions~~ condition;
6. Procedures for notifying the Chief and other governing agencies; and
7. Any additional information ~~which~~ that may be required by the Chief.

F. Before making any changes or modifications in the approved plan, the operator shall obtain approval of such changes or modifications from the Chief.

G. The Chief shall notify the operator in writing whether the operator's plan is approved or disapproved. ~~If he~~ the Chief disapproves the plan, he shall provide the operator with his written objections thereto and his required amendments.

**Drafting note: The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-617. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage and clarity.**



~~§ 45.1-224.1~~ 45.2-620. ~~Emergency Notification and Evacuation Plan~~ notification and evacuation plan.

A. On or before July 1 of each year, the operator of any ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment that meets the criteria of subsection A of ~~§ 45.1-222~~ 45.2-618 shall submit to the Chief an ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan. If there are no changes to a plan at the time the updated plan is due, the operator may submit a notice that there are no changes to the plan in lieu of submitting an updated plan to the Chief.

B. The plan and attendant maps, appropriate for the level of hazard of the retaining dam or mine refuse pile impoundment, shall describe the ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment and shall include:

1. The name and address of the operator owning, operating, or controlling the structure-;
2. The identification numbers of the structure as assigned by the Chief, ~~the Mine Safety and Health Administration~~ MSHA, and the Office of Surface Mining-;
3. The location of the structure indicated on (i) a current United States Geological Survey ~~7 1/2-minute~~ 7.5-minute or 15-minute topographic quadrangle map, (ii) an equivalent digital map, or (iii) a topographic map of a scale approved by the Chief-;
4. The name and size in acres of the watershed in which the structure is located-;
5. A description of the physical and engineering properties of the foundation materials on which the structure is to be or was constructed-;
6. The location of existing or proposed instrumentation-;
7. A statement of the runoff attributable to the probable maximum precipitation of six-hour duration and the calculations used in determining such runoff-;
8. A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff-;
9. ~~The locations~~ location of any surface and or underground coal mines mine, including the depth and extent of such workings, under and within 1,000 feet around the perimeter of the retaining dam or mine refuse impoundment, and the area of impounded material, shown at a scale not to exceed one inch equals 1,000 feet-;
10. A map depicting the impoundment area, and downstream and adjacent drainways, streambeds, roads, structures, and other public areas that ~~might could~~ could be affected ~~should if~~ if an accident were to occur at the impoundment. The map shall be at a scale not to exceed one inch equals 1,000 feet-;
11. ~~The name~~ names of persons who are familiar with the plan protocols and can take actions necessary to eliminate the hazard and minimize the impact to miners, the community, and the environment-;
12. A location where a command and communication center ~~can~~ could be established for the company team and emergency response personnel to report during an impoundment event-;

13. The location of potential evacuation centers where affected parties ~~may~~ could take shelter during an impoundment event;

14. An emergency contact list for agencies that would respond to an impoundment event; and

15. A list of miners employed at the site and businesses, community buildings, residences, and other occupied buildings within the impact zone that could be affected by an impoundment event, or other effective means of identifying such impact zone.

**Drafting note: The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-617. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Language is updated for clarity and technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-225. Repealed.~~

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

#### PART B.

#### UNDERGROUND COAL MINES.

**Drafting note: In proposed Subtitle II, proposed Part B (Underground Coal Mines) is created to logically organize provisions relating to underground coal mines and contains the following two chapters: Chapter 7 (Requirements Applicable to Underground Coal Mines; Mine Construction) and Chapter 8 (Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc.).**

#### CHAPTER ~~14.3~~ 7.

#### REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; MINE CONSTRUCTION.

**Drafting note: Articles 1, 2, 3, 5, 6, 7, 8, 15, and 16 of existing Chapter 14.3 are reordered and retained as Articles 1 through 9 of proposed Chapter 7, which is renamed as Requirements Applicable to Underground Coal Mines; Mine Construction to better reflect its content. The remainder of existing Chapter 14.3 is designated as proposed Chapter 8. The nine articles in this proposed chapter are as follows: Article 1 (General Provisions), Article 2 (Additional Duties of Certified Persons and Other Miners), Article 3 (Proximity of Mining to Gas or Oil Wells or Abandoned Areas), Article 4 (Roof, Face, and Rib Control), Article 5 (Explosives and Blasting), Article 6 (Mine Openings and Escapeways), Article 7 (Hoisting), Article 8 (Transportation), and Article 9 (Surface Areas).**

#### Article 1.

#### General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1 of Chapter 7.**

~~§ 45.1-161.105~~ 45.2-700. Scope of chapter.

~~This~~ ~~The provisions of this chapter and Chapter 8 (§ 45.2-800 et seq.) shall be applicable~~ apply to the operation of any underground coal mine in the Commonwealth; and shall supplement the provisions of Chapter ~~14.2~~ 5 (~~§ 45.1-161.7~~ 45.2-500 et seq.).

**Drafting note: Language is updated for modern usage and clarity. The provisions of this chapter are made to apply to both portions of existing Chapter 14.3, which is divided into proposed Chapters 7 and 8.**

~~§ 45.1-161.106~~ 45.2-701. Regulations governing conditions and practices at underground coal mines.

A. The Chief ~~shall have authority~~ may, after consultation with the Virginia Coal Mine Safety Board, created by Article 9 (§ 45.2-576 et seq.) of Chapter 5, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, ~~to promulgate rules and adopt~~ regulations necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth. Such ~~rules and~~ regulations governing underground coal mines shall relate to:

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

2. Safety and health standards for the protection of the life, health, and property of, and the prevention of injuries to, ~~persons~~ any person involved in or likely to be affected by any underground coal mining ~~operations which~~ operation. Such standards shall include ~~but not be limited to~~ the control of dust concentration levels; the use of respiratory equipment and ventilating systems; the development and maintenance of roof control systems; the handling of combustible materials and rock dusting; the installation, maintenance, and use of electrical devices, equipment, cables, and wires; fire protection, including equipment, emergency evacuation plans, emergency shelters, and communication facilities; the use and storage of explosives; and the establishment and maintenance of barriers in underground coal mines around gas and oil wells. The Chief ~~is authorized to promulgate~~ may adopt regulations setting forth specific occupations and conditions ~~for~~ under which a miner ~~will be~~ is prohibited from working alone underground; and

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

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

**Drafting note: In accordance with title-wide conventions, the phrases "shall have the authority to" and "is authorized to" are replaced with "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any**

word used in the singular includes the plural and vice versa. A cross-reference to the creation of the Virginia Coal Mine Safety Board is added. In subdivision A 2, "but not be limited to" is removed following the term "include" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."

§ ~~45.1-161.107~~ 45.2-702. Standards for regulations.

In ~~promulgating rules and~~ adopting regulations pursuant to § ~~45.1-161.106~~ 45.2-701, the Chief shall consider:

1. Standards utilized and generally recognized by the coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under ~~this~~ the Act and other mine safety laws; and
5. Such other criteria as ~~shall be~~ are necessary for the protection of the safety and health of miners and other persons or property likely to be endangered by underground coal mines or related operations.

**Drafting note: The term "promulgating regulations" is changed to "adopting regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage and clarity.**

#### Article ~~16~~ 2.

##### Additional Duties of Certified Persons and Other Miners.

**Drafting note: Existing Article 16 of Chapter 14.3, relating to additional duties of certified persons and other miners, is retained as proposed Article 2 of Chapter 7.**

§ ~~45.1-161.249~~ 45.2-703. Duties of mine foreman.

A. The mine foreman shall see that the requirements of ~~this~~ the Act that pertain to his duties and to the health and safety of the miners are fully complied with at all times.

B. The mine foreman shall see that every miner employed to work in such mine, before beginning work therein, is aware of all hazardous conditions incident to his work in such mine. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

**Drafting note: Technical changes.**

§ ~~45.1-161.250~~ 45.2-704. Employment and duties of top persons; plan for excavation of shaft or slope.

A. During the construction or modification of any shaft or slope mine, the person engaged in the actual construction or modification of such mine shall employ one or more ~~certified~~ top persons certified pursuant to § 45.2-534. It ~~shall be~~ is the duty of such top person to examine for proper and safe practices and materials used during the construction or modification of a shaft or

slope mine. Such duties shall at all times be performed in the immediate vicinity of the shaft or slope under construction.

B. Prior to commencing the excavation of any shaft or slope, the operator shall submit to the Department a copy of the plan that includes the following: (i) the name and location of the mine and ~~slope or shaft~~ shaft or slope; (ii) a description of the work and methods to be used in the construction of the ~~slope or shaft~~ shaft or slope; (iii) a description of the methods to be used to ensure wall and roof stability; (iv) a description of the system of ventilation to be used, including procedures for evacuation of the ~~slope or shaft~~ shaft or slope if a fan stoppage ~~occur~~ occurs; (v) details of hoisting equipment to be used; and (vi) such other information as ~~may be required by~~ the Chief requires. The excavation of a such shaft or slope shall not begin until the plan is approved by the Chief.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity. A cross-reference regarding the certification of top persons is added in subsection A.**

§ ~~45.1-161.251~~ 45.2-705. Employment of inexperienced underground miners.

A. ~~Inexperienced~~ An inexperienced underground ~~miners~~ miner shall be required to work with an experienced underground miner for a total of at least six months following the start of underground employment. However, an experienced surface ~~miners~~ miner shall only be required to work with an experienced underground miner for a total of at least ~~sixty~~ 60 days following the start of underground employment.

B. No inexperienced underground miner shall be assigned, ~~or~~ allowed, or ~~be~~ required to perform work alone in any area where there is ~~the~~ a potential ~~to endanger~~ danger to his safety unless he can communicate with others, ~~can~~ or be heard; or ~~can~~ be seen.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.252~~ 45.2-706. Employment of authorized persons.

No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine ~~who~~ if such miner is not an authorized person capable of determining the safety of the roof and ribs of ~~the~~ a working ~~places~~ place. Such miner shall also be capable of detecting the presence of explosive gas and shall ~~be compelled to~~ undergo examination by a mine inspector or other ~~instructors who are~~ instructor certified by the Board of Coal Mining Examiners and authorized by the Chief to determine ~~his~~ the miner's fitness to detect explosive gas before being permitted to have charge of ~~machines~~ a machine in such ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

Article 3.

Proximity of Mining to Gas ~~and~~ or Oil Wells, ~~and~~ or Abandoned Areas.

**Drafting note: Existing Article 3, relating to proximity of mining to gas or oil wells or abandoned areas, is renamed and retained as proposed Article 3 of Chapter 7.**

§ ~~45.1-161.121~~ 45.2-707. Mining in proximity to gas ~~and~~ or oil wells.

A. Except as provided in subsection D, an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine; within 500 feet of any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings shall file with the Chief a notice that such mining is taking place or will take place. The notice shall include a copy of parts of the maps and plans required under § ~~45.1-161.64~~ which 45.2-542 that show the mine workings ~~and~~ or projected mine workings ~~which~~ that are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to § 45.2-1604. Each notice shall contain a certification made by the operator that he has complied with the provisions of this subsection.

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

C. The Chief shall ~~promulgate~~ adopt regulations ~~which~~ that prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the process of being drilled into the projected mine workings. Each operator who files such a petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing to object to any petition filed under this section. Such ~~objections~~ objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

D. Procedures for safely mining in proximity to or through a coalbed methane ~~wells~~ well or a vertical ventilation ~~holes~~ hole developed for methane drainage in a mine shall be addressed in the bleeder system plan for that mine required by § ~~45.1-161.220~~ 45.2-837.

**Drafting note: The term "promulgate regulations" is changed in subsection C to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A cross-reference to the section addressing the appointment of the Gas and Oil Inspector is added in subsection A, and technical changes are made.**

~~§ 45.1-161.122~~ 45.2-708. Mining in proximity to an abandoned-areas area.

A. The mine foreman shall ensure that boreholes are drilled in each advancing working place that is (i) within 50 feet of an abandoned-areas area in the mine as shown by ~~surveys~~ a survey made and certified by a registered engineer or surveyor, (ii) within 200 feet of an abandoned-areas area in the mine ~~which have~~ that has not been certified as surveyed, or, (iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed unless the adjacent area of the mine has been pre-shift examined ~~pursuant to § 45.2-826~~. ~~The boreholes~~ Each borehole shall be at least 20 feet in depth ~~and, shall~~ always be maintained not less than 10 feet in advance of the face, and ~~shall be~~ not more than eight feet apart from an adjacent borehole unless approved by the Chief. One borehole shall also be drilled for each cut ~~on-sides~~ any side of the active workings ~~that are~~ is being driven toward, and in proximity to, an abandoned mine or part of a mine ~~which may that might~~ contain flammable explosive or hazardous gas or which that is filled with water.

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

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

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

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

F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole, or other hole drilled from the surface or from an overlying or underlying ~~mines~~ mine, or prior to drilling from into any portion of the same active mine, the operator shall submit a plan to the Chief

addressing: (i) the purpose of the hole, (ii) information about any abandoned ~~mines~~ mine that the hole ~~may~~ might penetrate, (iii) procedures for ~~withdrawal~~ withdrawing or limiting the number of miners from the mine or affected area during penetration, (iv) casing details and procedures ~~to prevent~~ for preventing water inflow and air transfer from the hole into the active mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such other information as the Chief may require. The drilling of such hole shall not begin until the plan is approved by the Chief.

G. The provisions of this section shall not apply to a gas-wells well, coalbed methane-wells well, or vertical ventilation-holes hole.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. The phrase "flammable gas" in subsection A is replaced with "explosive or hazardous gas" for consistency with the reference in subsection B to "hazardous quantities of" certain gases. The final sentence in subsection F is designated as subsection G.**

#### Article ~~2~~ 4.

#### Roof, ~~Rib~~ Face, and ~~Face~~ Rib Control.

**Drafting note: Existing Article 2, relating to roof, face, and rib control, is renamed and retained as proposed Article 4 of Chapter 7.**

§ ~~45.1-161.108~~ 45.2-709. Roof, ~~ribs~~ face, and ~~faces~~ ribs to be secure.

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

B. The mining method ~~of mining~~ followed that the mine operator follows shall not expose ~~miners~~ any miner to a hazardous ~~conditions~~ condition caused by the excessive ~~widths~~ width of ~~rooms and entries~~ a room or entry, a faulty pillar-recovery ~~methods~~ method, or any other hazardous mining ~~methods~~ method or working ~~conditions~~ condition.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.109~~ 45.2-710. Roof control plans.

A. Each underground coal mine shall have a roof control plan approved by the Chief. Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib support materials; (iv) instruction for the installation of temporary and permanent roof supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that demonstrate the width of ~~openings~~ each opening, each roof support installation ~~sequences~~ sequence, and each pillar recovery ~~sequences~~ sequence; and (vii) any additional requirements deemed necessary by the Chief. The initial submission of any roof control plan shall include maps of mine projections, overlying and



underlying mine workings, coal contours, and surface contours. If changes are to be made in the mining system that necessitate any change in the roof control plan, the plan shall be revised and approved by the Chief prior to implementing the new mining system.

B. The Chief shall, where he deems necessary, prescribe adequate minimum standards for systematic support of mine roof, suitable to the roof conditions and mining system of each mine. Such standards shall be incorporated into an approved roof control plan for the mine.

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

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

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

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

G. This section shall not apply to any roof control ~~systems~~ system installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face, and ribs.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The final sentence of subsection B is moved to the end of the section and designated as subsection G. Language is updated for modern usage.**

~~§ 45.1-161.110~~ 45.2-711. Instruction of miners.

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

**Drafting note: Technical changes.**

~~§ 45.1-161.111~~ 45.2-712. Copies of plan.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is reworded for clarity.**

~~§§ 45.1-161.112, 45.1-113~~. Repealed.

**Drafting note: Repealed by Acts 1996, c. 774, effective April 6, 1996.**

~~§ 45.1-161.114~~ 45.2-713. Automated temporary roof support systems.

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

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

§ ~~45.1-161.115~~ 45.2-714. Supplies of materials for supports.

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

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity and terms are reordered for consistency.**

§ ~~45.1-161.116~~ 45.2-715. Examination and testing of roof, face, and ribs.

A. The operator, or his agent, shall instruct ~~all miners~~ every miner on how to ~~make visual examinations~~ visually examine and conduct sound and vibration testing of roof, face, and ribs.

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

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

hazardous ~~conditions~~ condition and corrective actions taken shall be recorded in the on-shift record book at the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.117~~ 45.2-716. Mapping of roof falls.

~~Unplanned~~ Any unplanned roof falls fall that ~~are~~ is required to be reported in accordance with ~~§ 45.1-161.78~~ 45.2-556 shall be marked on a map maintained at the mine to indicate the specific location of the fall.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.118~~ 45.2-717. Unsafe conditions.

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

B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other work in the area where such conditions exist until the conditions have been corrected by taking down loose material or securely supporting the roof, face, or ribs pursuant to subsection B of § 45.2-715.

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

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity and a cross-reference is added.**

~~§ 45.1-161.119~~ 45.2-718. Removal of supports.

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

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

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.120~~. Repealed.

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

## Article 5.

### Explosives and Blasting.

**Drafting note: Existing Article 5, relating to explosives and blasting, is retained as proposed Article 5 of Chapter 7.**

~~§ 45.1-161.126~~ 45.2-719. Surface storage of explosives and detonators.

A. ~~Separate~~ Two or more surface magazines shall be provided for the storage of explosives and the separate storage of detonators.

B. ~~Surface magazines~~ Every surface magazine for storing and distributing explosives in ~~amounts~~ an amount exceeding 150 pounds shall be:

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

2. Provided with doors that are constructed of ~~three-eighth inch~~ three-eighth-inch steel plate. Such doors shall be lined with a two-inch thickness of wood, or the equivalent;

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

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

5. Provided with properly screened ventilators;

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

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded if constructed of metal.

C. ~~Surface magazines~~ A surface magazine for storing detonators need not be ~~bulletproof~~ bullet-resistant, but ~~they it shall conform to~~ it shall comply with the other provisions of subsection B regarding the storage of explosives.

D. ~~Explosives in amounts weighing a total of no more than 150 pounds or less, or 5,000 detonators numbering 5,000 or less fewer,~~ shall be stored (i) in accordance with preceding the standards set forth in subsection A, B, or C or (ii) in a separate locked box-type ~~magazines magazine. Box-type magazines~~ A box-type magazine may also be used as a distributing ~~magazines magazine when quantities do the weight of the explosives or the number of detonators does not exceed those mentioned. Box-type magazines the limits set forth in this subsection. Every box-type magazine shall be strongly constructed strongly of two-inch hardwood or the equivalent. Metal magazines~~ Every metal magazine shall be lined with nonsparking material. No magazine shall be placed (a) in a building containing oil, grease, gasoline, wastepaper, or other highly flammable material; nor shall a magazine be placed or (b) within 20 feet of a stove, furnace, open fire, or flame.

E. ~~Magazines~~ No magazine shall be located not placed less than 300 feet from any mine opening. However, ~~in the event that if~~ if a magazine cannot be practicably located at such a distance, ~~a magazine it~~ it may be located less than 300 feet from ~~any~~ a mine opening, if it is sufficiently

barricaded and is approved by the Chief. Unless approved by the Chief, ~~magazines~~ no magazine shall ~~not~~ be located closer to an occupied ~~buildings~~ building, public ~~roads~~ road, or passenger ~~railways~~ railway than ~~allowed~~ the distance recommended in the "American Table of Distances for Storage of Explosive Materials:" published by the Institute of Makers of Explosives.

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

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

H. If ~~the~~ an explosives magazine is illuminated electrically, each lamp shall be vapor-proof ~~lamps shall be~~ and installed and wired so as to ~~present minimum~~ minimize any fire and or contact ~~hazards~~ hazard.

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

J. Smoking or carrying smokers' articles or open flames is prohibited in or near any magazine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and "bulletproof" is replaced with "bullet-resistant" three times in recognition that bullet-resistant is the correct descriptive term. Proposed subsection J is added to provide applicable law and make provisions in this section parallel to proposed § 45.2-931 in Chapter 9.**

§ 45.1-161.127 ~~45.2-720~~. Underground transportation of explosives and detonators.

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

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

1. ~~The bodies~~ body and ~~covers~~ cover of each such ~~cars~~ car and ~~containers~~ each such container shall be constructed or lined with nonconductive material;

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

3. ~~Explosives~~ No explosives, detonators, or other blasting devices shall ~~not~~ be transported on the same trip with ~~miners~~ any miner;

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

5. ~~Explosives~~ No explosives or detonators shall ~~not~~ be hauled into or out of a mine within five minutes preceding or following a ~~man-trip~~ mantrip or any other trip. If traveling against the air current, the ~~man-trip~~ mantrip shall precede the explosives trip; if traveling with the air current, the ~~man-trip~~ mantrip shall follow the explosives trip.

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

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

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

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

3. Suitable loading and unloading stations with stop controls shall be provided; and

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

E. ~~Neither~~ No explosives ~~nor~~ or detonators shall be transported on a flight or shaking conveyors, scrapers conveyor, scraper, mechanical loading machines, locomotives machine, locomotive, cutting machines machine, or drill trucks, truck or on any self-propelled mobile equipment; however, this provision shall not prohibit the transportation of explosives or detonators in special closed containers in a shuttle-cars car or in equipment designed ~~especially~~ specifically to transport such explosives or detonators.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. Subdivisions D 3 and 4 are reorganized to group provisions relating to loading and unloading stations together.**

~~§ 45.1-161.128~~ 45.2-721. Underground storage of explosives and detonators.

A. ~~When supplies~~ If a supply of explosives ~~and~~ or detonators for use in one or more sections ~~are is~~ stored underground, ~~they it~~ shall be kept in a section-boxes box or magazines magazine of substantial construction with no metal exposed on the inside. Such ~~boxes box or magazines~~ magazine shall be located at least ~~twenty-five~~ 25 feet from ~~roadways and any roadway or power wires, wire~~ and in a reasonably dry, well rock-dusted location protected from falls of roof. In a pitching-beds bed, where it is not possible to comply with ~~the such~~ location requirement, such ~~boxes box~~ shall be placed in ~~niches~~ a niche cut into the solid coal or rock.

~~B. When~~ If explosives or and detonators are both stored in the section, they shall be kept in separate boxes or magazines not less than ~~twelve~~ 12 feet apart if feasible; if kept in the same box or magazine, they shall be separated by ~~at least a four-inch~~ substantially fastened hardwood partition at least four inches thick or the equivalent. Not more than ~~a forty-eight-hour~~ 48-hour supply of explosives or detonators shall be stored underground in such ~~boxes~~ box or ~~magazines~~ magazine.

~~C. Explosives~~ If explosives and detonators, are kept near the face for the use of workmen, miners, they shall be kept in separate individual closed containers, in niches in the ribs, not less than ~~twelve~~ 12 feet apart, and at least ~~fifty~~ 50 feet from the working place and out of the line of blast. ~~Such containers~~ Each such container shall be constructed of substantial material and maintained electrically nonconductive. Where it is physically impracticable to comply with such distance requirements, the explosives and detonator containers shall be stored in the safest available ~~place~~ places not less than ~~fifteen~~ 15 feet from any pipe, rail, conveyor, haulage road, or power line, not less than ~~twelve~~ 12 feet apart, and at least ~~fifty~~ 50 feet from the working face and out of the line of blast.

D. Explosives and detonators shall be kept in their containers pursuant to subsection C until immediately before use at ~~the~~ a working ~~faces~~ face.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.129~~ 45.2-722. Blasting practices; penalty.

A. All explosives shall be of the permissible type except where addressed in the plan for shaft and slope development required by subsection B of § 45.1-161.250 ~~B 45.2-704~~.

B. All explosives shall be used as follows:

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

~~3. Boreholes~~ Where the coal is cut, no borehole in coal shall ~~not~~ be drilled beyond the limits of the cut ~~where the coal is cut nor~~ or into the roof or floor;

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

~~5. All~~ Every blasting ~~charges~~ charge in coal shall have a burden of at least ~~eighteen~~ 18 inches in ~~all directions~~ every direction if the height of the coal permits;

~~6. Boreholes~~ Every borehole shall be stemmed with at least ~~twenty-four~~ 24 inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may approve the use of other stemming devices;

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

8. ~~Shots~~ No shot shall not be fired in any place where a methane level of one percent or greater can be detected with a permissible methane detector as directed by the Chief;

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

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

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

12. ~~Boreholes~~ No borehole shall ~~not~~ be charged while any other work is being done at the face, and ~~the any shot or shots~~ shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the miners;

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

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

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

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

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

18. ~~Mixed~~ No mixed types or brands of explosives shall ~~not~~ be charged or fired in any borehole;

19. ~~Adobe (mudcap)~~ No adobe, mudcap, or other open, unconfined shots shot shall ~~not~~ be fired in any mine except ~~those types a type~~ approved by ~~the Mine Safety and Health Administration~~ MSHA and the Chief;

20. ~~Power wires and cables~~ Any power wire or cable that could contact ~~blasting cables any~~ blasting cable or leg wires wire shall be de-energized during charging and firing;

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

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

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



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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501. Language is updated for modern usage and clarity.**

~~§ 45.1-161.130~~ 45.2-723. Blasting cables.

~~Blasting cables~~ Each blasting cable shall be:

1. Well insulated and as long as ~~may be~~ necessary to ~~permit~~ allow the shot firer to ~~get in~~ move to a safe place around a corner;
2. Short-circuited at the battery end until it is ready to attach to the blasting unit;
3. Staggered as to length, ~~or the~~ shall have its ends kept well separated when attached to the detonator leg wires; and
4. Kept clear of power wires and all other possible sources of active or stray electric currents.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity.**

~~§ 45.1-161.131~~ 45.2-724. Misfires.

A. Where ~~misfires occur~~ a misfire occurs with an electric ~~detonators~~ detonator, a waiting period of at least ~~fifteen~~ 15 minutes ~~shall elapse~~ is required before ~~a~~ any miner ~~shall be~~ is allowed to return to the shot area. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

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

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

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and**

vice versa. Language is updated for modern usage and clarity. Changes are made to conform the section to existing § 45.1-161.285.

~~§ 45.1-161.132~~ 45.2-725. Explosives and blasting practices in shaft and slope operations.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

#### Article ~~8~~ 6.

##### Mine Openings and Escapeways.

**Drafting note: Existing Article 8, relating to mine openings and escapeways, is retained as proposed Article 6 of Chapter 7.**

~~§ 45.1-161.162~~ 45.2-726. Mine openings.

A. Except as provided in ~~§ 45.1-161.164~~ 45.2-728, there shall be at least two travel ways, entries, or openings to the surface from each section of a mine worked. ~~All~~ Each longwall ~~panels~~ panel shall be developed with at least three entries; however, if new technology becomes available pursuant to which a two-entry systems may system can be safely developed, such technology may be used, with the approval of the Chief.

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

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

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

E. ~~After July 1, 1999, new~~ Any surface-structures structure where miners congregate or where the mine map or other official records are kept at the mine shall be offset ~~not less than fifteen~~ at least 15 feet from the nearest side of any mine opening, or otherwise located to be out of the ~~direct line zone of possible forces coming out of the mine should~~ danger if an explosion ~~occurs~~ occurs, unless otherwise approved by the Chief.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and obsolete provisions are removed.**

~~§ 45.1-161.163~~ 45.2-727. Separation of openings.

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

B. In ~~a shaft-mines~~ mine, openings shall be separated by ~~not less than~~ at least 200 feet of natural strata.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.164~~ 45.2-728. Number of miners in openings.

Until the two travel ways are made as required by § ~~45.1-161.162~~ 45.2-726, ~~not no~~ more than ~~twenty~~ 20 miners shall work underground in the mine at one time. No additional development shall be permitted until the connection is made to the second opening. In ~~mines where~~ a mine in which final pillar removal operations necessitate closing the second opening, ~~not no~~ more than ~~twenty~~ 20 miners shall be permitted to work in the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.165~~ 45.2-729. Maintenance of mine openings.

~~Mine openings~~ Every mine opening that ~~are~~ is used for entering and leaving the mine and every other required ~~travelways~~ travel way shall be kept in good condition and shall at all times be maintained in a safe condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made.**

~~§ 45.1-161.166~~ 45.2-730. Signs, life lines, and equipment.

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

B. Continuous life lines shall be installed and maintained in accordance with the approved emergency response plan pursuant to subsection A of § ~~45.1-161.202~~ 45.2-820.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.167~~ 45.2-731. Examination of escapeways.

The mine foreman shall examine ~~all escapeways~~ every escapeway for hazardous conditions at least ~~once per week~~ weekly. The mine foreman shall mark his initials and the date at ~~the places~~

each place examined, and if a hazardous ~~conditions are~~ condition is found ~~they,~~ it shall be reported promptly. A record of ~~these such~~ examinations and tests shall be kept at the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.168~~ 45.2-732. Longwall escape routes and plan.

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

B. The operator shall develop a plan for use of longwalls if the travel route becomes impassable. The plan shall address (i) the notification of to miners of the fact that the travel way is blocked and of the method and timetable for reestablishment of the travel way, (ii) the re-instruction of miners regarding escapeways and escape procedures in the event of an emergency, (iii) the re-instruction of miners on the availability and use of self-contained ~~self-rescue devices~~ self-rescuers, (iv) the monitoring and evaluation of the air entering the longwall section, (v) the location and effectiveness of the two-way communication systems, and (vi) a means of transportation from the longwall section to the main line. The plan provisions shall remain in effect until a travel way is reestablished on the tailgate side of a longwall section. Such an operation shall include provisions for such protective devices as fire extinguishers and respirators for miners working on the longwall section.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.169~~ 45.2-733. Fire protection.

A. ~~Shafts~~ Every shaft, and partitions every partition therein, shall be as nearly fireproof as is practicable.

B. Where there is danger of fire entering the mine, ~~openings~~ every opening shall have adequate protection against a surface fire ~~fire~~ or a hazardous volume ~~volumes~~ of smoke entering the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.170~~ 45.2-734. Unused openings.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article 7.

Hoisting.

**Drafting note: Existing Article 7, relating to hoisting, is retained as proposed Article 7 of Chapter 7.**

§ ~~45.1-161.153~~ 45.2-735. Hoisting equipment.

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

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

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

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, including the use of "miners" instead of "men" consistently throughout the section. The word "car" in subsection E, apparently an error, is corrected to "cage."**

§ ~~45.1-161.154~~ 45.2-736. Hoisting ropes.

A. ~~Hoisting ropes~~ The hoisting rope on ~~all cages~~ any cage or ~~trips~~ trip shall be adequate in size to handle the load ~~and have a proper factor of safety.~~ Ropes. A rope that is used to hoist or lower coal and other materials shall have a factor of safety of ~~not less than~~ at least five to one; ~~ropes.~~ A rope that is used to hoist or lower miners shall have a factor of safety of ~~not less than~~ at least 10 to one.

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

~~C. The~~ Each hoisting rope shall be fastened to its load by (i) a spelter-filled socket or ~~by~~ (ii) a thimble and an adequate number of clamps that are properly spaced and installed.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.155~~ 45.2-737. Hoisting cages.

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.156~~ 45.2-738. ~~Slope and shaft~~ Shaft and slope conditions.

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

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

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. The section is reorganized by moving existing subsections B and C, which deal with slopes or surface inclines, to the end of the section, after shafts.**

§ ~~45.1-161.157~~ 45.2-739. Signaling; signal code.

A. Two independent means of signaling shall be provided between the top, bottom, and ~~all~~ every intermediate ~~landings~~ landing of shafts, slopes, and each shaft, slope, or surface ~~incline~~ incline and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer or other person operating the equipment. Bell cords shall be installed in ~~shafts~~ each shaft in such a manner as to prevent unnecessary movement of such cords within the shaft.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.158~~ 45.2-740. Inspections of hoisting equipment.

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

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

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

~~D. Hoisting~~ The hoisting engineer shall inspect the hoisting rope on ~~all cages~~ every cage or ~~trips~~ trip shall be inspected trip at the beginning of each shift ~~by the hoisting engineer.~~

E. A test of safety catches on ~~cages~~ every cage shall be made by an authorized person designated by the operator at least once each month. A written record shall be kept of such tests, and such record shall be available for inspection by interested persons.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the conjunction "and" is replaced with "or" in two places in subsections B and C because the meaning of "or" encompasses both "or" and "and." Language is updated for modern usage and clarity.**

~~§ 45.1-161.159~~ 45.2-741. Hoisting engineers.

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

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**



Language is updated for modern usage and clarity. Subsections A and D are reorganized for clarity.

§ 45.1-161.160 ~~45.2-742~~. Operations of hoisting equipment.

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

B. When moving the platform or work deck, ~~all miners~~ every miner traveling thereon shall have a safety belts ~~belts~~ belt secured.

C. No ~~person~~ miner shall ride on a loaded cage.

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

E. ~~Conveyances~~ Any conveyance being lowered into a shaft in which ~~miners are~~ a miner is working shall be stopped at least ~~twenty~~ 20 feet above the area where such ~~miners are~~ miner is working.

F. ~~Whenever miners are~~ If any miner is working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least ~~twenty~~ 20 feet in length.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. The name "United States of America Standards Institute" is changed to "American National Standards Institute" to reflect the 1969 name change.**

§ 45.1-161.161 ~~45.2-743~~. Maintenance of hoisting equipment.

~~Hoists, ropes, cages,~~ Every hoist, rope, cage, and other component of any piece of hoisting equipment shall be maintained in a safe operating condition, as directed by the Chief. ~~Hoisting ropes~~ A hoisting rope shall be replaced as soon as there is evidence of possible failure.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. A reference to the authority of the Chief to determine safe operating conditions is added.**

Article ~~6~~ 8.

Transportation.

**Drafting note: Existing Article 6, relating to transportation, is retained as proposed Article 8 of Chapter 7.**

§ ~~45.1-161.133~~ 45.2-744. Haulage roads.

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

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

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

D. ~~Off-track~~ Each off-track haulage ~~roads road~~ shall be maintained reasonably free of bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling off-track haulage equipment difficult, and ~~accumulations~~ any accumulation of water over such ~~areas~~ an area of the haulage roads road and in such ~~depths that~~ a depth as to allow water could to enter an electrical panels panel and create a potentially hazardous conditions condition.

E. ~~Uninsulated~~ No uninsulated trolley lines shall ~~not~~ be used or installed in any underground coal ~~mines~~ mine without approval of the Chief.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.134~~ 45.2-745. Track switches and rails.

A. ~~All~~ Every track ~~switches~~ switch shall be provided with a properly installed throws, throw and properly installed latches; and bridle bars.

B. ~~All~~ Every track ~~switches~~ switch, other than ~~those in rooms and~~ a switch in a room or entry development, shall be equipped with properly installed guardrails.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.135~~ 45.2-746. Clearance on haulage roads.

A. ~~Track~~ Every track haulage ~~roads road~~ in ~~entries, rooms, and crosseuts~~ an entry, room, or crosscut shall have a continuous clearance on one side of at least ~~24 inches~~ two feet from the farthest projection of moving traffic. The clearance shall be kept free of any obstruction to a height permitted by the height of the coal seam. When it is not possible to maintain such clearance, signs indicating close clearance signs shall be posted inby and outby the affected area.

B. ~~Track~~ Every track haulage ~~roads road~~ in ~~entries, rooms, and crosseuts~~ an entry, room, or crosscut shall have a continuous clearance, on the side opposite the clearance required by

subsection A, of at least six inches from the farthest projection of moving traffic. When it is not possible to maintain such clearance, signs indicating close clearance signs shall be posted in by and out by the affected area.

C. ~~Haulage roads~~ Each track haulage road where trolley lines are used shall have the clearance required by subsection A on the side of the track opposite the trolley lines. This requirement shall not apply ~~where~~ if the trolley lines are ~~6 1/2~~ at least 6.5 feet or more above the rail.

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

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

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

G. ~~Belt conveyors~~ Every belt conveyor shall be equipped with a control ~~switches~~ switch to automatically stop the driving motor in the event that the belt is stopped by slipping on the driving pulley, ~~by~~ as a result of breakage or other accident.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.136~~ 45.2-747. Conveyor crossings.

Suitable facilities for crossing ~~conveyors~~ a conveyor belt shall be provided where it is necessary for miners to cross ~~conveyors~~ such conveyor belt regularly.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.137~~ 45.2-748. Shelter holes.

A. ~~Track~~ Every haulage ~~roads~~ road shall have shelter holes at intervals not to exceed the interval permitted by the roof control plan for crosscuts. Except at ~~points~~ a point where more than six feet of side clearance, measured from the rail, is maintained ~~and, or~~ at a room ~~switches~~ switch, a shelter hole shall be provided at each manually operated ~~doors~~ door and at each switch ~~throws~~ throw.

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

C. ~~Shelter holes~~ Every shelter hole at an underground slope ~~landings~~ landing where ~~men~~ miners pass and cars are handled shall be at least (i) ~~ten~~ 10 feet in depth, (ii) four feet in width, and (iii) six feet in height.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Reference to the roof control plan is inserted to clarify the source of authority for the permitted crosscut interval and language is updated for modern usage and clarity, including by replacing "men" with "miners."**

§ ~~45.1-161.138~~ 45.2-749. Refuge from moving traffic.

Upon the approach of moving traffic, ~~miners~~ any miner not engaged in haulage operations shall take refuge in a shelter holes hole or other ~~places~~ place of safety.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.139~~ 45.2-750. Inspection of underground equipment.

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

**Drafting note: Language is updated for modern usage.**

§ ~~45.1-161.140~~ 45.2-751. Maintenance of equipment.

~~Locomotives,~~ Every locomotive, mine cars car, shuttle cars car, supply cars, conveyors, car, conveyor, piece of self-propelled mobile equipment, and ~~all other piece of~~ piece of equipment shall be maintained in a safe operating condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.141~~ 45.2-752. Self-propelled equipment.

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

B. ~~All~~ Every piece of track-mounted equipment shall be equipped with proper lifting devices; for the rerailling of such equipment.

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

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

E. Effective ~~means measures~~, including ~~but not limited to use of a trailing locomotives locomotive~~, slides, skids, or drags, shall be ~~used taken~~ during track haulage to ensure ~~that safe control is maintained when grades create a grade creates a potential hazard~~.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity and modern usage.**

§ ~~45.1-161.142~~ 45.2-753. Pushing cars.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.143~~ 45.2-754. Transportation of material.

A. ~~Equipment or~~ Any equipment, material, or supplies being transported shall be loaded in a manner ~~to protect that protects~~ the operator and other personnel from sliding equipment ~~or, material, or supplies~~.

B. ~~Materials and~~ Any equipment, material, or supplies that are not necessary for the operation of a piece of self-propelled mobile equipment shall not be transported on such equipment, except for when the mobile equipment is designed to carry such materials or supplies and a no hazard is not created. Only small hand tools and materials or supplies which that do not create hazards may be transported in the same compartment of ~~personnel carriers a mantrip where miners are any miner is~~ seated.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Language is updated for modern usage and clarity, including by replacing "personnel carrier" with "mantrip," the term used throughout the title for a specialized personnel carrier in a mine.

§ ~~45.1-161.144~~ 45.2-755. Securing cars.

A. ~~Standing cars~~ A standing car on any track, unless it is held effectively by brakes, shall be properly blocked ~~or spragged~~ to prevent movement.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity and the unique term "spragged" is removed.**

§ ~~45.1-161.145~~ 45.2-756. Riding on cars.

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

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

C. No person shall get on or off a moving ~~locomotives~~ locomotive or ~~cars~~ a car that is being moved by ~~locomotives~~ a locomotive.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.146~~ 45.2-757. Back-poling.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.147~~ 45.2-758. Operation of equipment.

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

B. ~~Track~~ Every track haulage ~~cars~~ car that ~~requires~~ requires coupling and uncoupling shall be equipped with automatic couplers or devices designed to allow coupling and uncoupling

without exposing miners between such equipment. Specialty cars designed with safe clearance when connecting to other cars are excluded from the provisions of this subsection.

C. ~~Persons~~ Every person operating self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching ~~curves, sidetracks, doors, curtains~~ any curve, sidetrack, door, curtain, manway crossings crossing, or ~~any~~ other place where ~~persons are~~ a miner is or are is likely to be.

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

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.148~~ 45.2-759. Dispatchers.

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

**Drafting note: Language is updated for clarity.**

~~§ 45.1-161.149~~ 45.2-760. Availability of ~~man trips~~ mantrips.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage, including by replacing "man-trip" with "mantrip," consistent with language in proposed Chapter 9.**

~~§ 45.1-161.150~~ 45.2-761. ~~Man trips~~ Mantrips.

A. ~~Man trips~~ Each mantrip that is operated by means of ~~locomotives~~ a locomotive shall be pulled and operated at a safe speeds speed that is consistent with the condition of ~~roads~~ the road and the type of equipment used, and shall be so controlled that ~~they~~ it can be stopped within the limits of the operator's visibility.

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

C. ~~Man-trips~~ Each mantrip shall be maintained in safe operating condition, ~~and~~ Mantrips shall be provided in sufficient number to prevent any mantrip from becoming overloaded.

D. No person shall ride under a trolley wire other than in a suitably covered ~~man-ears mantrip~~. Covered man-ears A covered mantrip shall not be required under trolley wires that are guarded or positioned in accordance with subsection F of § ~~45.1-161.187~~ 45.2-808.

E. Other than small hand tools carried on the person, no supplies ~~or~~ tools, or materials shall ~~not~~ be transported in the same car or cage with miners on any ~~man-trip~~ mantrip, except in a special compartment compartment in such ears the car designed for such purpose.

F. ~~Miners~~ No miner shall ~~not~~ board or leave a moving man-trip ears. Miners mantrip car. Each miner shall remain seated while in a moving ears, car and shall proceed in an orderly manner to and from ~~man-trips~~ a mantrip.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, including by replacing "man-trip" with "mantrip," consistent with language in proposed Chapter 9.**

§ ~~45.1-161.151~~ 45.2-762. ~~Man-trip~~ Mantrip loading and unloading areas.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, including by replacing "man-trip" with "mantrip," the term used throughout the title for a specialized personnel carrier in a mine, and "man-cage" with "cage."**

§ ~~45.1-161.152~~ 45.2-763. Transporting miners by ~~belts~~ conveyor belt.

A. ~~When belts are~~ If a conveyor belt is used for transporting miners, such ~~belts~~ belt shall be free of loose materials; and shall maintain a minimum clearance of at least ~~eighteen~~ 18 inches ~~shall be maintained~~ between the belt and the overhead roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring, and other objects. ~~Belts~~ Each conveyor belt that is used for transporting miners shall be equipped with emergency stop cords for ~~their~~ its entire length.

B. The conveyor belt speed while miners are being transported shall not exceed (i) 250 feet per minute ~~while miners are being transported where~~ if the overhead clearance between the belt



~~and overhead roof or projections maintained pursuant to subsection A is between eighteen more than 18 inches and twenty-four but less than 24 inches and (ii) 300 feet per minute where if the overhead clearance is twenty-four 24 inches or more. The use of conveyor belts to transport miners shall be prohibited if the clearance between the belt and overhead is less than eighteen inches. Such conveyor belt shall be stopped while miners are boarding or leaving disembarking.~~

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, including the substitution of "conveyor belt" for "belt" and "disembark" for "leave."**

~~Article-15~~ 9.

Surface Areas.

**Drafting note: Existing Article 15, relating to surface areas, is retained as proposed Article 9 of Chapter 7.**

~~§ 45.1-161.236~~ 45.2-764. Housekeeping; noxious fumes.

A. Good housekeeping shall be practiced in and around ~~buildings, shafts, slopes, yards and every building, shaft, slope, yard, or other areas~~ area of the a mine. Such ~~practices include~~ practice includes cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and possible falling and rolling materials.

B. Painting or ~~operations creating~~ conducting any operation that creates noxious fumes shall be performed only in a ~~well-ventilated~~ well-ventilated atmosphere.

C. ~~All~~ Every surface mine ~~structures, enclosures, and~~ structure, enclosure, or other facilities facility shall be maintained in good repair.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.237~~ 45.2-765. Lighting.

A. Lights shall be provided as needed in or on a surface ~~structures~~ mine structure, enclosure, or other facility.

B. ~~Roads, paths and walks~~ Each road, path, or walk outside of ~~structures~~ a structure, enclosure, or other facility shall be kept free from obstructions and shall be ~~well-illuminated, well-illuminated~~ well-illuminated if it is used at night.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.238~~ 45.2-766. Flammable or combustible materials.

A. Oil, grease, and any similar flammable ~~materials~~ or combustible material shall be kept in a closed container, separate from other materials, so as ~~not to create a~~ to prevent any fire hazard to nearby buildings or mines. If ~~oil or grease, grease, or any similar flammable material~~ is stored in a building, the building or room in which it is stored shall be of fireproof construction and ~~well-ventilated~~ well-ventilated.

B. ~~Oily rags~~ Any oily rag, oily waste, ~~and or~~ wastepaper shall be kept in a closed metal container until removed for disposal.

C. The area within 100 feet of ~~all each~~ mine openings opening shall be kept free of flammable or combustible material; however, this provision shall not apply to the temporary storage of not more than ~~a one-day's~~ one-day's supply of such ~~materials~~ material.

D. ~~All~~ Every oxygen ~~and or~~ acetylene ~~bottles~~ bottle shall be (i) secured when not in use and (ii) stored with its cap in place in racks designated and a rack constructed and designated for the storage of such bottles with caps in place and secured when not in use. Any storage. Smoking shall be prohibited in any place for where such materials are stored. Signs indicating that smoking is prohibited in the area shall be posted to prohibit smoking.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subsection D, clause designations are added and clauses are reordered. Language is updated for modern usage and clarity.**

~~§ 45.1-161.239~~ 45.2-767. ~~Crane~~ Hazardous crane operations.

A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in ~~the~~ such crane operation.

**Drafting note: Language is updated for modern usage and clarity.**

~~§ 45.1-161.240~~ 45.2-768. Controlling dust at the surface.

A. In each surface ~~structures~~ structure, enclosure, or facility at any excessively dusty ~~mines,~~ mine, every electric ~~motors~~ motor, ~~switches~~ switch, lighting ~~fixtures~~ fixture, and ~~controls~~ control shall be protected by dust-tight construction.

B. ~~Surface structures~~ Each surface structure and piece of equipment shall be kept free of coal dust accumulations.

C. ~~Where~~ If mining operations raise an excessive amount of dust into the air, such dust shall be allayed at its sources by the use of water or, water with a wetting agent added to it, or other another effective methods shall be used to allay such dust at its sourees method.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, including by reorganizing the text in subsection C.**

~~§ 45.1-161.241~~ 45.2-769. Scaffolding and overhead protection.

~~Where Proper scaffolding or proper overhead protection shall be provided (i) where repairs are being made to the plant, a facility or (ii) where equipment or material is being used or transported overhead, proper scaffolding or proper overhead protection shall be provided.~~

**Drafting note: Language is updated for modern usage and clarity, including by reorganizing the text.**

~~§ 45.1-161.242~~ 45.2-770. Welding and cutting.

~~Welding No welding or cutting with arc or flame shall not be done in an excessively dusty atmospheres atmosphere or dusty locations location. Fire fighting Firefighting apparatus shall be readily available when such welding or cutting is performed.~~

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.243~~ 45.2-771. Fire prevention and fire control.

The provisions of Article 5 (~~§ 45.1-161.265~~ 45.2-912 et seq.) of Chapter ~~14.4 of this title~~ 9 shall apply with respect to ~~requirements~~ any requirement for ~~fire fighting~~ firefighting equipment, duties in the event of a fire, ~~and or~~ or fire precautions at ~~the any surface areas~~ area of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.244~~ 45.2-772. Surface equipment.

The provisions of Article 6 (~~§ 45.1-161.268~~ 45.2-915 et seq.) of Chapter ~~14.4 of this title~~ 9 shall apply with respect to equipment at ~~the any surface areas~~ area of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.245~~ 45.2-773. Travel ways; and loading and haulage areas.

The provisions of Article 7 (~~§ 45.1-161.275~~ 45.2-922 et seq.) of Chapter ~~14.4 of this title~~ 9 shall apply with respect to any travel ~~ways~~ way, loading area, ~~and or~~ or haulage ~~areas~~ area at the surface of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.246~~ 45.2-774. Electricity.

The provisions of Article 9 (~~§ 45.1-161.279~~ 45.2-926 et seq.) of Chapter ~~14.4 of this title~~ 9 shall apply with respect to any power ~~lines~~ line, ~~circuits~~ circuit, ~~transformers~~ transformer, ~~and or~~ or other ~~electric~~ electrical equipment at ~~the any surface areas~~ area of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.247~~ 45.2-775. Surface blasting.

The provisions of Article 10 (§ ~~45.1-161.284~~ 45.2-931 et seq.) of Chapter ~~14.4~~ of this title 9 shall apply with respect to explosives ~~and or~~ blasting at the any surface areas area of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.248~~ 45.2-776. Ground control.

The provisions of Article 11 (§ ~~45.1-161.287~~ 45.2-934) of Chapter ~~14.4~~ of this title 9 shall apply with respect to ~~the pits, highwalls, benches, banks, and walls~~ any pit, highwall, wall, bank, or bench associated with any coal mining ~~activities~~ activity conducted at ~~the any surface areas area~~ of an underground coal ~~mines~~ mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

## CHAPTER 8.

### REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; ELECTRICITY, SAFETY, ETC.

**Drafting note: Articles 4, 10, 11, 12, 13, and 14 of existing Chapter 14.3 are reordered and retained as Articles 1 through 6 of proposed Chapter 8, Requirements Applicable to Underground Coal Mines; Electricity, Safety, Etc. The remainder of existing Chapter 14.3 is organized as proposed Chapter 7. The six articles in this proposed chapter are as follows: Article 1 (Mechanical Equipment), Article 2 (Electricity), Article 3 (Fire Prevention and Fire Control), Article 4 (Ventilation, Mine Gases, and Other Hazardous Conditions), Article 5 (Personal Safety; Smoking), and Article 6 (First Aid Equipment; Medical Care; Emergency Medical Services Providers).**

#### Article ~~4~~ 1.

##### Mechanical Equipment.

**Drafting note: Existing Article 4 of Chapter 14.3, relating to mechanical equipment, is retained as proposed Article 1 of Chapter 8.**

§ ~~45.1-161.123~~ 45.2-800. Face and other equipment.

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

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

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

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

~~E. All~~ Each piece of equipment that is raised for repairs or other work shall be securely blocked prior to ~~persons~~ any person positioning ~~themselves~~ himself where the falling of such equipment could create a hazardous condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-161.124~~ 45.2-801. Shop and other equipment.

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

1. ~~Gears, sprockets, pulleys~~ Any gear, sprocket, pulley, fan-blades blade or ~~propellers, propeller, or friction devices and couplings with~~ device or coupling that has a protruding ~~bolts~~ bolt or ~~nuts~~ nut;

2. ~~Shafting and~~ or any projecting shaft ~~ends~~ end that ~~are~~ is within seven feet of the floor or platform level;

3. ~~Belt~~ Any belt, chain, or rope ~~drives~~ drive that ~~are~~ is within seven feet of the floor or platform;

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

5. ~~Circular and~~ Any circular or ~~band-saws and planers~~ saw or planer;

6. ~~Repair pits~~ Any repair pit, provided that ~~guards shall be kept in place~~ including when ~~the pits are~~ pit is not in use;

7. ~~Counterweights; and~~ Any counterweight; and

8. ~~The~~ Any mine fan, including the approach to any mine ~~fans shall be guarded~~ fan.

B. ~~Machinery~~ No machinery shall ~~not~~ be repaired or serviced while the machinery is in motion; however, this prohibition shall not apply where a safe remote ~~devices are~~ device is used.

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

D. ~~Mechanically~~ Each mechanically operated grinding ~~wheels~~ wheel shall be equipped with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of which shall not expose more than a 90 degree sector of the wheel; and (iii) eyeshields, unless goggles are worn by the miners. ~~Retaining hoods~~ Each retaining hood shall include either a device to control

and collect excess rock, metal, or dust particles; or a device providing equivalent protection to the ~~miners~~ miner operating such machinery.

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

**Drafting note: Language is updated for clarity and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.125~~ 45.2-802. Hydraulic hoses.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

~~Article 11 2.~~

Electricity.

**Drafting note: Existing Article 11 of Chapter 14.3, relating to electricity, is retained as proposed Article 2 of Chapter 8. Two sections, §§ 45.1-161.172 and 45.1-161.173, in existing Article 9 (Illumination) are relocated to this article.**

~~§ 45.1-161.181~~ 45.2-803. Surface electrical installations.

A. ~~Overhead~~ Any overhead high-potential power ~~lines~~ line shall be (i) placed at least ~~fifteen~~ 15 feet above the ground and ~~twenty~~ 20 feet above ~~driveways~~ any driveway, ~~shall be~~ (ii) installed on insulators, and ~~shall be~~ (iii) supported and guarded to prevent contact with other circuits.

~~B. Surface~~ Any surface transmission lines line, including a trolley circuits circuit, shall be protected against short circuits and lightning. Each power circuit that leads underground shall be equipped with lightning arrestors within 100 feet of ~~where the location at which~~ the circuit enters the mine.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.182~~ 45.2-804. Surface transformers.

~~A. Surface transformers which are~~ Any surface transformer that is not isolated by elevation ~~of being elevated at least eight feet or more~~ above the ground shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The door to the enclosure or the gate to the fence shall be kept locked at all times unless ~~persons~~ a person who is authorized to enter the gate or enclosure ~~are is~~ present.

~~B. Surface transformers containing~~ Any surface transformer that contains flammable oil and is installed near a mine openings opening, in or near a combustibles building building, or at any other places place where ~~they present~~ such transformer presents a fire hazard shall be provided with a means to drain or to confine the oil in the event of a rupture of the transformer casing.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.183~~ 45.2-805. Underground transformers.

~~All transformers~~ Every transformer that is used underground shall be air-cooled or filled with nonflammable liquid or inert gas.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.184~~ 45.2-806. Stations and substations.

A. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all every~~ transformer stations station.

B. ~~All Every~~ transformer stations station, substations substation, battery-charging ~~stations station,~~ pump ~~stations station,~~ and compressor ~~stations station~~ shall be kept free of nonessential combustibles ~~materials material~~ and refuse.

C. Reverse-current protection shall be provided at each storage-battery-charging ~~stations station~~ station to prevent the storage batteries from energizing ~~the a power circuits circuit~~ in the event of power failure.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.185. Repealed.~~

**Drafting note: Repealed by Acts 1999, c. 256.**

~~§ 45.1-161.186~~ 45.2-807. Power circuits.

A. All underground power wires and cables shall (i) have adequate current-carrying capacity, ~~shall~~ (ii) be guarded from mechanical injury, and ~~shall~~ (iii) be installed in a permanent manner.

B. Wires and cables that are not encased in armor shall be supported by ~~well installed~~ well installed insulators and shall not touch any roof, rib, or combustible ~~materials, roof, or ribs~~ material; however, this prohibition shall not apply to ground wires, grounded power conductors, ~~and~~ or trailing cables.

C. Power wires ~~and~~ or cables that are installed in a belt-haulage ~~slopes~~ slope shall be insulated adequately and buried in a trench ~~not less than 12 inches~~ at least one foot below any combustible material, unless such wires or cables are encased in armor or otherwise fully protected against mechanical injury.

D. ~~Splices and repairs~~ Any splice or repair in a power-cables cable shall ~~be made in~~ accordance with the following:

1. ~~Mechanically~~ Be mechanically strong ~~with~~ and have adequate electrical conductivity;
2. ~~Effectively~~ Be effectively insulated and sealed so as to exclude moisture;
3. If the cable has metallic armor, possess mechanical protection and electrical conductivity equivalent to that of the original armor; and
4. If the cable has metallic shielding around each conductor, ~~then the~~ possess new shielding ~~shall be~~ that is equivalent to ~~that of~~ the original shielding.

E. ~~All~~ Every underground high-voltage transmission ~~cables~~  cable shall be:

1. Installed only in a regularly inspected ~~airways~~ airway;
2. Covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if it is installed along ~~the~~ a haulage road;
3. Guarded ~~where~~ if miners regularly work or pass under ~~them~~ such cable, unless ~~they are~~ 6-1/2 it is at least 6.5 feet ~~or more~~ above the floor or rail;
4. Securely anchored, properly insulated, and guarded at its ends; and
5. Covered, insulated, or placed to prevent contact with any trolley ~~circuits~~ and circuit or other low-voltage ~~circuits~~ circuit.

F. ~~New~~ Any new high-voltage ~~disconnects~~ disconnect that is installed on ~~all~~ underground electrical equipment shall automatically ground all three power leads when in the open position. ~~All~~ Every high-voltage ~~disconnects~~ disconnect that are is rebuilt or remanufactured after July 1, 2011, shall meet this standard.



G. ~~All~~ Every power-wires and cables wire or cable shall be insulated adequately where ~~they~~ pass it passes into or out of ~~an electrical compartments~~ compartment and where ~~they pass it passes~~ through ~~doors and stoppings~~ a door or stopping.

H. Where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet;

2. At least one rail on any secondary track-haulage-roads road shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet; and

3. Track switches on entries shall be well bonded.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.187~~ 45.2-808. Trolley wires and feeder wires.

A. Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and any shelter-holes hole, except where the wires are guarded or ~~6 1/2~~ are installed at least 6.5 feet or more above the top of the rail.

B. Trolley-wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.

C. Trolley wires shall be aligned properly and installed on insulated hangers at least six inches outside the rail.

D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at intervals of not more than 1,500 feet and near the beginning of ~~all~~ each branch-lines line.

E. Trolley wires and trolley feeder wires shall be kept taut and shall not be permitted to touch the roof, ~~ribs, timbers~~ or any rib, timber, or combustible material.

F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of ~~doors~~ any door and at ~~all places~~ every place where ~~it is necessary to~~ miners work or pass under them, unless they are ~~more than six and one half~~ at least 6.5 feet above the top of the rail.

G. ~~Trolley~~ No trolley wires ~~and or~~ or trolley feeder wires shall ~~not~~ extend beyond any open crosscut between an intake and a return airways, and airway. All such wires shall be kept at least 150 feet from any active, open pillar workings.

H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

I. Trolley wires and trolley feeder wires shall be installed only in an intake-air airway.

J. ~~Trolley~~ No trolley wires or other exposed conductors shall ~~not~~ carry more than 300 volts.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage. The minimum separation of "more than" six and**

one-half feet in subsection F is reduced to "at least" 6.5 feet for consistency with subsection A.

~~§ 45.1-161.188~~ 45.2-809. Grounding.

A. ~~All Every~~ metallic sheaths, armors, and conduits enclosing sheath, armor, or conduit that encloses a power-conductors conductor shall be electrically continuous throughout and shall be grounded effectively.

B. ~~Metallic frames~~ Every metallic frame, casing, and or other enclosures enclosure of stationary ~~electric~~ electrical equipment that can become ~~"alive"~~ electrified through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. ~~Three-phase~~ Any three-phase alternating current circuits circuit that is used underground shall contain either a direct or derived neutral ~~which that~~ shall be grounded through a suitable resistor at the power center, ~~and a~~ A grounding circuit, ~~originating that originates~~ at the grounded side of the grounding resistor; shall extend with the power conductors and serve as the grounding conductor for the ~~frames~~ frame of all the every piece of electrical equipment that is supplied with power from that circuit. ~~Grounding resistors~~ A grounding resistor that are is manufactured to meet the extended time rating as set forth in American National standard IEEE Standard 32-1972, formerly AIEE Standard 32, are C57.32-2015 is deemed to meet the requirements of this section. High-voltage circuits extending underground shall be supplied with a grounding resistor of a proper Ohmic value located on the surface to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. ~~The~~ Such grounding resistor shall be rated for maximum fault current continuously and insulated from ground for a voltage equal to the phase-to-phase voltage of the system. ~~All~~ Every resistance-grounded ~~alternating circuits circuit~~ used underground shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to ~~assure~~ ensure the continuity of the ground conductor.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. An obsolete citation to the former name of the IEEE standard is removed and the current standard is added.**

~~§ 45.1-161.189~~ 45.2-810. Circuit breakers and switches.

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect ~~all electric~~ each piece of electrical equipment and each power ~~circuits~~ circuit against excessive overload; however, this requirement shall not apply to ~~locomotives~~ any locomotive that is operated regularly on grades exceeding a grade that exceeds five percent. ~~Wires~~ Wire or other conducting ~~materials~~ material shall not be used as a substitute for a properly designed ~~fuses~~ fuse, and every circuit breaking ~~devices~~ device shall be maintained in safe operating condition.

B. An automatic circuit breaker of the correct type and capacity shall be installed on each ~~resistance-grounded~~ resistance-grounded circuit used underground. Such circuit breaker shall be

located at the power source and equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

C. Operating controls, such as switches, starters, and switch buttons, shall be installed so that they are readily accessible and can be operated without danger of contact with moving or live electrified parts.

D. ~~Disconnecting switches~~ A disconnecting switch shall be installed underground in ~~all~~ each main power ~~circuits~~ circuit within approximately 500 feet of the ~~bottoms~~ bottom of shafts and boreholes, each shaft or borehole and at any other places where ~~place at which a main power circuits enter~~ circuit enters the mine.

E. ~~Electric~~ Each piece of electrical equipment and ~~circuits~~ each circuit shall be provided with switches or other controls of safe design, construction, and installation.

F. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at any piece of stationary machinery ~~where~~ at which a shock ~~hazards exist~~ hazard exists.

G. ~~Circuit breakers~~ Each circuit breaker, ~~disconnecting devices~~ device, and ~~switches~~ switch shall be marked for identification.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.190. Repealed.~~

**Drafting note: Repealed by Acts 1996, c. 774, effective April 6, 1996.**

~~§ 45.1-161.191~~ 45.2-811. Communication systems.

A. Telephone service or equivalent two-way communication facilities shall be provided between the top and each landing of ~~each main shafts and slopes~~ shaft or slope. A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of ~~all~~ each main portals, and shall be portal and installed in either ~~in~~ a building or ~~in~~ a box-like structure that is designed to protect the ~~facilities~~ facility from damage by inclement weather. At least one of these communication facilities shall be at a location where an authorized person who is always on duty when miners are underground can see or hear the facility and respond immediately in the event of an emergency.

B. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and insulated adequately where they cross power or trolley wires, ~~they shall be insulated adequately~~.

C. Lightning arrestors shall be provided ~~at the points~~ each point where a telephone ~~circuits enter~~ circuit enters the mine and at each telephone on the surface. Where the telephone circuit enters a building or structure, ~~the~~ a lightning arrestor is ~~only~~ required ~~where~~ only at the point at which the circuit enters such building or structure.

D. If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, a means shall be provided to permit continued communication in the event the mine electric power fails or is cut off.

E. Communication systems equipped with audible and visual signals that become operative when telephone communication is being established between the phones of the communication station on the surface and the underground working sections shall be provided.

F. The Chief shall ~~promulgate~~ adopt regulations governing any disruption of communication in ~~mines~~ a mine.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.192. Repealed.~~

**Drafting note: Repealed by Acts 1999, c. 256.**

~~§ 45.1-161.193 45.2-812. Electric~~ Electrical equipment.

A. ~~Electric~~ Electrical equipment that is taken into or used ~~inby~~ the last open crosscut or in other than an intake air ~~shall be~~ airway constitutes permissible equipment.

B. Permissible equipment that is used in ~~areas~~ an area specified in subsection A shall be maintained in permissible condition.

C. ~~Electric~~ No electrical equipment shall ~~not~~ be taken into or operated in any place where a methane level of one percent or more is detected.

D. Voltage limitations for underground installations of ~~electric~~ electrical equipment using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

E. ~~Electric~~ Electrical equipment ~~must~~ shall be classified as permissible and shall be maintained in a permissible condition when such equipment is located within 150 feet of any pillar workings or longwall ~~faces~~ face.

F. ~~Electric~~ Any electrical conductors and cables installed in or ~~by~~ inby the last open crosscut, or within 150 feet of any pillar workings or longwall ~~faces~~ face, shall be:

1. Shielded high-voltage cables supplying power to permissible longwall ~~and~~ equipment or other equipment;
2. Interconnecting conductors and cables of permissible longwall equipment;
3. Conductors and cables of intrinsically safe circuits; or
4. Cables and conductors supplying power to ~~low and medium voltage~~ low-voltage or medium-voltage permissible equipment.

G. ~~Electric~~ Electrical equipment shall be maintained in safe operating condition at all times while it is being used, and any unsafe condition shall be corrected promptly or the equipment shall be removed from service.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

§ ~~45.1-161.194~~ 45.2-813. Trailing cables.

A. Trailing cables that are used underground shall be flame-resistant ~~cables~~.

B. Trailing cables shall be provided with suitable short-circuit protection and some means of disconnecting power from the cable. ~~Power connections~~ Any power connection that is made in other than an intake-air airway shall be by means of a permissible-connectors connector.

C. ~~Temporary splices~~ Any temporary splice in a trailing-cables cable shall be made in a workmanlike manner, and shall be mechanically strong, and well insulated.

D. No more than one temporary, unvulcanized splice shall be allowed in ~~a~~ any trailing cable.

E. ~~Permanent splices~~ Any permanent splice or ~~repairs~~ repair in a trailing-cables cable shall be made as follows:

1. ~~They shall be~~ Be mechanically strong, with adequate electrical conductivity and flexibility;

2. ~~They shall be~~ Be effectively insulated and sealed so as to exclude moisture;

3. ~~The finished splice or repair shall be~~ Be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket; and

4. If the cable has metallic shielding around each conductor, ~~then the~~ possess new shielding ~~shall be~~ that is equivalent to ~~that of~~ the original shielding.

F. Trailing cables shall be protected against mechanical damage. ~~Trailing cables~~ A trailing cable that is damaged in a manner that exposes the insulated inner power conductors shall be repaired promptly or removed from service.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for clarity.**

§ ~~45.1-161.195~~ 45.2-814. Inspection of ~~electric~~ electrical equipment and wiring; checking and testing methane monitors.

A. ~~Electric~~ Electrical equipment and wiring shall be inspected by a certified person at least weekly if it is located underground, and at least monthly if it is located on the surface, ~~and~~. Such equipment and wiring shall be inspected more often if doing so is necessary to ~~assure~~ ensure safe operating conditions, ~~and any~~. Any hazardous condition that is found shall be promptly corrected or the equipment or wiring shall be removed from service. Records of such ~~examination inspections~~ shall be maintained at the mine for a period of one year.

B. A functional check of methane monitors on electrical face equipment shall be conducted to determine ~~that~~ whether such monitors are de-energizing the electrical face equipment properly. Such check shall be (i) made on each production shift ~~and shall be~~, (ii) conducted by the equipment

operator in the presence of a mine foreman, and ~~shall be~~ (iii) recorded in the on-shift report of the mine foreman.

~~C. Weekly calibration tests on~~ To determine the accuracy and operation of methane monitors on electrical face equipment ~~to determine the accuracy and operation of,~~ weekly calibration tests of such monitors shall be conducted with a known mixture of methane at the flow rate recommended by the methane monitor manufacturer. A record of the results shall be maintained.

D. Required methane monitors shall be maintained in permissible and proper operating condition.

**Drafting note: Language is updated for modern usage and clarity.**

~~§ 45.1-161.196~~ 45.2-815. Repairs to circuits and electric equipment.

A. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution circuits circuit or equipment; except by a certified person or by a person who is trained to perform electrical work and to maintain electrical equipment and is working under the direct supervision of a certified person. ~~All~~ Every high-voltage circuits circuit shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the persons the person who perform performs electrical or mechanical work on such circuits a circuit or piece of equipment connected to the circuits such a circuit, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons person. Locks and tags shall be removed only by the ~~persons~~ person who installed them or, if such ~~persons are~~ person is unavailable, by a certified persons person authorized by the operator or his agent.

~~However, miners~~ B. A miner may, where necessary, repair energized trolley wires if they wear he wears insulated shoes and lineman's gloves.

C. This section does not prohibit a certified electrical repairmen repairman from making checks on or troubleshooting energized circuits or the performance of an authorized person from performing repairs or maintenance on equipment by authorized persons once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage. The section is divided into subsections for clarity.**

~~§ 45.1-161.172~~ 45.2-816. Underground illumination.

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

~~B. Electric lights~~ Every electric light shall be guarded and installed so that they do it does not contact any combustible materials material.

**Drafting note: This section is relocated from existing Article 9 of Chapter 14.3. Technical changes are made pursuant to § 1-227, which states that throughout the Code any**

**word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.173~~ 45.2-817. Inspection of electric illumination equipment.

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

**Drafting note: This section is relocated from existing Article 9 of Chapter 14.3. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

### ~~Article 13~~ 3.

#### Fire Prevention and Fire Control.

**Drafting note: Existing Article 13 of Chapter 14.3, relating to fire prevention and fire control, is retained as proposed Article 3 of Chapter 8.**

~~§ 45.1-161.200~~ 45.2-818. Firefighting equipment; fire prevention.

A. Each mine shall be provided with suitable firefighting equipment; that is adequate for the size of the mine.

B. The following equipment, at a minimum, shall be immediately available at each mine:

1. A water car filled with water and provided with hose and pump, or waterlines and necessary hoses;

2. At least three 20-pound dry chemical fire extinguishers;

3. Ten 50-pound bags of rock dust, which shall be made available at doors or other strategic places;

4. Bolt cutters ~~which may~~ that can be used to cut trolley wire in an emergency;

5. One pair of rubber gloves ~~to~~ that shall be used with each pair of bolt cutters when cutting trolley wire;

6. Two sledge hammers; and

7. Five hundred square feet of brattice cloth, nails, and a hammer.

C. Clean, dry sand, rock dust, or fire extinguishers; that are suitable from a toxic and shock standpoint; shall be ~~provided and~~ placed at each electrical station, ~~such as substations~~ including each substation, transformer ~~stations~~ station, and permanent pump ~~stations~~ station, so as to be out of the smoke in case of a fire in the station.

D. Suitable fire extinguishers shall be provided at ~~all~~ each (i) electrical ~~stations~~ station, ~~such as substations~~ including each substation, transformer ~~stations~~ station, and permanent pump ~~stations~~ station; (ii) piece of self-propelled mobile equipment; (iii) belt ~~heads~~ head and at the inby

end of ~~belts~~ each belt; (iv) ~~areas~~ area used for the storage of flammable materials; (v) fueling ~~stations~~ station; and (vi) any other area that may constitute a fire hazard, so as to be on the fresh air side in case of a fire.

E. All firefighting equipment and each fire sensor ~~systems~~ system shall be maintained in a useable and operative condition. ~~Chemical extinguishers~~ Each chemical extinguisher shall be examined every six months and the date of the examination shall be indicated on a tag attached to ~~the extinguishers~~ each extinguisher.

F. A sufficient number of approved one-hour, self-contained, self-rescuers shall be readily available, not more than 100 feet away, for the persons involved in the moving or transporting of any ~~unit~~ piece of off-track mining equipment.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and consistency.**

§ ~~45.1-161.201~~ 45.2-819. Duties in case of fire.

A. In case of a fire, the next inby permanent stopping into the return air course shall be opened, as soon as possible, in order to short circuit the air and permit close access to the fire for extinguishment.

B. When a fire that ~~may~~ could endanger persons underground cannot be extinguished immediately, ~~the~~ such persons shall be withdrawn promptly from the mine.

C. ~~Should~~ If a fire ~~occurs~~ occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it.

**Drafting note: Technical changes.**

§ ~~45.1-161.202~~ 45.2-820. Emergency response plans; list of next of kin.

A. ~~Operators~~ Each operator shall develop an emergency response plan for each mine. The plan shall include (i) a mine emergency communication plan, (ii) an evacuation procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the location of ~~escapeways~~ each escapeway, and (vi) such other information as the Chief ~~may~~ reasonably require requires.

~~C. An~~ B. The emergency response plan shall be subject to approval by the Chief or mine inspector. The Chief may require periodic updates to an operator's emergency response plan. ~~Operators~~ Such operator shall comply with the requirements of the approved plan.

~~D. C.~~ The emergency response plan shall be posted in a conspicuous manner and ~~place,~~ location readily accessible to all miners, both underground and at the surface of the mine.

~~E. D.~~ The operator shall train miners in the implementation of the emergency response plan and shall conduct practice drills. Records of dates and times of practice drills shall be maintained in the emergency response plan.

~~F. E.~~ Each miner employed by the operator who goes underground, and each visitor authorized by the operator to enter the mine ~~by the operator~~, shall have available an adequate supply of self-rescue devices, each of which provides at least one hour ~~or longer~~ of protection and



is approved by ~~the Mine Safety and Health Administration~~ MSHA. The training related to self-rescue devices shall be included in the emergency response plan approved by the Chief.

~~B.~~F. The operator shall maintain a list of the next of kin of all miners employed at the mine. The list shall be kept at the mine site or at a central facility readily accessible to the mine.

**Drafting note: Language is updated for modern usage and clarity. Subsection B, which requires a list of next of kin, is moved to the end of the section and designated as subsection F. Technical changes are made and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501.**

~~§ 45.1-161.203~~ 45.2-821. Reporting fires; response.

In case of any unplanned fire at a mine that is not extinguished within ~~thirty~~ 30 minutes of discovery, the operator shall report the fire to the Chief; by the quickest available means, giving all information known to ~~him~~ the operator. The Chief, based on ~~the~~ such information, shall promptly go in person or dispatch a mine inspector to the scene of the fire for consultation; and assist ~~assistance~~ in the ~~extinguishing~~ extinguishment of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or the mine inspector shall be final. The decision of the Chief regarding measures to extinguish the fire and protect persons shall have the force of an order issued pursuant to ~~§ 45.1-161.91~~ 45.2-569 if it is delivered to the operator in writing.

**Drafting note: Technical changes are made.**

~~§ 45.1-161.204~~ 45.2-822. Fire prevention in transportation of mining equipment.

A. Prior to moving or transporting any ~~unit~~ piece of off-track mining equipment in ~~areas~~ any area of the active workings where energized trolley wires or trolley feeder wires are present; (i) the ~~unit~~ piece of equipment shall be examined by a certified person to ensure that accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible materials have been removed from such ~~unit~~ piece of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

B. A record shall be kept of the examinations required pursuant to subsection A and shall be made available, upon request, to the Chief or his authorized representative.

C. Off-track mining equipment shall not be moved or transported in ~~areas~~ any area of the active workings where energized trolley wires or trolley feeder wires are present ~~only~~ unless under the direct supervision of a certified person who ~~shall be~~ is physically present at all times during the moving or transporting of such equipment.

D. The ~~frames~~ frame of any unit of off-track mining equipment that is being moved or transported shall be covered on the top and on the trolley wire side with fire-resistant material.

E. Electrical contact shall be maintained between the mine track and the ~~frames~~ frame of any piece of off-track mining equipment that is being moved ~~in track~~ in a track and trolley ~~entries~~;

~~except that~~ entry. However, rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

F. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or, if necessary, the assemblage shall be removed,~~if necessary,~~ if the clearance to the power lines is six inches or less.

G. Sufficient prior notice shall be given to the Department so that a mine inspector ~~may, if he deems it necessary, can~~ travel the route of the move before the actual move is made,~~if he deems it necessary.~~

H. A minimum vertical clearance of ~~twelve inches~~ one foot shall be maintained between the farthest projection of the ~~unit piece~~ unit piece of equipment ~~which that~~ is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the coal seam does not permit ~~twelve inches~~ one foot of vertical clearance to be so maintained, the following additional precautions shall be taken:

1. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the ~~unit piece~~ unit piece of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, such power may be supplied from inby such equipment if a miner ~~with who has~~ who has the means to cut off the power, ~~and is~~ is in direct communication with the persons actually engaged in the moving or transporting operation, ~~and is~~ is stationed outby the equipment being moved;

2. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

3. At all times when the ~~unit piece~~ unit piece of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be (i) in direct communication with the persons actually engaged in the moving or transporting operation and (ii) capable of communicating with the authorized person on the surface who is required to be on duty;

4. Where trolley phones are utilized to satisfy the requirements of subdivision 3 ~~of this subsection,~~ telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by (i) the miner who is stationed at the first automatic circuit breaker outby the equipment being moved and (ii) by a miner who is actually engaged in the moving or transporting operation; and

5. No person shall be permitted to be inby the ~~unit piece~~ unit piece of equipment being moved or transported, or in the ventilating current of air that is passing over such equipment, ~~except those persons~~ a person who is directly engaged in moving such equipment.

I. The provisions of ~~this subsection~~ H shall not apply to ~~units~~ a piece of mining equipment that ~~are~~ is transported in a mine ~~cars,~~ car ~~provided that~~ if no part of the equipment extends above or over the sides of the mine car.

**Drafting note: Technical changes are made, including pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and consistency. The final paragraph of subsection H is designated as subsection I.**

~~§ 45.1-161.205~~ 45.2-823. Storage and use of flammable fluids and materials.

A. ~~Underground~~ Each underground storage place for oil, grease ~~and, or~~ flammable hydraulic fluid shall be of fireproof construction.

B. Oil, grease, and flammable hydraulic fluid that is kept underground for current use shall be kept in a closed metal container.

C. Provisions shall be made to prevent an accumulation of spilled oil or grease ~~at the~~ any such storage place or ~~at the locations where~~ any location at which such ~~materials are~~ material is used.

D. Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until it is removed for disposal.

E. No gasoline, benzene, kerosene, or other flammable ~~oils~~ oil shall be used underground in powering machinery.

F. ~~All~~ Every oxygen ~~and or~~ acetylene ~~bottles~~ bottle that is used underground shall be secured while in use. When stored underground, each oxygen ~~and or~~ acetylene ~~bottles~~ bottle shall be placed in a safe location, protected from physical damage, stored with ~~eaps~~ its cap in place where such storage is provided for on the tank, and secured upright or elevated, whichever mine heights allow.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.206~~ 45.2-824. ~~Diesel-powered~~ Diesel-powered equipment.

~~Diesel-powered~~ Diesel-powered equipment may be utilized underground with the written approval of the Chief. The Chief shall ~~promulgate~~ adopt regulations necessary to carry out the provisions of this section. ~~The~~ Such regulations shall require that the air in each travel way in which diesel equipment is used, and in any active workings connected thereto, be of a quality necessary for a safe, healthful working environment. The minimum quantity of ventilating air that ~~must~~ shall be supplied for a permissible diesel machine in a given time shall conform to ~~that the~~ quantity shown on the approval plate attached to the machine. ~~All~~ Every diesel ~~machines and machine or piece of~~ equipment shall be maintained in such manner that the exhaust emissions meet the ~~same~~ standards to which the machine or equipment was manufactured.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

~~§ 45.1-161.207~~ 45.2-825. Arcs, sparks, and flames.

A. The intentional creation of any open arc, open spark, or open flame, except as provided in subsection B, ~~shall be~~ is prohibited.

B. ~~Welding and~~ Any underground (i) welding or cutting with arc or flame or (ii) soldering underground in other than, unless conducted in a fireproof enclosure that is ventilated with intake air, shall be done by or under the direct instruction of a certified foreman or repairman. A person certified in gas detection shall test for methane before and during such ~~operations~~ welding, cutting, or soldering operation in an underground ~~mines coal mine~~ and shall make a diligent search for fire after such an operation in all ~~mines~~ parts of the mine where such operation occurred. Rock dust or a suitable fire ~~extinguishers~~ extinguisher shall be immediately available during such welding or cutting. ~~Welding operations~~ Any welding operation shall be performed only in ~~well-ventilated areas~~ a well-ventilated area.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for clarity.**

#### Article-14 4.

#### Ventilation, Mine Gases, and Other Hazardous Conditions.

**Drafting note: Existing Article 14 of Chapter 14.3, relating to ventilation, mine gases, and other hazardous conditions, is retained as proposed Article 4 of Chapter 8.**

~~§ 45.1-161.208~~ 45.2-826. Pre-shift examinations.

A. The operator or his agent shall establish eight-hour intervals of time, each of which shall be subject to a required pre-shift ~~examination~~ examination. Within three hours preceding the beginning of any such eight-hour interval during which any person is scheduled to work or travel underground, a mine ~~foremen~~ foreman shall make a pre-shift examination. No person scheduled to enter the mine during the eight-hour interval, other than the mine ~~foremen~~ foreman who is conducting the examination ~~may~~, shall enter any underground area unless a pre-shift examination has been completed for such established eight-hour interval.

B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split, at each of the following underground locations ~~which are underground~~:

1. ~~Track entries and~~ Every track entry or other ~~areas~~ area where persons are scheduled to work or travel during the oncoming shift;

2. ~~Belt conveyors~~ Every belt conveyor that will be used to transport persons during the oncoming shift and the ~~entries~~ entry in which ~~these~~ each such belt ~~conveyors are~~ conveyor is located;

3. ~~Working sections and areas~~ Any working section or area where mechanized mining equipment is being installed or removed, if ~~anyone~~ a person is ~~being~~ scheduled to work on the section or in the area during the oncoming shift. ~~This~~ Such a working section or area includes each

~~working places, approaches~~ place and each approach to a worked-out areas area, and ventilation controls on ~~these sections~~ each such section or in ~~these areas~~ each such area;

4. ~~Approaches~~ Each approach to a worked-out areas area along an intake air courses course if intake air passes by ~~the such~~ worked-out area to ventilate any working sections section where ~~anyone~~ a person is scheduled to work during the oncoming shift;

5. ~~Seals~~ Every seal along an intake air courses course where intake air passes by ~~a such~~ seal to ventilate any working sections section where ~~anyone~~ a person is scheduled to work during the oncoming shift;

6. ~~Entries and rooms~~ Where intake air passes through or by an entry or room to any working section where a person is scheduled to work during the oncoming shift, each such entry or room that is driven (i) more than 20 feet off an intake air course without a crosscut and without or permanent ventilation controls; or (ii) more than two crosscuts off an intake air course without permanent ventilation controls where intake air passes through or by these entries or rooms to a working section where anyone is scheduled to work during the oncoming shift; and

7. Where unattended diesel equipment is expected to operate or ~~areas where~~ an area in which trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

C. During the pre-shift examination, the mine foreman shall determine the volume of air entering each of the following areas if a miner is scheduled to work in ~~the areas~~ such area during the oncoming shift:

1. In the last open crosscut, ~~which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses,~~ of each set of entries or rooms on each working section ~~and areas where~~ or any area in which mechanized mining equipment is being installed or removed;

2. On each longwall or shortwall in ~~the each~~ intake entry ~~or entries~~ at the intake end of the longwall or shortwall face immediately outby the face ~~and~~. The mine foreman shall also determine the velocity of air at each end of the face at the locations specified in the approved ventilation plan required by the federal mine safety law; and

3. At the intake end of any pillar line (i) ~~if a single split of air is used,~~ in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is used or (ii) ~~if a split system is used,~~ in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A mine foreman shall make a pre-shift examination of the surface areas of an underground coal ~~mines~~ mine in accordance with the requirements for pre-shift examinations at surface coal mines as provided in § ~~45.1-161.256~~ 45.2-903.

E. The Chief may require the mine foreman to examine other areas of the mine or to examine for other hazards during the pre-shift examination.

F. Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign located where anyone entering the area would pass. Only ~~persons~~ a person

designated by the operator, or his agent, to correct or evaluate the condition ~~may~~ shall enter ~~this~~ such posted area.

G. At each working place examined, the mine foreman shall certify by initials, date, and time, that the examination was made. In ~~areas~~ any area to be examined out by a working section, the mine foreman shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

H. ~~Idle and~~ Each idle or worked-out areas area underground shall be inspected for gas and other hazardous conditions by a mine foreman, immediately before miners are permitted to enter or work in such ~~places~~ place. A certified person shall supervise the correction of ~~conditions~~ any condition that ~~create~~ creates an imminent danger. The mine operator, or his agent, ~~may~~ shall not pass beyond the danger ~~signal~~ only sign except in cases of necessity.

I. ~~Where persons have not~~ If no person has been working underground before an established eight-hour interval, no person other than ~~the a mine foremen~~ foreman conducting a pre-shift examination ~~may~~ shall enter the mine until the examination has been completed and the mine ~~foremen report~~ foreman reports that the mine ~~to be~~ is clear of danger; however, miners may enter under the direction of a mine foreman for the purpose of making the mine safe. The Chief ~~shall have the authority~~ may, in certain mines, ~~in his discretion, to~~ authorize ~~man trips~~ mantrips to proceed to a designated station underground, from which ~~they may not pass~~ no mantrip shall leave until ~~the a mine foremen report~~ foreman reports that the remainder of the areas of the mine ~~to be~~ are clear of danger.

J. Miners who are regularly employed on a shift during which a pre-shift examination is being conducted shall be permitted to leave or enter the mine in the performance of their duties.

K. In ~~multiple shift operations~~ a multiple-shift operation, certified persons may be used to make the pre-shift examination for the next or succeeding shift.

L. ~~Areas~~ Immediately before any miner is permitted to enter an area of an inactive underground coal mines mine in order to take emergency actions to preserve the mine, a mine foreman shall be examined examine such area for gas and other hazardous conditions ~~by a mine foreman immediately before miners are permitted to enter such areas to take emergency actions to preserve a mine.~~

M. In the performance of his duties under this section, the mine foreman shall have no superior officer, and ~~all miners~~ every miner shall be subordinate to him.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. The text defining "last open crosscut" is moved to the definitions section for Subtitle II, in proposed Chapter 5.**

§ ~~45.1-161.209~~ 45.2-827. On-shift examinations.

A. At least once during each shift, and more often if necessary, a certified person shall examine each underground section where coal is produced and any other area where mechanized mining equipment is being installed or removed during the shift. The certified person shall (i)

examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split. ~~Hazardous conditions~~ Any hazardous condition shall be corrected immediately or the miners shall be withdrawn and the affected area plainly marked with "~~danger~~" danger signs.

B. During each shift ~~that~~ in which coal is produced, a certified person shall examine for hazardous conditions along each underground belt conveyor entry where a belt conveyor is operated. ~~This~~ Such examination may be conducted at the same time as the pre-shift examination of the belt conveyors and the belt conveyor entries, if the examination is conducted within three hours before the established eight-hour interval. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

C. ~~Persons~~ A person conducting ~~the~~ an on-shift examination shall determine at the following underground locations ~~which are underground~~:

1. The volume of air in the last open crosscut, ~~which means the crosscut in the line of pillars containing the permanent stoppings that separate the intake air courses and the return air courses,~~ of each set of entries or rooms on each working section and ~~areas where~~ in any area in which mechanized mining equipment is being installed or removed;

2. The volume of air on a longwall or shortwall, including ~~areas~~ any area where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall;

3. The velocity of air at each end of the longwall or shortwall face at ~~the locations~~ each location specified in the approved ventilation plan required pursuant to the federal mine safety law; and

4. The volume of air at the intake end of any pillar line (i) ~~where a single split of air is used,~~ in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is used or (ii) ~~if a split system is used,~~ in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A test shall be made for methane before (i) any electrically powered equipment is taken inby the last open crosscut, ~~before~~ (ii) any blasting takes place, and ~~before~~ (iii) work is resumed after blasting. When a longwall or shortwall mining system is used, ~~these~~ such methane tests test shall be made from under permanent roof support at the shearer, the plow, or the cutting head. ~~These~~ Such methane tests test shall be made at least once every 20 minutes or more often as necessary for safety while such equipment is in operation. When mining has been stopped for more than 20 minutes, a methane tests test shall be conducted prior to the ~~start up~~ start-up of equipment.

E. ~~Idle~~ Each idle or worked-out ~~areas~~ area underground, including any section ~~belts~~ belt that ~~have~~ has been idle for a period of 24 hours or more, shall be examined by a certified person immediately before miners are permitted to enter or work in such ~~areas~~ area. The person

conducting the examination shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

F. Daily and on-shift examinations of surface areas of underground coal mines shall be made in accordance with the requirements for daily and on-shift examinations at surface coal mines as provided in ~~§ 45.1-161.256~~ 45.2-903.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. The text defining "last open crosscut" is moved to the definitions section for Subtitle II, in proposed Chapter 5.**

~~§ 45.1-161.210~~ 45.2-828. Weekly examinations.

A. At least once every seven days, a mine foreman shall examine each unsealed worked-out-~~areas~~ area where no pillars have been recovered.

B. At least once every seven days, a mine foreman shall evaluate the effectiveness of each ~~bleeder-systems~~ system used ~~under~~ pursuant to ~~§ 45.1-161.220~~ 45.2-837.

C. At least once every seven days, a mine foreman shall examine each of the following locations for hazardous conditions:

1. ~~In at~~ At least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

2. ~~In at~~ At least one entry of each return air course, in its entirety, so that the entire air course is traveled.

3. ~~In each~~ Each longwall or shortwall travel way, in its entirety, so that the entire travel way is traveled.

4. ~~At each~~ Each seal along each return ~~and or~~ bleeder air ~~courses~~ course and ~~at~~ each seal along each intake air ~~courses~~ course not examined ~~under~~ pursuant to ~~§ 45.1-161.208~~ 45.2-826.

5. ~~In each~~ Each escapeway, in its entirety, so that the entire escapeway is traveled.

6. ~~On each~~ Each working section not examined ~~under~~ pursuant to ~~§ 45.1-161.208~~ 45.2-826 during the previous seven days.

D. At least once every seven days, a certified person shall:

1. Determine the volume of air entering ~~the~~ each main ~~intakes~~ intake and ~~in~~ each intake split;

2. Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms; Such determination and test shall be conducted in the return of each split of air immediately before it enters the main returns and where the air leaves the main returns; and

3. Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

E. ~~Hazardous conditions~~ Any hazardous condition shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons necessary to correct the



hazardous ~~conditions~~ condition shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

F. ~~Weekly~~ No weekly examination is ~~not~~ required during any seven-day period in which no person enters any underground area of ~~the~~ a mine. ~~When~~ If a mine is idled or is in a nonproducing status with entry only for maintenance of the mine, weekly examinations may be conducted in accordance with a plan approved by the Chief.

G. Except for certified persons required to make examinations, no person shall enter any underground area of a coal mine if ~~the~~ no weekly examination has ~~not~~ been completed within the preceding seven days. The weekly examination may be conducted at the same time as the pre-shift examination.

H. ~~The~~ A person making ~~the~~ a ~~weekly-examinations~~ examination shall certify completion of the examination by initials, date, and ~~the time that the examination was made~~. ~~Certifications and time shall appear~~ at enough locations to show that the entire area has been examined.

I. ~~Examinations~~ Any examination of surface areas of underground coal mines shall be made in accordance with the requirements for weekly examinations at surface coal mines ~~as provided in~~ pursuant to § 45.1-161.256 45.2-903.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity, and the text of subsection H is conformed to similar certification provisions in other sections.**

§ ~~45.1-161.211~~ 45.2-829. Examinations of fans.

A. ~~A~~ An authorized person shall conduct a daily inspection ~~shall be made of all each~~ main fans fan and of the machinery connected ~~therewith by an authorized person with such fan~~. The person making the examination shall ~~make a record of the same~~ such examination in a book prescribed for this purpose or by other adequate ~~facilities~~ means provided to permanently record the performance of the main fan and to give warning of an interruption to a fan. No such daily examination is required on any day in which no person goes underground, except that the examination shall be completed prior to any person entering the mine if no examination was made on the previous day's examination has not been made day.

B. ~~Places~~ Any place ventilated by means of a blower ~~fans~~ fan shall be examined for methane by a certified person before the fan is started at the beginning of the shift and after any interruption of fan operation that lasts for five minutes or more during the shift.

C. ~~The~~ Each blower fan and its tubing shall be inspected at least twice during each working shift by a certified person.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

§ ~~45.1-161.212~~ 45.2-830. Record of examinations.

A. Any hazardous condition found by the mine foreman or ~~other~~ another certified ~~persons~~ person designated by the operator for the ~~purposes~~ purpose of conducting examinations under Article 14 (~~§ 45.1-161.208 et seq.~~) of this chapter this article shall be (i) corrected immediately; or ~~the affected area shall be dangered off~~ (ii) posted with conspicuous danger signs until the condition is corrected. If the hazardous condition creates an imminent danger, all persons except those required to perform work to correct the imminent danger shall be withdrawn from the affected area. ~~A record of the~~ The hazardous condition found and the corrective actions taken shall be ~~made~~ recorded in a book maintained for ~~this~~ such purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found.

B. Upon completing the pre-shift examination, the mine foreman shall return to the surface or a designated station underground and report in person to an authorized person before ~~other miners enter~~ any other miner enters the mine. Immediately upon reaching the surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in a book ~~kept~~ maintained for such purpose on the surface ~~for that purpose~~ at the mine.

C. At the completion of any shift during which a portion of a weekly examination is made, a record of ~~each hazardous conditions, their locations~~ condition, its location, the corrective action taken, and the ~~results~~ result and location of ~~each~~ each air and methane ~~measurements~~ measurement shall be made. ~~The~~ Such record shall be made by the ~~person~~ mine foreman making the examination or ~~by a~~ another certified person designated by the operator. If the record is made by a person other than the ~~examiner~~ one making the examination, the ~~examiner~~ person making the examination shall verify the record by initials and date.

D. The actual level of methane detected in any examination shall be recorded in the book.

E. A mine foreman or other certified person conducting a required examination shall record the results of his examination in ink or indelible pencil in a book ~~kept~~ maintained for such purpose on the surface ~~for that purpose~~ at the mine. Similar records may be kept at designated stations or offices underground.

F. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose ~~hazardous conditions~~ a hazardous condition, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control ~~the~~ each ~~hazardous conditions~~ condition have been taken. Where such records ~~do not~~ disclose no ~~hazardous conditions~~ condition, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person ~~with equivalent~~ who possesses authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate ~~the~~ each ~~hazardous conditions~~ condition disclosed in the records.

G. All records of examination shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage and clarity, including by rephrasing the requirement in subsection A that an area "be endangered off."**

~~§ 45.1-161.213. Repealed.~~

**Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

~~§ 45.1-161.214~~ 45.2-831. Notice of hazardous conditions.

The mine foreman shall give prompt attention to the removal of ~~all~~ each hazardous ~~conditions~~ condition reported to him by any person working in the mine. If it is impracticable to remove ~~the~~ a hazardous condition at once, ~~he~~ the mine foreman shall notify every person whose safety is ~~menaced thereby~~ threatened by such hazardous condition to remain away from the portion of the mine where the hazardous condition exists.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.215~~ 45.2-832. Notice of monitor tampering prohibition.

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

NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR, OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY.

**Drafting note: Technical changes.**

~~§ 45.1-161.216~~ 45.2-833. Main fans.

A. The active workings of a mine shall be ventilated by means of main fans.

B. Unless otherwise approved by the Chief, ~~fans~~ each fan shall be (i) provided with pressure-recording gauges, (ii) installed on the surface in a fireproof ~~housings~~ housing, and (iii) equipped with fireproof air ducts.

C. In addition to the requirements of subsection B, each main ~~fans~~ fan shall either:

1. Be equipped with ample means of pressure relief; and be offset not less than 15 feet from the nearest side of the mine opening; or

2. Be directly in front of, or over, the mine opening; however, ~~the~~ such opening shall not be in direct line with ~~possible~~ forces coming out of the mine ~~should~~ if an explosion were to occur; and there. There shall be another opening ~~having,~~ equipped with a weak-wall stopping or with explosion doors ~~that would be in direct line with the forces coming out of the mine should an explosion occur, such opening to be,~~ that is located not less than 15 feet ~~nor~~ or more than 100 feet

from the fan opening and in direct line with the forces coming out of the mine if an explosion were to occur; and

3. In ~~mines~~ a mine ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

D. ~~Main~~ Each main mine ~~fans~~ fan shall be provided with an automatic device to give alarm when the fan slows down or stops. Unless otherwise approved by the Chief, ~~this~~ such device shall be placed so that it will be seen or heard by an authorized person.

E. ~~Main fans~~ Each main fan shall be on a separate power-circuits circuit, independent of the mine circuit.

F. The area surrounding a main fan-installations installation shall be kept free of combustible material for at least 100 feet in ~~all directions~~ every direction where physical conditions permit.

G. ~~Mine fans~~ Each mine fan shall be operated continuously, except when no miner is underground and such mine fan is intentionally stopped for necessary testing, adjustment, maintenance, or repairs ~~while no miners are underground~~, or as otherwise approved by the Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs, the mine operator shall comply with the requirements set forth in the approved fan stoppage plan for that mine. If the main fan is stopped after all miners are out of the mine, the fan shall be operated for a period specified in the approved fan stoppage plan for that mine, prepared pursuant to § 45.2-834, before any miner is allowed underground.

H. Where electric power is available, no main mine-fans fan shall not be powered by means of an internal combustion ~~engines; however, where engine~~. However, if electric power is not available or the fan is employed for emergency use, a main mine-fans fan may be powered with an internal combustion ~~engines if, unless engine~~. Unless otherwise approved by the Chief, ~~(i) the such~~ fan shall be operated exhausting; and ~~(ii) the engine operating the such~~ fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.217~~ 45.2-834. Fan stoppage plan.

A fan stoppage plan shall be prepared for each mine, ~~which~~. Such plan shall be subject to approval by the Chief or his designated representative. Failure to comply with ~~requirements~~ any requirement set forth in the approved plan ~~will be~~ is a violation of this section. ~~Fan~~ Each fan stoppage ~~plans~~ plan shall require the following:

1. When the main fan fails or stops, the power shall be cut off from the mine and miners shall be withdrawn from ~~the~~ all face areas.

2. Miners shall be withdrawn from the underground areas if the ventilation is not restored within a reasonable time determined by the Chief, ~~which period of time shall not to exceed fifteen~~

15 minutes. In determining ~~the~~ such reasonable time period, the Chief shall consider, among other ~~things~~ factors, the size and number of fans, and the methane liberation rate of the mine.

3. If ventilation is restored within the time period established in the plan, ~~the each~~ face areas ~~area~~ and any other ~~areas where~~ area in which methane is likely to accumulate shall be examined by a certified person, and if ~~the all~~ all areas are found to be free of explosive or harmful gases, power may be restored and work resumed.

4. If ventilation is not restored within the time period established in the plan and the miners are evacuated from the mine, the main fan shall be operated for a period of time specified in the plan, ~~which~~. Such period of time shall not be less than ~~fifteen~~ 15 minutes. Thereafter, the mine shall be examined by a certified person before ~~miners shall be~~ any miner is permitted underground or ~~energizing any power circuits~~ circuit is energized.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

~~§ 45.1-161.218~~ 45.2-835. Auxiliary fans.

A. The installation or use of an auxiliary fans fan in any mine ~~shall be~~ is prohibited, without the prior written approval of the Chief.

B. ~~Machine mounted scrubbers~~ A machine-mounted scrubber and spray fan ~~systems~~ system may be used for control of coal dust and ~~to enhance~~ enhancement of ventilation. Such ~~installations are~~ an installation is not considered an auxiliary fans fan.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.219~~ 45.2-836. ~~Volume~~ Quantity of air.

A. The quantity of air passing through the last open crosscut shall be ~~not less than~~ at least 9,000 cubic feet per minute; ~~provided, however, that~~. However, the quantity of air reaching the last open crosscut in a pillar-recovery sections section may be less than 9,000 cubic feet per minute, if at least 9,000 cubic feet of air per minute is being delivered to the intake end of the pillar line.

B. The air current at a working faces face shall, under all conditions, have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases and dust.

C. In a longwall and or shortwall mining systems system:

1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face, unless otherwise approved by the Chief; and

2. The velocity of air provided to control dust at designated locations on the longwall or shortwall face shall be maintained in accordance with the provisions of the mine ventilation plan approved by ~~the Mine Safety and Health Administration~~ MSHA.

D. Ventilation shall be maintained during the installation ~~and or~~ or removal of mechanized mining equipment.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for clarity. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-501.**

~~§ 45.1-161.220~~ 45.2-837. Bleeder systems.

A. ~~All mines~~ Every mine shall have a system, ~~which has been~~ approved by the Chief, of bleeder openings of air courses designed to provide positive movement of air through or around worked-out areas ~~which is~~. Such system shall be sufficient to prevent a hazardous accumulation of gas in any such ~~areas~~ area and to minimize the effect of variations in atmospheric pressure. ~~Operators~~ Each operator shall submit a bleeder system ~~plans which comply~~ plan that complies with requirements developed by the Chief.

B. The system requirements developed by the Chief shall, at a minimum, address standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous movement of gases from gob areas, (iv) methane content, (v) the use and operation of degasification systems, (vi) air flow direction, ~~and content,~~ and (vii) ventilation controls. The Chief shall not approve a plan ~~which that provides for a methane content exceeding four and one half 4.5 percent in bleeder air courses. Failure to comply with an approved plan will be a violation of this section.~~

C. This section shall not prohibit the sealing of worked-out areas in accordance with ~~§ 45.1-161.228~~ 45.2-845.

B. The mine map requirements of ~~§ 45.1-161.64~~ 45.2-542 may be used to depict bleeder system standards specified in this section.

D. Failure to comply with an approved plan is a violation of this section.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and organizational changes are made that separate the provisions addressing the requirements to be developed by the Chief and place the violation provision at the end of the section.**

~~§ 45.1-161.221~~ 45.2-838. Coursing of air.

A. The main intake and return air currents of ~~drifts~~ a drift or slope ~~mines~~ mine shall not be in a single partitioned opening.

B. ~~All entries~~ Every entry driven in coal shall be in ~~sets~~ a set of two or more entries.

C. ~~Underground~~ Every transformer ~~stations~~ station, battery-charging ~~stations~~, ~~substations~~, ~~rectifiers~~ station, substation, rectifier, and water ~~pumps~~ pump shall be housed in ~~noncombustible structures~~ an incombustible structure or ~~areas~~, area or be equipped with an approved fire suppression system. ~~These installations~~ Each such installation shall be ventilated with intake air that is coursed into a return air course or to the surface, and that is not used to ventilate any working ~~places~~ place. This requirement does not apply to: any (i) ~~rectifiers~~, rectifier, battery-charging station, or power centers center with transformers that are ~~either dry type~~ of the dry type or contain

nonflammable liquid, ~~or battery charging stations, if they are~~ such rectifier, battery-charging station, or power center is located at or near the working section and ~~are is~~ moved as the working section advances or retreats; (ii) ~~submersible pumps, pump;~~ (iii) ~~permissible pumps pump~~ and associated permissible switch gear; (iv) ~~pumps pump~~ located at or near the working section that ~~are is~~ moved as the working section advances or retreats, ~~and; or~~ (v) small portable ~~pumps pump~~. Such equipment shall be installed and operated only in a well-ventilated location.

D. ~~Changes~~ Any change in ventilation that materially ~~affect~~ affects the main air current or any split thereof shall be made when the mine is not in operation and there are no miners in the mine other than those engaged in changing the ventilation.

E. Each section in a mine shall be ventilated by a separate split of air.

F. Air used to ventilate a belt haulage entry shall not be used to ventilate any working place unless approved by the Chief.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

§ 45.1-161.222 45.2-839. Actions for excessive methane.

A. Tests for methane concentration under this section shall be made by certified or qualified persons trained in the use of an approved detecting device ~~which that~~ is properly maintained and calibrated. Tests shall be made at least ~~twelve inches~~ one foot from the roof, face, ribs, and floor.

B. ~~When~~ If a methane concentration of one percent or more methane is present in a working place ~~or;~~ an intake air course, including an air course in which a belt conveyor is located; ~~or in~~ an area where mining equipment is being installed or removed, work shall cease and ~~electrical power~~ electrically powered equipment shall be de-energized in the affected working place ~~at the equipment,~~ except for any intrinsically safe atmospheric monitoring systems system (AMS), which need not be de-energized. Changes or adjustments shall be made ~~to the~~ such ventilation system to reduce the methane concentration to below one percent. Only work to reduce the methane concentration ~~of methane to~~ below one percent ~~shall be~~ is permitted. ~~This~~ Such limitation does not apply to ~~other faces~~ any other face in the entry or slope in which work can be safely continued.

C. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more methane is present in a working place ~~or;~~ an intake air course, including an air course in which a belt conveyor is located; ~~or an~~ area where mining equipment is being installed or removed, only work necessary to reduce the methane concentration to less than ~~one and one-half~~ 1.5 percent ~~will be~~ is permitted, and ~~all other personnel~~ miners except those required to perform such necessary work shall be withdrawn from the affected area. Electrically powered equipment in the affected area shall be de-energized and other mechanized equipment in the affected area shall be shut off, except for any intrinsically safe atmospheric monitoring systems (AMS) AMS.

D. ~~When~~ If a methane concentration of one percent or more methane is present in a return or split between the last working place on a working section and ~~where that~~ the location at which such split of air meets another split of air, or the location at which ~~the~~ such split is used to ventilate

~~seals a seal~~ or worked-out ~~areas~~ area, changes or adjustments shall be made to the ventilation system to reduce the methane concentration ~~of methane~~ in the return air to less than one percent.

E. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more ~~methane~~ is present in a return air split between the last working place on a working section and ~~where that the~~ location at which such split of air meets another split of air, or the location ~~where the~~ at which such split is used to ventilate ~~seals a seal~~ or worked-out ~~areas~~, everyone area, all miners except those persons required to perform necessary work to correct the problem shall be withdrawn from the affected area. Other than an intrinsically safe ~~atmospheric monitoring systems (AMS)~~ AMS, all equipment in the affected area shall be de-energized at the source. No other work ~~shall be~~ is permitted in the affected area until the methane concentration ~~of methane~~ in the return air is less than one percent.

F. An alternative methane ~~level up to one and one-half~~ concentration of as much as 1.5 percent ~~may be~~ is allowed in ~~the a~~ return air split ~~where if~~ the following precautions conditions are met: (i) the quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut; (ii) the methane ~~content of the air~~ concentration in the split is continuously monitored during mining operations by an intrinsically safe ~~atmospheric monitoring system (AMS)~~ AMS that gives a visual and audible signal on the working section when the methane concentration in the return air reaches ~~one and one-half~~ 1.5 percent; and (iii) rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course that is immediately outby the most inby monitoring point or inby such point ~~provided if~~ the mechanical duster is maintained in a permissible condition and does not adversely affect the AMS. ~~When one and one-half~~ If a methane concentration of 1.5 percent or more ~~methane~~ is present ~~where~~ at the location at which a return air alternative is applied, all persons shall be withdrawn, except those necessary to improve ventilation, and changes or adjustments shall be made to reduce the methane concentration ~~of methane~~ in the return air to below ~~one and one-half~~ 1.5 percent as set forth in subsection E.

G. The methane concentration ~~of methane~~ in a bleeder split of air immediately before the air in ~~the such~~ split joins another split of air, or in a return air course other than described in subsections D and E, shall not exceed two percent.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

§ ~~45.1-161.223~~ 45.2-840. Crosscuts.

A. Crosscuts shall be made between entries and between rooms as provided in the approved roof control plan.

B. ~~Crosscuts~~ Every crosscut between an intake and a return air ~~courses~~ course shall be closed, except the one nearest the face. ~~Crosscuts~~ A crosscut between rooms shall be closed where necessary to provide adequate ventilation at the working face.



C. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

D. ~~Entries~~ No entry or rooms room shall ~~not~~ be started off an entry beyond the last open crosscut.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.224~~ 45.2-841. Permanent stoppings.

A. Permanent stoppings shall be built and maintained:

1. Between each intake and return air ~~courses~~ course, except that temporary controls may be used in ~~rooms~~ any room that ~~are~~ is located 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved by the Chief, ~~these~~ such stoppings shall be maintained to and ~~including~~ inclusive of the third connecting crosscut outby the working face.

2. To separate each belt conveyor ~~haulageways~~ haulage entry from any return air ~~courses~~ course, except where a belt ~~entries are~~ entry is used as a return air ~~courses~~ course.

3. To separate the primary escapeway from any belt ~~and or~~ trolley haulage ~~entries~~ entry, unless otherwise approved by the Chief.

4. In each return air ~~courses~~ course to direct air into adjacent worked-out areas.

B. Permanent stoppings shall be built of substantial, incombustible material such as concrete, concrete ~~blocks~~ block, brick, tile, or other approved material; however, where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used.

C. The use of an air lock in the permanent intake stopping line near the section loading point ~~shall be~~ is permitted to access the belt and transport supplies.

D. Stoppings shall be maintained to serve the purpose for which they were built and shall be reasonably ~~air tight~~ airtight.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.225~~ 45.2-842. Ventilation controls.

A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of a haulage ~~trips~~ trip or ~~persons~~ person along the entries will ~~not~~ cause no interruption of the air current. ~~Air locks~~ Each air lock shall be ventilated sufficiently to prevent ~~accumulations~~ an accumulation of methane therein.

B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation within an air course shall be (i) made of ~~noncombustible~~ incombustible material or coated on all accessible surfaces with flame-retardant material having a flame spread index of 25 or less as tested under ASTM ~~E-162-187~~ E162 and (ii) of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

C. To provide easy access between the return, belt, and intake escapeway entries, substantially constructed man-doors that are properly marked so as to be readily detected shall be installed in at least every fifth crosscut in the stopping ~~lines~~ line separating such entries.

D. Doors shall be kept closed except when ~~miners~~ a miner or piece of equipment is passing through the ~~doorways~~ doorway. Any motor crew or other ~~miners~~ miner who ~~open~~ opens such doors shall see that ~~the doors~~ they are closed before leaving them.

E. Overcasts, undercasts, and regulators shall be ~~well-constructed~~ well-constructed; of incombustible material, such as masonry, concrete, concrete ~~blocks~~ block, or prefabricated metal. ~~They shall;~~ and (i) ~~be~~ of sufficient strength to withstand possible falls from the roof, (ii) ~~be~~ of ample area to pass the required quantity of air, and (iii) ~~be~~ kept clear of obstructions.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity. A reference to an ASTM standard is corrected and updated.**

§ ~~45.1-161.226~~ 45.2-843. Line brattice.

A. Substantially constructed line brattice shall be used from the last open crosscut of an entry or room when necessary to provide adequate ventilation for the miners and to remove gases. Any line brattice that is damaged by ~~falls~~ a fall or otherwise shall be repaired promptly.

B. The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

C. Brattice cloth that is used underground shall be of flame-resistant material.

D. ~~Accumulations~~ An accumulation of methane shall be moved only by means of properly installed line brattice, or other approved method.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

§ ~~45.1-161.227~~ 45.2-844. Ventilation with air from certain areas.

Active face workings shall not be ventilated with air that has passed through a worked-out ~~areas~~ area or has been used to ventilate a pillar ~~lines~~ line. This section shall not apply to air ~~which~~ that is being used to ventilate an active pillar line ~~and rooms which are~~ or a room that is necessary to establish and maintain ~~the~~ such pillar line.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

§ ~~45.1-161.228~~ 45.2-845. Worked-out areas.

A. ~~All~~ Every worked-out ~~areas~~ area shall be either sealed or ventilated.

B. Where the practice is to seal worked-out areas, the sealing shall be done in accordance with sealing provisions of the approved bleeder plan.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.229~~ 45.2-846. Air quality.

A. All active workings shall be ventilated by a current of air containing ~~not less than~~ at least 19.5 volume percent by volume of oxygen and no harmful ~~quantities~~ amount of ~~other~~ any noxious or poisonous ~~gases~~ gas.

B. The volume and velocity of the current of air in all active workings shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases ~~and~~, dust, smoke, and explosive fumes.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.230~~. Repealed.

**Drafting note: Repealed by Acts 1999, c. 256.**

~~§ 45.1-161.231~~ 45.2-847. Examination of ~~mines~~ mine for explosive gas and other hazardous conditions.

A. ~~Certified persons~~ Every certified person whose regular duties require ~~them~~ him to inspect working places in any mine for hazardous conditions shall have in ~~their~~ his possession, and shall use, when underground, a permissible methane detector or other permissible device capable of detecting methane and oxygen deficiency.

B. A sufficient number of permissible methane detectors or other permissible devices capable of detecting methane shall be kept at each mine inby the last open crosscut. ~~All miners~~ Every miner shall be trained in the operation of ~~the device~~. ~~Any miners~~ such devices. Every miner working inby the last open crosscut shall be certified by the Board of Coal Mining Examiners pursuant to § 45.2-520 to conduct gas testing. ~~Methane detectors or indicators~~

C. Every methane detector shall be maintained in permissible condition.

~~C. Methane detectors or indicators~~ Every methane detector shall be calibrated at least monthly in accordance with ~~manufacturers~~ the manufacturer's recommendations. A record of such calibration shall be made in a book for this purpose kept at a surface location at the mine and maintained for one year.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Outdated references to methane indicators are removed as duplicative of references to methane detectors. The final sentence of subsection B is moved to the beginning of subsection C.**

~~§ 45.1-161.232~~ 45.2-848. Tampering with methane monitoring devices prohibited; penalty.

A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise tamper with any methane monitors monitor or other devices device that is capable of detecting the presence of explosive gases gas and is used in an underground coal mine. If ~~the~~ such methane monitor or device is installed on a face cutting machine, a continuous miner, longwall face equipment, a loading machine, or other mechanized equipment used to extract or load coal, as required pursuant to ~~30-CFR~~ C.F.R. Part 75.342, and ~~the~~ such monitor, device, or the equipment malfunctions, ~~the monitor it~~ may be disconnected or bypassed for the ~~purposes~~ purpose of removing ~~the monitor it~~ or the equipment in order to make necessary repairs to ~~the monitor it~~ or the equipment. Any ~~other~~ methane monitor or device not otherwise required by law may be disconnected, bypassed, or removed.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage. The final sentence in subsection A, which allows any other methane monitor to be disconnected, is clarified to refer only to such a monitor when it is not required by law.**

~~§ 45.1-161.233~~ 45.2-849. Allowing persons to work in mine where methane monitoring equipment disconnected; penalty.

~~An~~ No operator, agent, or mine foreman shall ~~not~~ knowingly permit any miner to work in any area of ~~the~~ an underground coal mine where such operator, agent, or mine foreman has knowledge that a methane monitor or other device capable of detecting the presence of explosive gases gas has been impaired, disturbed, disconnected, or bypassed in violation of ~~§ 45.1-161.232~~. ~~Any person convicted of a violation~~ 45.2-848. Violation of this section ~~shall be guilty of~~ is a Class 6 felony.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.233:1~~ 45.2-850. Intentionally bypassing a safety ~~devices~~ device; prohibition.

A. No person shall intentionally bypass, bridge, or otherwise impair an electrical or hydraulic circuit that affects the safe operation of electrical or mechanical equipment. ~~This~~

B. The provisions of subsection A shall not prohibit (i) a certified electrical ~~repairmen~~ repairman from ~~by passing~~ bypassing an energized circuits circuit for troubleshooting; (ii) an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustment or to move the equipment to a safe location; (iii) an authorized person from bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a safe location in order to make necessary repairs or ~~be taken~~ take such equipment out of service; or (iv) an authorized person from

activating an override feature that is designed by the machine manufacturer to allow ~~the~~ such machine to be moved to a safe location in order to ~~make~~ undergo necessary repairs or be taken out of service.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and subsection designations are added for clarity. An erroneous reference to a certified electrical "repairmen" in the second sentence is corrected.**

~~§ 45.1-161.234~~ 45.2-851. Control of coal dust.

A. Coal dust shall not be permitted to accumulate excessively in any part of the active areas, including any active workings that are soon to be worked-out.

B. Where an underground mining ~~operations create~~ operation creates or ~~raise~~ raises an excessive amount of coal dust into the air, any coal dust on the ribs, roof, or floor shall undergo an application of water or water with ~~an added~~ a wetting agent; added to it or ~~other~~ another effective method ~~of controlling dust~~, approved by the Chief; or his authorized representative, ~~shall be applied to coal dust on the ribs, roof, and floor~~ of controlling dust to reduce dispersibility and to minimize the ~~hazard~~ risk of explosion. Such application or method shall occur within ~~forty~~ 40 feet from ~~all of any~~ any active workings or such other ~~areas~~ area as the Chief or his authorized representative ~~shall require~~ requires.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

~~§ 45.1-161.235~~ 45.2-852. Rock dusting.

A. ~~All~~ Every underground ~~areas~~ area of a mine, except ~~those areas where~~ an area in which the coal dust is too wet or too high in incombustible content to propagate an explosion, shall be ~~rock dusted~~ rock-dusted to within ~~forty~~ 40 feet of ~~all every~~ every working ~~faces~~ face, unless such ~~areas~~ area is inaccessible or unsafe to enter or unless the Chief; or his authorized representative; permits an exception upon his finding that such exception ~~will~~ does not pose a hazard to ~~the miners~~. All crosscuts any miner. Every crosscut that are is less than ~~forty~~ 40 feet from a working ~~faces~~ face shall also be ~~rock dusted~~ rock-dusted.

B. ~~All~~ Every other ~~areas~~ area of a mine shall be ~~rock dusted~~ rock-dusted if conditions are found by a proper inspection to be so dusty as to constitute a hazard ~~after proper inspection~~. Should. If such conditions ~~be~~ are found to exist, the Chief; or his authorized representative; shall require the necessary rock dusting to make ~~the areas~~ every such area of the mine safe.

C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible ~~materials~~ material, shall be cleaned up and shall not be permitted to accumulate excessively in active workings; or on electric equipment therein.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

Article ~~10~~ 5.

Personal Safety; Smoking.

**Drafting note: Existing Article 10 of Chapter 14.3, relating to personal safety and smoking, is retained as proposed Article 5 of Chapter 8.**

~~§ 45.1-161.174~~ 45.2-853. Checking system; tracking system.

A. Each mine shall have a personnel checking system ~~containing that includes~~ the following requirements:

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

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

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

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

B. ~~Mine-wide~~ Any mine-wide tracking ~~systems~~ system shall be maintained in useable and operative ~~conditions~~ condition.

**Drafting note: Technical changes are made, including organizational changes in subsection A and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.175~~ 45.2-854. Protective clothing.

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

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

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

D. ~~All employees~~ Every employee inside or outside of ~~mines~~ a mine shall wear ~~approved~~ an approved type of goggles or shields where there is a hazard from flying particles.

E. ~~Welders~~ Every welder and ~~helpers~~ helper shall use proper ~~shields or goggles~~ shields to protect ~~their~~ his eyes.

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

~~G. Gloves Every employee shall be worn wear gloves when handling material which that may injure the hands is handled. Gloves or when handling energized cables. No gloves with gauntlet cuffs shall not be worn around moving equipment. Gloves shall be worn when handling energized cables.~~

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.176 45.2-855. Noise levels and ear protection.~~

~~Approved Each mine operator shall provide approved hearing protection shall be provided to miners by the mine operator. Miners. Every miner shall wear approved hearing protection in areas any area of excess noise levels in accordance with the mine's hearing conservation program approved under 30-CFR C.F.R. Part 62.~~

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.177 45.2-856. Smoking materials prohibited; penalty.~~

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

~~B. The Each operator shall institute a smoker search program, approved by the Chief, to ensure that any no person entering the underground area of the mine does not carry carries any smoking materials, matches, material, match, or lighters lighter.~~

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.178~~ 45.2-857. Allowing persons to work in a mine with smoker's articles; penalty.

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

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

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-161.179~~ 45.2-858. Posting of notice.

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

NOTICE:

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

**Drafting note: Technical changes.**

~~§ 45.1-161.180~~ 45.2-859. Smoking in surface and other areas.

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

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~Article 9:~~

~~Illumination.~~

**Drafting note: The first section of existing Article 9 of Chapter 14.3 is relocated to this proposed article, while the remaining two sections of existing Article 9 are relocated to proposed Article 2 of this chapter.**

~~§ 45.1-161.171~~ 45.2-860. Portable illumination.

A. ~~All miners~~ For portable illumination underground, every miner shall use ~~only a~~ permissible electric cap ~~lamps~~ lamp that ~~are~~ is worn on the person ~~for portable illumination.~~

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



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

B. Any light bulb on an extension cable shall be guarded adequately.

**Drafting note: Technical changes are made, including organizational changes that condense subsection A and move subsection B to the end of the section for clarity, and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

#### ~~Article 12~~ 6.

First Aid Equipment; Medical Care; Emergency Medical Services Providers.

**Drafting note: Existing Article 12 of Chapter 14.3, relating to first aid equipment, medical care, and emergency medical services providers, is retained as proposed Article 6 of Chapter 8.**

~~§ 45.1-161.197~~ 45.2-861. First aid equipment.

Each mine shall have ~~an adequate supply~~ supplies of first aid equipment as determined by the Chief. Such supplies shall be located on the surface, at the bottom of ~~shafts~~ each shaft and ~~slopes~~ slope, and at other strategic locations near the working faces, as ~~shall be prescribed by the Chief~~ prescribes. ~~The Such~~ first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof. ~~The Such~~ supplies shall be available for use of ~~all persons~~ any person employed in the mine. No first aid material shall be removed or diverted without authorization except in case of injury at the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.198~~ 45.2-862. Attention to injured persons.

A. When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting such injured ~~persons~~ person to a hospital if necessary.

B. Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the surface of the mine.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.199~~ 45.2-863. Certified emergency medical services providers.

A. At each mine, the mine operator shall station at least one person who is a working coal miner and who holds a valid certificate as an emergency medical services provider issued by the Commissioner of the Department of Health pursuant to § 32.1-111.5 so as to be

~~make such person available for duty at each mine during any time when miners are working at that such mine. Such emergency medical services operator shall utilize enough such providers shall be utilized in sufficient numbers to assure that workers in any mine location can be reached by them a provider within such a reasonable time as is determined by the Chief. Emergency medical services providers Each provider shall have available to them him at all times the necessary equipment, as specified by the Chief, for prompt response to emergencies. In the event that at any time there is at any mine Telephone facilities or their equivalent shall be installed to provide two-way voice communication between such provider and medical personnel outside the mine.~~

~~B. If an insufficient number of qualified miners volunteering at a particular mine volunteer to serve as emergency medical services providers as provided for in pursuant to this section, the operator may elect to utilize the services of first aid trainees, in such numbers as the Chief determines to be appropriate. Telephone or equivalent facilities shall be installed to provide two-way voice communication between the emergency medical services providers and medical personnel outside the mine.~~

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated, subsection designations are added, and the provision referring to telephone facilities is moved for clarity. A cross-reference to the emergency medical services provider certification is added.**

PART C.  
SURFACE COAL MINES.

**Drafting note: In proposed Subtitle II, proposed Part C, Surface Coal Mines, is created to logically organize provisions relating to surface coal mines and contains the following two chapters: Chapter 9 (Requirements Applicable to Surface Coal Mines) and Chapter 10 (Virginia Coal Surface Mining Control and Reclamation Act of 1979).**

~~CHAPTER 14.4 9.~~  
REQUIREMENTS APPLICABLE TO SURFACE COAL MINES.

**Drafting note: Existing Chapter 14.4, Requirements Applicable to Surface Coal Mines, is retained as proposed Chapter 9. Articles 1 through 13 of existing Chapter 14.4 are retained in that order in proposed Chapter 9 as follows: Article 1 (General Provisions), Article 2 (Work Area Examinations, Recordkeeping, and Reporting), Article 3 (Personal Protection), Article 4 (First Aid Equipment; Medical Care; Emergency Medical Services Providers), Article 5 (Fire Prevention and Fire Control ), Article 6 (Surface Equipment), Article 7 (Travel Ways and Loading and Haulage Areas), Article 8 (Dust Control s), Article 9 (Electricity), Article 10 (Explosives and Blasting), Article 11 (Ground Control), Article 12 (Auger and Highwall Mining), and Article 13 (Proximity of Mining to Gas or Oil Wells or Vertical Ventilation Holes).**

Article 1.

General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1 of Chapter 9.**

~~§ 45.1-161.253~~ 45.2-900. Scope of chapter.

This chapter ~~shall be applicable~~ applies to the operation of any surface coal mine in the Commonwealth; and ~~shall supplement~~ supplements the provisions of Chapter ~~14.2-5~~ (~~§ 45.1-161.7~~ 45.2-500 et seq.).

**Drafting note: Technical changes are made to modernize language.**

~~§ 45.1-161.254~~ 45.2-901. Regulations governing conditions and practices at surface coal mines.

A. The Chief ~~shall have authority~~ may, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), ~~to promulgate rules and~~ adopt regulations necessary to ensure safe and healthy working conditions in surface coal mines in the Commonwealth. ~~Such rules and~~ regulations governing surface coal mines shall relate to:

1. Safety and health standards for the protection of the life, health, and property of, and the prevention of injuries to, persons involved in or likely to be affected by any surface coal mining ~~operations which shall include but not be limited to~~. Such regulations shall include standards for the control of dust concentration levels; the installation, maintenance, and use of electrical devices, equipment, cables, and wires; fire protection; the use and storage of explosives; hoistings; drilling; loading and haulage areas; the training of surface miners; the preparation of responses to emergencies; examinations of conditions at a surface mine site; and reporting requirements;

2. The storage or disposal of any matter or ~~materials~~ material that is (i) extracted or disturbed as the result of a surface coal mining operation ~~or operations~~ or (ii) used in the surface coal mining operation or for the refinement or preparation of the ~~materials~~ material that is extracted from the surface coal mining operation, so that such matter or material does not threaten the health ~~or~~, safety, or property of the miners or the general public; and

3. The operation, inspection, operating condition, and movement of drilling equipment and machines to protect the health, safety, and property of miners and the general public.

B. The Chief shall ~~not promulgate any rule or~~ adopt no regulation establishing ~~requirements~~ a requirement for the operation of, or for conditions at, a surface coal mine ~~which are~~ that is inconsistent with ~~requirements~~ any requirement established by ~~this~~ the Act.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. In subdivision A 1, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The word "property" is added to subdivision A 2 for consistency with subdivision A 1. Technical changes are made pursuant to § 1-227, which states that**

throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made to modernize language.

~~§ 45.1-161.255~~ 45.2-902. Standards for regulations.

In ~~promulgating the rules and adopting~~ regulations pursuant to ~~§ 45.1-161.254~~ 45.2-901, the Chief shall consider:

1. Standards utilized and generally recognized by the surface coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. Standards established by federal mine safety laws;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under ~~this~~ the Act and other mine safety laws; and
5. Such other criteria ~~as shall be~~ necessary for the protection of the safety and health of miners and other persons or property likely to be affected by surface coal mines or related operations.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made.**

## Article 2.

Work Area Examinations, ~~Record Keeping~~ Recordkeeping, and Reporting.

**Drafting note: Existing Article 2, relating to work area examinations, recordkeeping, and reporting, is retained as proposed Article 2 of Chapter 9. A technical change is made to the name.**

~~§ 45.1-161.256~~ 45.2-903. Safety examinations.

A. ~~On-shift examinations~~ An on-shift examination of the work area, including any pit, auger, thin seam ~~and, or highwall operations~~ operation, shall be conducted by a certified ~~persons~~ once every person for each production shift and at such other times or frequency as the Chief designates as necessary for hazardous conditions.

B. ~~Pre-operational examinations~~ A pre-operational examination of all mobile equipment shall be conducted by an authorized person.

C. ~~Pre-shift examinations~~ A pre-shift examination shall be conducted by a certified person for certain hazardous conditions designated by the Chief.

D. ~~Mine~~ Each mine refuse ~~piles~~ pile, as defined in § 45.2-617, shall be examined ~~daily~~ by an authorized person ~~on any~~ each day on which ~~a~~ any person works at such location.

E. The location of ~~all~~ each natural gas ~~pipelines~~ pipeline on a permitted surface mine ~~areas~~ area shall be identified and conspicuously marked so that equipment operators can readily ~~see~~ identify the location of such ~~lines~~ pipeline. ~~Pre-shift examinations~~ A pre-shift examination shall

be conducted of the location of ~~pipelines~~ each pipeline whenever the work area approaches within 500 feet of such pipeline unless otherwise approved by the Chief.

F. ~~Air~~ An air quality examination shall be conducted by a certified person when a surface coal mining operation intersects an underground mine, auger hole, or other underground ~~workings~~ working.

G. ~~Examinations~~ At least one examination for methane shall be conducted for each production shift in each surface ~~installations~~ installation, enclosures enclosure, or other ~~facilities~~ facility in which coal is handled or stored ~~once each production shift. Such areas~~ Each such area shall also be tested for methane before any activity involving welding, cutting, or an open flame. ~~Examinations~~ An examination conducted pursuant to this subsection shall be made by an authorized person certified to make gas tests.

H. Electrical equipment and wiring shall be inspected as often as necessary but at least once a per month.

I. ~~Fire extinguishers~~ Each fire extinguisher shall be examined at least once every six months.

J. ~~Areas~~ Each area of an inactive surface coal ~~mines~~ mine shall be examined for hazardous conditions by a mine foreman immediately before ~~miners are~~ any miner is permitted to enter into such ~~areas~~ area to take emergency actions to preserve a mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Reference to the definition of "mine refuse pile" is made as that term is not defined in this chapter.**

§ ~~45.1-161.257~~ 45.2-904. Records of examinations.

A. Documentation of examinations and testing conducted pursuant to § ~~45.1-161.256~~ 45.2-903 shall be recorded in a mine record book provided for that purpose. Documentation shall include records of hazardous conditions found in the work area. However, examinations of fire extinguishers shall be conducted by an authorized person and documentation shall be accomplished by recording the date of the examination on a permanent tag attached to ~~the~~ each extinguisher.

B. The actual methane readings taken during examinations required under ~~this~~ the Act shall be recorded in the mine record book.

C. The surface foreman shall maintain and sign a daily record book. Where any such ~~reports~~ report discloses a hazardous ~~conditions~~ condition, the surface foreman shall take prompt action to have such ~~conditions~~ condition corrected, barricaded, or posted with warning signs.

D. ~~Records~~ Each record shall be countersigned by the supervisor of the examiner creating the ~~records~~ record. Where such ~~records~~ record discloses a hazardous ~~conditions~~ condition, the countersigning of the ~~records~~ record shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination ~~records were~~ record was completed, and the person countersigning shall ensure that actions to eliminate or

control the hazardous ~~conditions~~ condition have been taken. Where such ~~records do~~ record does not disclose ~~a hazardous conditions~~ condition, the countersigning ~~may~~ shall be completed within 24 hours following the end of the shift for which the examination ~~records were~~ record was completed. The operator may authorize another person ~~with equivalent~~ who has authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign ~~the records~~ and ensure that action is taken to eliminate ~~the any hazardous conditions~~ condition disclosed in ~~the records~~ a record.

E. All records of inspections shall be open for inspection by any interested persons person and maintained at the mine site for a minimum of one year.

**Drafting note: Subsection D is clarified so that it does not allow an operator to convey the authority of a supervisor to another person. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.258~~ 45.2-905. Areas with safety or health hazards; duties of surface mine foreman.

A. Any hazardous condition shall be corrected promptly or the affected area shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

B. The surface mine foreman shall see that the requirements of ~~this the~~ the Act pertaining to his duties and to the health and safety of the miners are fully complied with at all times.

C. The surface mine foreman shall see that every miner employed to work at the mine, before beginning work therein, is aware of ~~all any hazardous conditions~~ condition incident to his work at the mine.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

### Article 3.

#### Personal Protection.

**Drafting note: Existing Article 3, relating to personal protection, is retained as proposed Article 3 of Chapter 9.**

~~§ 45.1-161.259~~ 45.2-906. Personal protection devices and practices.

A. ~~All persons~~ Every person at a surface coal mine shall wear the following protection in the specified conditions:

1. ~~Hard hats~~ A hard hat in and around ~~mines~~ any area of a mine where falling objects ~~may~~ could cause injury.

2. Hard-toed footwear in and around ~~mines~~ a mine.

3. Safety goggles or ~~shields~~ a shield where there is a hazard of flying material.

4. ~~Protective~~ A protective shield or goggles when welding.
5. Snug-fitting clothes when working around moving parts or machinery.
6. Gloves where the hands could be injured. Gauntlet cuffed gloves are prohibited around moving machinery.

B. ~~Ear~~ The operator shall supply ear protection shall be supplied by the operator to all miners any miner upon request.

C. Every person assigned to or performing duties at a surface mine work area shall wear reflective ~~materials~~ material adequate to ~~be~~ make the person visible from all sides. ~~The~~ Such reflective material shall be placed on ~~the hard hats~~ hat and at least one other item of outer clothing, such as ~~belts a belt,~~ suspenders, ~~jackets a jacket,~~ ~~coats a coat,~~ coveralls, ~~shirts a shirt,~~ pants, or vests a vest.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa Other technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.260~~ 45.2-907. Housekeeping.

A. Good housekeeping shall be practiced in and around ~~buildings~~ every building, ~~shafts shaft,~~ ~~slopes slope,~~ ~~yards and yard,~~ or other ~~areas~~ area of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and material that ~~may potentially~~ could fall or roll.

B. ~~All~~ Every surface mine ~~structures~~ structure, ~~enclosures enclosure,~~ and ~~or~~ other ~~facilities~~ facility shall be maintained in a safe condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.261~~ 45.2-908. Noxious fumes.

Painting or ~~operations creating~~ any operation that creates noxious fumes shall be performed only in a well-ventilated atmosphere.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

#### Article 4.

First Aid Equipment; Medical Care; Emergency Medical Services Providers.

**Drafting note: Existing Article 4, relating to first aid equipment, medical care, and emergency medical services providers, is retained as proposed Article 4 of Chapter 9.**

~~§ 45.1-161.262~~ 45.2-909. First aid equipment.

~~Each~~ Every surface coal mine shall have ~~an~~ adequate ~~supply~~ supplies of first aid equipment as determined by the Chief. Such supplies shall be located at strategic locations at the mine site so as to be available in a reasonable response time. ~~The first aid~~ Such supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition

to the supplies in the ~~cases~~ receptacles, blankets, splints, and properly constructed stretchers in good ~~conditions~~ condition shall be provided at every mine. ~~The~~ All of the first aid supplies shall be available for use ~~of all persons~~ by any person employed at the mine. No first aid supplies shall be removed or diverted without authorization except in case of injury at the mine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.263~~ 45.2-910. First aid training.

A. ~~Surface foremen~~ Each surface foreman shall ~~have completed~~ complete and ~~passed~~ pass a first aid course of study as prescribed by the Chief. The Chief ~~is authorized to~~ may utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each operator of a surface coal mine, ~~upon request~~, shall make first aid training, including refresher training, available upon request to every miner employed ~~in~~ at such mine ~~first aid training, including refresher training~~.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrases "is authorized to" and "shall have the power to" are replaced with "may." Language is updated for modern usage.**

~~§ 45.1-161.264~~ 45.2-911. Attention to injured persons.

A. Prompt medical attention shall be provided in the event of an injury, and adequate facilities shall be made available for transporting injured persons to a hospital where necessary.

B. Safe transportation shall be provided to move injured persons from the site where the injury occurred to ~~areas~~ an area that is accessible to emergency transportation.

C. The operator of each mine shall post directional signs that are conspicuously located to identify ~~the routes~~ each route of ingress to and egress from any mine located off of a public road.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

## Article 5.

### Fire Prevention and Fire Control.

**Drafting note: Existing Article 5, relating to fire prevention and fire control, is retained as proposed Article 5 of Chapter 9.**

~~§ 45.1-161.265~~ 45.2-912. ~~Fire fighting~~ Firefighting equipment; duties in case of fire; fire precaution in transportation of mining equipment; fire prevention generally.

A. Each mine shall be provided with suitable ~~fire fighting~~ firefighting equipment, ~~that is~~ adequate for the size of the mine and ~~shall include~~ includes at least three 20-pound dry chemical fire extinguishers. Equipment and devices used for the detection, warning, and extinguishing of fires shall be suitable in type, size, and quantity for the type of fire hazard that ~~may~~ could be encountered. Such equipment and devices shall be strategically located and plainly identified.



B. Suitable fire extinguishers shall be provided at ~~all~~ or on each (i) ~~electrical stations station~~, such as ~~substations a substation~~, transformer ~~stations and station~~, or permanent pump ~~stations, station~~; (ii) piece of self-propelled mobile equipment; (iii) ~~belt heads, head~~; (iv) ~~areas area~~ used for the storage of flammable materials; (v) ~~fueling stations, station~~; and (vi) ~~other areas area~~ that ~~may could~~ constitute a fire hazard. Such fire extinguishers shall be placed so as to be out of the smoke in case of a fire.

**Drafting note: Language is updated for modern usage and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-161.266~~ 45.2-913. Duties in case of fire.

A. ~~Should~~ If a fire ~~occurs~~ occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it. When a fire that ~~may could~~ endanger persons at the mine cannot be extinguished immediately, all persons shall be withdrawn promptly from the area of the fire.

B. In case of any unplanned fire at or about a mine that is not extinguished within ~~thirty~~ 30 minutes of discovery, the operator or agent shall report the fire to the Chief by the quickest available means ~~to the Chief~~, giving all information known to ~~him~~ the operator or agent regarding the fire. The Chief shall take prompt action, ~~based on the information, and decide whether~~ to go in person or dispatch qualified subordinates to the scene of the fire for consultation; and ~~assist~~ assistance in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but ~~must~~ such decision shall be given to the operator in writing in order to have the force of an order.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.267~~ 45.2-914. Fire precautions.

A. An examination for fire shall be made after every blasting operation.

B. No person shall smoke or use an open flame within ~~twenty-five~~ 25 feet of ~~locations~~ any location used to handle or store flammable or combustible liquids or where an arc or flame ~~may could~~ cause a fire or explosion.

C. ~~Areas~~ Any area surrounding a flammable liquid storage ~~tanks, tank~~ or electrical substations and transformers substation or transformer shall be kept free of combustible material for at least ~~twenty-five~~ 25 feet in ~~all directions~~ every direction. ~~Such~~ Each such storage ~~tanks, substations and transformers tank, substation, or transformer~~ shall be posted with readily visible fire hazard warning signs.

D. ~~Structures~~ Any structure or ~~areas~~ area used for storage of flammable materials shall be constructed of fire resistant material, ~~well-ventilated~~; kept well-ventilated, clean, and orderly; and posted with readily visible fire hazard warning signs.

~~E. Fuel lines~~ Every fuel line shall be equipped with a shut-off ~~valves~~ valve at ~~the sources~~. ~~Such valves its source. Each such valve~~ shall be readily accessible and maintained in good operating condition.

~~F. Battery~~ Every battery charging ~~areas~~ area shall be ~~well-ventilated~~ well-ventilated and posted with warning signs prohibiting smoking or open flames within ~~twenty-five~~ 25 feet.

G. Oil, grease, ~~other~~ flammable hydraulic fluid, and other flammable materials shall be kept in closed metal containers and separated from other materials so as to not create a fire hazard.

H. Combustible materials, grease, lubricants, paints, and other flammable materials and liquids shall not be allowed to accumulate where they could create a fire hazard. Provision shall be made to prevent the accumulation of such material on any equipment, at any storage ~~areas~~ area, and at any location where the material is used.

I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

J. Precautions shall be taken to ensure that ~~sparks~~ no spark or other hot ~~materials do not result~~ material results in a fire when welding or cutting. ~~Welding~~ No welding or cutting with an arc or flame shall ~~not~~ be done in any excessively dusty ~~atmospheres~~ atmosphere or ~~locations~~ location. ~~Fire fighting~~ Firefighting apparatus shall be readily available when welding or cutting is performed.

K. Precautions shall be taken before applying heat, cutting, or welding on any pipe or container that has contained a flammable or combustible material.

~~L. Oxygen and~~ Every oxygen or acetylene ~~bottles~~ bottle shall be (i) stored in ~~raeks designated and a rack~~ constructed and designated for the storage of such bottles with their caps in place and (ii) secured when not in use. Such bottles shall not be stored near oil, grease, ~~and~~ or other flammable material.

~~M. Oxygen~~ Every oxygen and acetylene ~~gauges~~ gauge and ~~regulators~~ regulator shall be kept clean and free of oil, grease, and other combustible materials.

~~N. Belt conveyors~~ Every belt conveyor shall be equipped with a control ~~switches~~ switch to automatically stop the driving motor of the conveyor in the event that the belt is stopped by slipping on the driving pulley, ~~by~~ as a result of breakage or other accident.

~~O. Areas~~ The area surrounding every main fan ~~installations and~~ installation or other mine ~~openings~~ opening shall be kept free from grass, weeds, underbrush, and other combustible materials for ~~twenty-five~~ 25 feet in ~~all directions~~ every direction.

~~P. Internal~~ Every internal combustion ~~engines~~ engine, except a diesel ~~engines~~ engine, shall be shut off prior to fueling.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The prohibitory language of subsection J is recast in affirmative form consistent with current drafting practice. Other technical changes are made and language is updated for modern usage and parallel construction.**

Article 6.

Surface Equipment.

**Drafting note: Existing Article 6, relating to surface equipment, is retained as proposed Article 6 of Chapter 9.**

~~§ 45.1-161.268~~ 45.2-915. Haulage and mobile equipment; operating condition.

A. All mobile equipment shall be maintained in a safe operating condition.

B. Positive-acting stopblocks shall be used where necessary to protect persons from the danger of moving or runaway haulage equipment.

C. Where it is necessary for ~~men~~ persons to cross conveyors regularly, suitable crossing facilities shall be provided.

D. ~~Persons~~ No person shall ~~not~~ get on or off moving equipment.

E. When the equipment operator is present, ~~persons shall notify him before~~ any person getting on or off mobile equipment shall notify the operator before doing so.

F. Mobile equipment shall not be left unattended unless the brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned ~~into~~ in to a bank unless the lowering of the bucket or blade to the ground will prevent movement and such bucket or blade is lowered.

G. ~~Persons~~ No person shall ~~not~~ work on or from a piece of mobile equipment in a raised position unless the equipment is specifically designed to lift ~~persons~~ a person.

H. Water, debris, or spilled materials ~~which may that could~~ create ~~hazards~~ a hazard to moving equipment shall be removed.

I. Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved. No person shall be allowed to ride on top of self-propelled mobile equipment.

J. ~~Operators~~ The operator of a piece of self-propelled haulage equipment shall sound a warning before ~~starting~~ he starts such equipment and as ~~approaching~~ he approaches any place where ~~persons are~~ a person is or ~~are~~ is likely to be.

K. Each ~~man-trip~~ mantrip shall be operated independently under the charge of an authorized person, ~~and operated independently~~.

L. ~~Operator provided man-trips~~ Each mantrip shall be maintained in safe operating condition, ~~and enough of them~~. Mantrips shall be provided in sufficient number to prevent ~~their~~ being any mantrip from becoming overloaded.

M. ~~Employees~~ No employee shall ~~not~~ board or leave a moving ~~man-trips;~~ mantrip. Each employee shall remain seated while in a moving ~~cars,~~ car and shall proceed in an orderly manner to and from ~~man-trips~~ a mantrip.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage. The unnecessary phrase "Operator provided" is removed from subsection L to make the subsection parallel to subsection C of § 45.1-161.150 in proposed Chapter 7.**

~~§ 45.1-161.269~~ 45.2-916. Equipment operation.

A. Equipment operating speeds, conditions, and characteristics shall be prudent and consistent with the conditions of the roadway, grades, grade, clearance, visibility, and traffic, and the type and use of equipment.

~~B. Vehicles~~ Any vehicle that follows another vehicle shall follow do so at a safe distance; passing shall be limited to areas of adequate clearance and visibility.

C. Mobile equipment shall be operated under power control at all times and each mobile equipment ~~operators~~ operator shall have full control of the equipment while in motion.

D. Before starting or moving equipment, an equipment operator ~~must~~ shall be certain by signal or other means that all persons are clear.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.270~~ 45.2-917. Safety measures on equipment.

~~A. Rubber-tired~~ Every rubber-tired or crawler-mounted crawler-mounted piece of equipment shall have a rollover protective-structures structure to the extent required by 30-CFR 77.403a C.F.R. § 77.403-1.

~~B. Seat belts~~ Each seat belt provided in mobile equipment shall be maintained in safe working condition. ~~Operators~~ Every operator of such equipment shall wear a seat-belts belt when the equipment is in motion.

C. Mobile equipment shall be equipped with adequate brakes and parking brakes.

D. Cab windows shall be of ~~safety~~ safe design, kept in good condition, and clean for adequate visibility.

~~E. Tires~~ Any tire shall be deflated before ~~repairs~~ any repair on them are it is started, and adequate means shall be provided to prevent ~~wheel locking~~ wheel-locking rims from creating a hazard during tire inflation.

F. An audible warning device and headlights shall be provided on ~~all~~ each piece of self-propelled mobile equipment.

G. An automatic backup alarm; that is audible above surrounding noise levels; shall be provided on ~~all~~ each piece of mobile equipment. An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

~~H. All~~ Each piece of equipment that is raised for repairs or other work shall be securely blocked-prior to persons positioning themselves before any person positions himself where the falling of such equipment could create a hazardous condition.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The cross-reference to the Code of Federal Regulations in subsection A is updated to reflect a redesignation of the section number in 71 Fed. Reg. 16669 (April 3, 2006). Language is updated for modern usage.**

~~§ 45.1-161.271~~ 45.2-918. Transportation of personnel.

No person shall be permitted to ride or ~~be otherwise~~ be transported (i) on or in: ~~(i) dippers, shovels, buckets, forks and clamshells, a dipper, shovel, bucket, fork, or clamshell;~~ (ii) on or in the cargo space of ~~a dump trucks, truck;~~ (iii) outside cabs or beds ~~the cab or bed of a piece of heavy equipment;~~; or (iv) on or in a chain, belt, or bucket ~~conveyors~~ conveyor, unless the item described in clauses (i) through (iv) is specifically designed to transport persons.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is added for clarity.**

~~§ 45.1-161.272~~ 45.2-919. Lighting.

A. Lights shall be provided on or in surface structures as needed, ~~in or on surface structures.~~

B. Roads, paths, and walks outside of surface structures shall be kept free from obstructions and shall be ~~well illuminated~~ well-illuminated if used at night.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-161.273~~ 45.2-920. Shop and other equipment.

A. The following shall be guarded and maintained adequately:

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

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

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

4. Fly wheels. ~~Where a~~ Any fly wheels extend ~~wheel that extends~~ more than seven feet above the floor, they shall be guarded to a height of at least seven feet.

5. Circular and band saws and planers.

6. Repair pits. Guards shall be kept in place when ~~the pits are~~ a pit is not in use.

7. Counterweights.

8. Mine fans. The approach to any mine fan shall be guarded.

9. Lighting and other electrical equipment that ~~may cause~~ could create a shock ~~hazards~~ hazard or cause personal injury.

B. ~~Machinery~~ No machinery shall ~~not~~ be repaired or oiled while in motion; ~~provided, however, that this shall not apply where~~ unless a safe remote oiling ~~devices are~~ device is used.

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

D. ~~Mechanically operated~~ Every mechanically operated grinding ~~wheels~~ wheel shall be equipped with:

1. Safety washers and tool rests;

2. ~~Substantial~~ A substantial retaining ~~hoods~~ hood, the hood opening of which shall not expose more than a 90 degree sector of the wheel. ~~Such hoods~~ Each such hood shall include a

device to control and collect excess rock, metal, or dust particles, ~~or~~. If no such device is provided, equivalent protection shall be provided to the employees each employee operating such machinery; and

3. Eyeshields, unless goggles are worn by the ~~operators~~ operator.

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

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-161.274~~ 45.2-921. Hydraulic hoses.

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

**Drafting note: Obsolete dates for manufacture of hydraulic hoses are removed and language is amended accordingly. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage.**

#### Article 7.

~~Travelways,~~ Travel Ways and Loading and Haulage Areas.

**Drafting note: Existing Article 7, relating to travel ways and loading and haulage areas, is retained as proposed Article 7 of Chapter 9. Technical changes are made to the name.**

§ ~~45.1-161.275~~ 45.2-922. Stairways, platforms, runways, and floor openings.

A. Stairways, platforms, and runways shall be provided where ~~men~~ persons work or travel.

B. Stairways, elevated platforms, ~~floor openings, and~~ elevated runways, and floor openings shall be equipped with suitable handrails or guardrails.

C. ~~Elevated Stairways, elevated~~ platforms, runways, and floor openings, ~~stairways, and runways~~ shall be provided with toe boards. ~~Platforms, stairways, Stairways, platforms, and runways~~ shall be kept clear of stumbling and slipping hazards and shall be maintained in good repair.

**Drafting note: Language is updated for modern usage and consistency.**

§ ~~45.1-161.276~~ 45.2-923. Loading and haulage work area requirements.

A. ~~Ramps and dumps~~ Every ramp or dump shall be of solid construction, ample width, and ample clearance, ~~and head room and~~ headroom shall be kept reasonably free of spillage.

B. Berms or guards shall be provided on the outer bank of every elevated haulage ~~roads road~~. ~~Berms constructed on or after July 1, 2005, Every berm~~ shall be constructed of substantial material to the mid-axle height of the largest vehicle regularly used on ~~the~~ such haulage road. The width and height of the berm shall be constructed on a two-to-one ratio when it is constructed of unconsolidated material. Other ~~no less~~ equally effective and appropriate methods may be used for berms.

C. Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent overtravel and overturning at ~~dump~~ dumping stations.

D. Dumping locations and haulage roads shall be kept reasonably free of water, debris, and spillage. Water, debris, or spilled material that creates ~~hazards~~ a hazard to moving equipment shall be removed.

E. ~~Haulage roads~~ Every haulage road constructed on or after July 1, 2005, shall be constructed at least one and one-half times the width of the widest equipment in use, and ~~those~~ any haulage ~~roads~~ road that is used for passing shall be constructed at least three times the width of the widest equipment in use. ~~In areas where this may~~ any area in which it is not possible to construct the haulage road to at least the applicable minimum width, the foreman shall establish procedures for safe travel of haulage vehicles.

F. Traffic rules, signals, and warning signs shall be standardized at each mine and shall be posted. ~~This~~ Such rules, signals, and signs shall include, ~~but not be limited to,~~ rules for the travel of on-road vehicles operating near off-road haulers in work areas.

G. ~~Dumping stations where~~ Every dumping station at which material is dumped over an embankment shall be designed to minimize backing and, where conditions permit, to provide for perpendicular travel to allow the equipment operator to observe the dumping station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other available means shall be used to clearly indicate each dumping ~~locations~~ location. This subsection shall not apply to a dumping ~~stations~~ station (i) that ~~are~~ is moved after each dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are dumped short and pushed over the embankment. ~~Dump stations~~ Any dumping station that may could interfere with ~~haulroads~~ a haulage road or work ~~areas~~ area below shall be clearly marked with signs to prevent further

dumping, unless other effective precautions are taken to protect ~~haulroads~~ such haulage road or work ~~areas~~ area below the dump station.

**Drafting note: The berm construction date reference is removed from subsection B because it has been made obsolete by federal law. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity, consistency, and modern usage. The word "haulroads," which appears only in this section, is replaced with the standard "haulage road."**

§ ~~45.1-161.277~~ 45.2-924. Equipment operation.

A. ~~If truck spotters are~~ a truck spotter is used, ~~they~~ he shall be well in the clear while ~~trucks~~ are any truck is backing into dumping position and dumping. ~~Truck spotters~~ Every truck spotter shall use lights at night to direct backing and dumping operations.

B. ~~Dippers, buckets, scraper blades, and similar movable parts~~ Every dipper, bucket, scraper blade, or similar movable part shall be secured or lowered to the ground when not in use.

C. Equipment ~~which~~ that is to be hauled shall be loaded and protected so as to prevent sliding or spillage. When moving between work areas, the equipment shall be secured in the travel position.

D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar.

E. Dust control measures shall be taken so as to ~~not obstruct~~ prevent the obstruction of visibility of any equipment operator.

F. ~~Dippers~~ No dipper, bucket, loading booms, boom, or other heavy loads load shall ~~not~~ be swung over ~~cabs~~ the cab of haulage equipment until the driver is out of the cab and ~~is~~ in a safe location, unless the equipment is designed specifically to protect ~~drivers~~ the driver from falling material.

G. Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard for other vehicles.

**Drafting note: Language is updated for clarity and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

## Article 8.

### Dust Control.

**Drafting note: Existing Article 8, relating to dust control, is retained as proposed Article 8 of Chapter 9.**

§ ~~45.1-161.278~~ 45.2-925. Control of dust and combustible material.

A. Where a surface coal mining operation ~~operations~~ raise operation raises an excessive amount of dust into the air, such dust shall be allayed at its sources by the use of water or, water with a wetting agent added to it, or other another effective methods shall be used to allay such dust at its sources method.



B. Drilling in rock shall be done wet, or other means of dust control shall be used.

C. Loose coal, coal dust, oil, grease, ~~and~~ or other combustible materials shall not be permitted to accumulate excessively on equipment or surface structures.

**Drafting note: Language is updated for clarity and technical changes are made.**

Article 9.

Electricity.

**Drafting note: Existing Article 9, relating to electricity, is retained as proposed Article 9 of Chapter 9.**

§ ~~45.1-161.279~~ 45.2-926. Overhead high-potential power lines; surface transmission lines; electric wiring in surface buildings.

A. Overhead high-potential power lines shall be (i) placed at least ~~fifteen~~ 15 feet above the ground and ~~twenty~~ 20 feet above ~~driveways and any driveway or haulage roads, shall be road,~~ (ii) installed on insulators, and ~~shall be~~ (iii) supported and guarded to prevent contact with other circuits.

B. Surface transmission lines shall be protected against short circuits and lightning.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.280~~ 45.2-927. Transformers.

A. Unless a surface transformer is transformer is isolated by elevation ~~(to a height of eight feet or more above the ground), they,~~ it shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is made of metal, ~~it~~ such enclosure or fence shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times, unless an authorized person is present ~~persons are person is present~~.

B. ~~Surface transformers containing~~ Any surface transformer that contains flammable oil and is installed where ~~they present it presents~~ a fire hazard shall be provided with a means to drain or ~~to~~ confine the oil in the event of a rupture of the transformer casing.

C. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every transformer ~~stations~~ station on the surface.

D. ~~All~~ Every transformer ~~stations~~ station on the surface shall be kept free of nonessential combustible materials and refuse.

E. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution ~~circuits~~ circuit or equipment, except by (i) a certified person or ~~by~~ (ii) a person who is trained to perform electrical work and to maintain electrical equipment and who is working under the direct supervision of a certified person. ~~All~~ Every high-voltage ~~circuits~~ circuit shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably

tagged by the ~~persons~~ person who ~~perform~~ performs electrical or mechanical work on such ~~circuits~~ a circuit or on any equipment connected to the ~~circuits~~, ~~except that circuit~~. However, in cases where a case in which such locking out is not possible, such devices shall be opened and suitably tagged by such ~~persons~~. Locks and tags person. Each lock and tag shall be removed only by the ~~persons~~ person who installed ~~them~~ it or, if such ~~persons are~~ person is unavailable, by a certified persons person who is authorized by the operator or his agent. However, ~~employees~~ an employee may, where necessary, repair energized trolley wires if ~~they wear~~ he wears insulated shoes and lineman's gloves.

F. This section does not prohibit a certified electrical repairmen repairman from making checks on or troubleshooting an energized circuits circuit or ~~the performance of an authorized person from performing~~ repairs or maintenance on equipment ~~by authorized persons~~ once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. An organizational change is made in proposed subsection F, and language is updated for modern usage.**

§ ~~45.1-161.281~~ 45.2-928. Grounding.

A. ~~All Every~~ metallic sheaths, armors, and conduits sheath, armor, or conduit enclosing a power ~~conductors~~ conductor shall be electrically continuous throughout and shall be grounded effectively.

B. ~~Metallic frames~~ Every metallic frame, casing, and or other enclosures enclosure of stationary electric equipment that can become ~~"alive"~~ electrified through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. When electric equipment is operated from a three-phase alternating current circuits circuit originating in ~~transformers~~ a transformer that is connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the ~~frames~~ frame of the power-utilizing equipment. Such grounding ~~conductors~~ conductor shall be grounded at the neutral point and at intervals along the conductor, if feasible. A suitable circuit breaker or switching device shall be provided having a ground-trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subsection B, the phrase "become 'alive' through failure" is changed to "become electrified through failure."**

§ ~~45.1-161.282~~ 45.2-929. Circuit breakers and switches.

A. ~~Automatic circuit breaking devices or fuses~~ An automatic circuit breaking device or fuse of the correct type and capacity shall be installed so as to protect ~~all~~ each piece of electric

equipment and power ~~circuits~~ circuit against excessive overload. ~~Wires or other~~ Wire or another conducting ~~materials~~ material shall not be used as a substitute for a properly designed ~~fuses~~ fuse, and ~~circuit breaking devices~~ every circuit breaking device shall be maintained in safe operating condition.

B. Operating controls, such as switches, starters, ~~and~~ or switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

C. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction, and installation.

D. ~~Insulating mats~~ An insulating mat or other electrically nonconductive ~~material~~ material shall be kept in place at each power-control switch and at stationary machinery where a shock ~~hazards exist~~ hazard exists.

E. Suitable ~~danger~~ warning signs shall be posted conspicuously at ~~all~~ every high-voltage ~~installations~~ installation.

F. ~~All~~ Every power ~~wires and cables~~ wire or cable shall have adequate current-carrying capacity, ~~shall~~ be guarded from mechanical injury, and be installed in a permanent manner.

G. ~~Power circuits~~ Every power circuit shall be labeled to indicate the unit or circuit ~~they~~ control that it controls.

H. ~~Persons~~ All persons shall stay clear of ~~an~~ any electrically powered shovel or other similar heavy equipment during an electrical storm.

I. ~~All devices~~ Every device that is installed on or after July 1, 2005, ~~which provide that~~ provides either short circuit protection or protection against overload, shall conform to the minimum requirements for protection of electric circuits and equipment of the National ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

J. ~~All~~ Every electric ~~conductors~~ conductor installed on or after July 1, 2005, shall be sufficient in size to meet the minimum current-carrying capacity provided for in the National ~~Electric~~ Electrical Code in effect at the time of ~~their~~ its installation.

K. ~~All~~ Every trailing ~~cables~~ cable purchased on or after July 1, 2005, shall meet the minimum requirements for ampacity provided in the standards of the Insulated ~~Power~~ Cable Engineers Association—/National ~~Electric~~ Electrical Manufacturers Association in effect at the time such ~~cables are~~ cable is purchased.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The names of the Insulated Cable Engineers Association and the National Electrical Manufacturers Association are updated. Language is updated for modern usage and clarity.**

§ ~~45.1-161.283~~ 45.2-930. Electrical trailing cables.

A. ~~Trailing cables~~ Every trailing cable shall be provided with suitable short-circuit protection and a means of disconnecting power from the cable.

~~B. Temporary splices~~ Any temporary splice in a trailing-cables cable shall be made in a workmanlike manner, and shall be mechanically strong, and well insulated well-insulated.

C. The number of temporary, unvulcanized splices in a trailing cable shall be limited to one.

~~D. Permanent splices~~ Every permanent splice in a trailing-cables cable shall be made as follows:

- ~~1. Mechanically~~ mechanically strong, with adequate electrical conductivity and flexibility;
- ~~2. Effectively, and shall be effectively~~ insulated and sealed so as to exclude moisture.
3. The finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

~~E. Trailing cables~~ Every trailing cable shall be protected against mechanical injury.

**Drafting note: Technical changes are made, including organizational changes in subsection D and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

#### Article 10.

##### Explosives and Blasting.

**Drafting note: Existing Article 10, relating to explosives and blasting, is retained as proposed Article 10 of Chapter 9.**

~~§ 45.1-161.284~~ 45.2-931. Surface storage of explosives and detonators.

~~A. Separate~~ Two or more surface magazines shall be provided for the storage of explosives and ~~the separate storage of~~ detonators.

~~B. Surface magazines~~ Every surface magazine for storing and distributing explosives in amounts an amount exceeding 150 pounds shall be:

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

2. Provided with doors that are constructed of ~~three-eighth-inch~~ three-eighth-inch steel plate. Such doors shall be lined with a two-inch thickness of wood; or the equivalent;

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

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

5. Provided with properly screened ventilators;

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

7. Kept locked securely when unattended; and
8. Electrically bonded and grounded, if constructed of metal.

C. ~~Surface magazines~~ A surface magazine for storing detonators need not be ~~bulletproof~~ bullet-resistant, but ~~they~~ it shall ~~be in accordance~~ comply with other provisions for storing explosives.

D. ~~Explosives in amounts weighing a total of no more than 150 pounds or less, or 5,000 detonators numbering 5,000 or less fewer,~~ shall be stored either (i) in accordance with the ~~preceding standards set forth in subsection A, B, or C or (ii) in a separate locked box-type magazines magazine.~~ Box-type magazines ~~A box-type magazine~~ may also be used as a distributing magazines magazine when ~~quantities do~~ the weight of the explosives or the number of detonators does not exceed those mentioned. Box-type magazines ~~the limits set forth in this subsection.~~ Every box-type magazine shall be strongly constructed ~~strongly~~ of two-inch hardwood or the equivalent. ~~Metal magazines~~ Every metal magazine shall be lined with nonsparking material. No magazine shall be placed (a) in a building containing oil, grease, gasoline, wastepaper, or other highly flammable material; ~~nor shall a magazine be placed~~ or (b) within twenty 20 feet of a stove, furnace, open fire, or flame.

E. ~~The location of magazines~~ No magazine shall be ~~not placed~~ less than 300 feet from any mine opening. However, ~~in the event that~~ if a magazine cannot be practicably located at such a distance, ~~the magazine~~ it may be located less than 300 feet from a mine opening, if it is sufficiently barricaded and is approved by the Chief. Unless approved by the Chief, ~~magazines~~ no magazine shall ~~not~~ be located closer to an occupied buildings building, public roads road, or passenger railways railway than ~~allowed~~ the distance recommended in the "American Table of Distances for Storage of Explosive Materials" published by the Institute of Makers of Explosives.

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

G. The area surrounding ~~magazines~~ for not less than twenty five feet in all directions any magazine shall be kept free of rubbish, dry grass, or other materials of a combustible nature for at least 25 feet in every direction.

H. If ~~the~~ an explosives magazine is illuminated electrically, ~~the lamps~~ each lamp shall be of vapor-proof type; and installed and wired so as to present ~~minimum~~ a minimal fire ~~and or~~ contact ~~hazards~~ hazard.

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

J. Smoking; or carrying smokers' articles or open flames ~~shall be~~ is prohibited in or near any magazine.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and "bulletproof" is replaced by "bullet-resistant" three times for consistency.**

§ ~~45.1-161.285~~ 45.2-932. Misfires.

A. ~~Misfires~~ Every misfire shall be reported promptly to the mine foreman, and no other work shall be performed in the blasting area until the hazard has been corrected. A waiting period of at least ~~fifteen~~ 15 minutes ~~shall elapse~~ is required before anyone ~~returns~~ is allowed to the any misfired holes hole. If explosives are suspected of burning in a hole, ~~all persons~~ every person affected shall move to a safe location for ~~the longer of~~ one hour or until the danger has passed, whichever time is longer. When such failure involves an ~~electronic detonators~~ detonator, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before ~~electric connections are~~ any electrical connection is examined.

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

C. A ~~very~~ careful search of the blasting area, and, if necessary, of the coal after it reaches the tipple shall be made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall ~~be~~ occur under the direct supervision of the foreman or an authorized person designated by him.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.286~~ 45.2-933. Minimum blasting practices.

A. ~~When~~ If explosives are in use on the surface and an electrical storm approaches, all persons shall be removed from ~~such~~ the blast area until the storm has passed.

B. In accordance with the standards set forth in § ~~45.1-161.255~~ 45.2-902, the Chief shall ~~promulgate~~ adopt regulations regarding the safe storage, transportation, handling, and use of blasting agents and other explosives.

**Drafting note: Technical changes are made for modern usage. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

Article 11.

Ground Control.

**Drafting note: Existing Article 11, relating to ground control, is retained as proposed Article 11 of Chapter 9.**

~~§ 45.1-161.287~~ 45.2-934. Ground control.

A. ~~All~~ Every surface coal mining ~~operations~~ operation shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the ~~operations~~ operation. The ground control plan shall be consistent with prudent engineering design. Mining methods, including benching, shall ensure wall and bank stability, ~~including benching, in order~~ to obtain a safe overall slope. The ground control plan shall also ensure the safety of ~~persons~~ every person who is (i) located in residences a residence or other occupied ~~buildings~~ building, (ii) working or traveling on any roadway, ~~and~~ or (iii) located in any other area where persons congregate, work, or travel that ~~may~~ could be affected by blasting or by the falling, sliding, or other uncontrolled movement of material. The ground control plan shall identify how residents or occupants of other buildings located down the slope from active workings will be notified when ~~ground disturbing~~ ground-disturbing activities will take place above them and what actions will be taken to protect such residents or occupants from ground control failures during the work.

B. Scaling and removal of loose hazardous material from the ~~tops~~ top of ~~pits and highwalls, banks, walls and benches~~ a pit or from a highwall, wall, bank, or bench shall be completed to ~~assure~~ ensure a safe work area.

C. Employees and other persons, except those involved in correction of the condition, shall be restricted from ~~areas~~ any area where hazardous highwall or pit conditions exist.

D. Unless he is required for the purpose of making repairs, ~~all persons~~ no person shall be ~~restricted from areas~~ allowed in any area that is located between equipment and ~~walls, benches, or banks~~ a highwall, wall, bank, or bench if the equipment ~~may~~ could hinder ~~their~~ escape from falling or sliding material. Special precautions shall be taken when ~~persons are~~ any person is required to perform such repairs.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. References to a highwall, wall, bank, or bench are made consistent.**

## Article 12.

### Auger and Highwall Mining.

**Drafting note: Existing Article 12, relating to auger and highwall mining, is retained as proposed Article 12 of Chapter 9.**

~~§ 45.1-161.288~~ 45.2-935. Inspection of electric equipment and wiring; checking and testing methane monitors.

Electric equipment and wiring that ~~extend~~ extends to an underground ~~areas~~ area shall be inspected by a certified person at least once a week and more often if necessary to ~~assure~~ ensure safe operating conditions, ~~and any~~. Any hazardous condition found shall be corrected or the equipment or wiring shall be removed from service. ~~This~~ Such surface inspection is also required for any trailing ~~cables and cable~~ cable or circuit ~~breakers~~ breaker used in conjunction with such equipment and wiring.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The first sentence in the section is divided into two sentences for clarity and language is updated for clarity.**

§ ~~45.1-161.289~~ 45.2-936. Highwall inspections.

A. ~~The A mine foreman shall inspect the face of all highwalls, each highwall~~ for a distance of 25 feet in both directions from an auger or highwall miner operation, ~~shall be inspected by a mine foreman (i)~~ before any such operation begins and at least once during each coal producing shift.

B. ~~Mine foreman shall examine the face of all highwalls for a distance of 25 feet in both directions from auger or highwall miner operations and (ii) frequently during periods~~ any period of heavy rainfall or intermittent ~~freezing thawing~~ freezing and thawing.

~~C. B.~~ Hazardous conditions shall be corrected and loose material removed from above the mining area before any work is begun.

~~D. C.~~ Records shall be kept of the inspection ~~compiled and examination performed~~ pursuant to ~~subsections~~ subsection A and B. Such records shall be maintained for at least one year.

**Drafting note: Subsections A and B are combined and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.290~~ 45.2-937. Penetration of underground mines; testing.

A. A qualified person shall test for the presence of methane and for a deficiency of oxygen, using an approved device, at the entrance to an auger hole or at a highwall miner entry when either such entry point penetrates a worked-out area of an underground mine.

B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is found to exist, no further work shall be performed until the atmosphere has been made safe.

**Drafting note: Language is updated for clarity.**

§ ~~45.1-161.291~~ 45.2-938. Safety precautions.

A. No person shall enter an auger hole or highwall miner entry without prior approval from the Chief.

B. ~~Auger holes and~~ Every auger hole or highwall miner entries entry shall be blocked with highwall spoil or other suitable material before it is abandoned.

C. ~~Auger and~~ Every auger or highwall mining machines which are machine that is exposed to any highwall and or explosion hazards hazard shall be provided with worker protection from falling material and a mine explosions explosion.

D. At least one person shall be assigned to observe the highwall for possible movement while ground personnel are working in ~~high risk areas~~ a high-risk area in close proximity to the highwall.



~~E. Persons~~ All persons shall stay clear of any moving auger or highwall miner train, and ~~no persons~~ person shall pass over or under a moving train unless adequate crossing facilities are provided.

F. The ground control plan shall specify ~~spacing~~ any spacing of holes, web design, and use of alignment control devices.

G. The ground control plan shall include other administrative, engineering, and source controls that are to be provided for safe operations.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

### Article 13.

Proximity of Mining to Gas, ~~or~~ Oil Wells ~~and~~ or Vertical Ventilation Holes.

**Drafting note: Existing Article 13, relating to the proximity of mining to gas or oil wells or vertical ventilation holes, is retained as proposed Article 13 of Chapter 9. Technical changes are made to the name.**

~~§ 45.1-161.292~~ 45.2-939. Surface coal mining; distance from wells; requirements.

A. Any mine operator who plans to remove coal or extend any workings in any mine ~~closer~~ to a distance of less than 500 feet ~~to~~ from any gas or oil well that is already drilled or is in the process of being drilled shall file with the Chief a notice that such mining is taking place or will take place, together with ~~a copy~~ copies of parts of the maps and plans required under ~~§ 45.1-161.64~~ which 45.2-542 that show the mine workings and projected mine workings beneath the tract in question and within 500 feet of the well. Such mine operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the provisions of § 45.2-1604. ~~Each notice~~ The mine operator shall certify in each notice that ~~the mine operator~~ he has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A ~~of this section~~, the mine operator may proceed with surface coal mining operations in accordance with the maps and plans; ~~however~~. However, without the prior approval of the Chief, ~~he~~ such mine operator shall not remove any coal or extend any workings in any mine ~~closer~~ to a distance of less than 200 feet ~~to~~ from any gas or oil well that is already drilled or is in the process of being drilled.

C. The Chief shall ~~promulgate~~ adopt regulations ~~which that~~ prescribe the procedure to be followed by a mine operator in petitioning the Chief for approval to conduct ~~such activities~~ closer surface coal mining operations to a distance of less than 200 feet ~~to~~ from a well. A petition may include a request to mine through a plugged well or a plugged vertical ventilation hole. ~~A~~ Such petition may also include a request to mine through a well or a vertical ventilation hole and to lower the head of such well or vertical ventilation hole. Each mine operator who files a petition to remove coal or extend any workings ~~closer~~ to a distance of less than 200 feet ~~to~~ from any gas or oil well shall mail copies of the petition, maps, and plans by certified mail, return receipt

requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The ~~well operator and the Gas and Oil Inspector and the well operator~~ shall have standing to object to any petition filed under this section. Such ~~objections~~ objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

**Drafting note: Language is updated for modern usage and clarity and technical changes are made. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Existing subsection B is divided into two subsections for clarity. A cross-reference to the section addressing the appointment of the Gas and Oil Inspector is added.**

#### CHAPTER ~~19~~ 10.

#### VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979.

**Drafting note: Existing Chapter 19, Virginia Coal Surface Mining Control and Reclamation Act of 1979, is retained as proposed Chapter 10, consisting of five articles: Article 1 (General and Administrative Provisions), Article 2 (Regulation of Mining Activity), Article 3 (National Pollutant Discharge Elimination System Permit; Replacement of Water Supply), Article 4 (Abandoned Mine Reclamation), and Article 5 (Coal Surface Mining Reclamation Fund).**

#### Article 1.

#### General and Administrative Provisions.

**Drafting note: Existing Article 1, relating to general and administrative provisions, is retained as proposed Article 1 of Chapter 10.**

~~§ 45.1-226. Short title.~~

~~This chapter shall be known as the "Virginia Coal Surface Mining Control and Reclamation Act of 1979."~~

**Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which states that throughout the Code the caption of a subtitle, chapter, or article serves as a short title citation.**

~~§ 45.1-227. Findings and policy.~~

~~A. The General Assembly finds and declares that federal enforcement and administration of the regulatory program established by the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the Commonwealth. It is the objective of the General Assembly to preclude, or minimize the adverse effects of federal enforcement, and to allow the regulation of coal surface mining to remain within the powers of the Commonwealth, to the fullest extent possible.~~

~~It is the purpose of this chapter to enable the Commonwealth through its own instrumentalities, to enforce and administer the provisions of the federal program, in order to lessen federal enforcement and administration thereof.~~

~~Nothing in this chapter, however, is intended, nor shall be construed, as expressing the Commonwealth's approval of or satisfaction with the standards or provisions contained in the regulatory program of the federal act, so as to limit or affect any suit, action or other proceeding brought by the Commonwealth or any person, to invalidate, set aside or modify, in whole or part, the federal act or regulations promulgated thereunder.~~

~~B. The proper control of surface mining of coal so as to minimize or prevent adverse disruptions and the injurious effects thereof requires thorough planning in the selection of appropriate coal surface mining sites, methods of coal surface mining, and the nature and extent and the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of coal surface mining;~~

~~C. Because the Commonwealth's administrative agencies, through their experience of regulating coal surface mining, have developed a special expertise in the characteristics of coal surface mining in Virginia, as well as physical conditions in Virginia's coal mining areas, and because coal mining is such an important and integral element in the economy and culture of Virginia, it is in the best interest of the Commonwealth that the development, administration and enforcement of the provisions of the federal Surface Mining Control and Reclamation Act of 1977 be carried out by State officials and instrumentalities pursuant to a permanent State regulatory program and a State abandoned mine reclamation program approved by the Secretary of the Interior of the United States.~~

**Drafting note: This section, which is currently not set out, is deleted as an unnecessary and nonstatutory policy statement in accordance with policies of the Code Commission. In addition, the interest of the General Assembly in providing that Virginia agencies administer and enforce requirements related to the federal Surface Mining Control and Reclamation Act of 1977 are now in place and incorporated into Title 45.1 (Mines and Mining).**

~~§ 45.1-229 45.2-1000. Definitions.~~

~~The following words and phrases when As used in this chapter shall have the meaning respectively ascribed to them in this section except where, unless the context clearly requires a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.;~~

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

~~"Coal surface mining and reclamation operations operation" means a surface mining operations operation and all activities any activity necessary and incidental to the reclamation of such operations after March 20, 1979 operation.~~

"Coal surface mining ~~operations~~ operation" means ~~the following~~:

1. ~~Activities~~ Any activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § ~~45.1-243~~ 45.2-1018, any surface operations operation and surface ~~impacts~~ impact incident to an underground coal mine, the products of which enter commerce or the ~~operations~~ operation of which directly or indirectly ~~affect~~ affects interstate commerce. Such ~~activities include~~ 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 uses~~ use of explosives and blasting, ~~and~~; (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~~. However, such ~~activities do~~ activity does not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed  $16\frac{2}{3}$  and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal ~~explorations~~ exploration subject to § ~~45.1-233 of this chapter~~ 45.2-1008; and

2. The ~~areas~~ area upon which such ~~activities occur~~ activity occurs or where such ~~activities disturb~~ activity disturbs the natural land surface. Such ~~areas shall also include~~ area includes (i) any adjacent land ~~the whose use of which~~ is incidental to any such ~~activities~~, activity; (ii) all lands affected by the construction of any new roads road or the improvement or use of any existing roads road to gain access to the site of such ~~activities~~ activity and for haulage; ~~and excavations~~ (iii) any excavation, workings, ~~impoundments~~ impoundment, ~~dams~~ dam, ventilation ~~shafts~~ shaft, ~~entryways~~ entryway, refuse ~~banks~~ bank, ~~dumps~~ dump, ~~stockpiles~~ stockpile, overburden ~~piles~~ pile, spoil ~~banks~~ bank, culm ~~banks~~ bank, tailings, ~~holes~~ hole or ~~depressions~~ depression, repair ~~areas~~ area, storage ~~areas~~ area, processing ~~areas~~ area, shipping ~~areas~~ area, and other ~~areas~~ area upon which ~~are~~ is sited ~~structures~~ any structure, ~~facilities~~ facility, or other property or materials on the surface, resulting from or incident to such ~~activities~~ activity.

"Division" means the Division of Mined Land Reclamation.

"Federal act" means the federal Surface Mining Control and Reclamation Act of 1977, Public Law 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 ~~or~~, practice, or ~~any~~ violation of a permit or other requirement of this chapter ~~in a coal surface mining and reclamation operation, which condition, practice or violation that~~ could reasonably be expected to cause substantial physical harm to ~~persons~~ 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 ~~conditions~~ condition or ~~practices~~ 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 operations operation whether or not such coal is sold ~~within or without~~ the Commonwealth.

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

"Permit" means a permit issued by the Director pursuant to ~~the approved state regulatory program~~ regulations.

"Permit area" means the area of land indicated on the approved map submitted by the operator with ~~his~~ the operator's application, ~~which~~. Such area of land shall be covered by the operator's bond as required by § ~~45.1-241~~ 45.2-1016 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding a ~~permit~~ any of the following permits issued by the Director: (i) a permit for coal surface mining pursuant to § ~~45.1-234~~ 45.2-1009, (ii) a permit for coal exploration pursuant to § ~~45.1-233~~ 45.2-1008, or for an NPDES (iii) a national pollutant discharge elimination system permit pursuant to § ~~45.1-254~~ 45.2-1029.

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

"Secretary" means the U.S. Secretary of the Interior ~~of the United States~~.

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

~~"State regulatory program regulations" or "~~ means the permanent state regulatory program" ~~means the program~~ established by this chapter meeting the requirements of the federal act for the regulation of coal surface mining and reclamation operations within the Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

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

**Drafting note: The section, because it contains definitions, is relocated to the beginning of the chapter. The provision in the first sentence authorizing certain regulations is retained as a part of subsection A in proposed § 45.2-1003. Technical changes are made, including the reordering of definitions into alphabetical order. An obsolete provision in the definition of "coal surface mining and reclamation operations" is proposed for deletion and an obsolete reference to a future "permanent state regulatory program" is proposed for deletion because it has been adopted.**

~~§ 45.1-228~~ 45.2-1001. Purpose and policy Limitations of chapter.

~~A. It is the purpose and policy of this chapter to do the following:~~

~~1. Provide for the implementation and enforcement, by the Commonwealth, of the federal Surface Mining Control and Reclamation Act of 1977, and the regulations of the United States Secretary of the Interior promulgated thereunder, and amendments thereto, as the same may be or become effective at any time or from time to time.~~

~~2. Promote the reclamation of coal-mined areas, and areas which have been affected by such mining, which were not adequately reclaimed, or abandoned, prior to the enactment of the federal Surface Mining Control and Reclamation Act of 1977, and which, in their unreclaimed condition, continue to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the public health or safety;~~

~~3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to insure the protection of the public welfare and safety;~~

~~4. Authorize and enable the Department to submit, and obtain approval of, a permanent state regulatory program and abandoned mine reclamation program, pursuant to the federal Surface Mining Control and Reclamation Act of 1977.~~

~~B. Nothing in this chapter is intended, nor 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 damage 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; nor. Nothing in this chapter is intended or shall be construed to affect the powers of the Commonwealth to initiate, prosecute and, or maintain actions to abate public nuisances.~~

**Drafting note: Pursuant to policies of the Code Commission, subsection A is deleted because its subdivisions 1 through 3 comprise an unnecessary statement of purpose and its subdivision 4 is obsolete. The single sentence of subsection B is divided into two sentences for clarity and its subsection designation is removed. Language is updated for clarity and modern usage.**

~~§ 45.1-253 45.2-1002. Certain mining operations exempt from this Application of chapter.~~

~~A. The provisions of this chapter shall not apply to any of the following activities the extraction of coal:~~

~~1. The extraction of coal by By a landowner for his own noncommercial use from land owned or leased by him; and or~~

~~2. The extraction of coal as As an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the Director.~~

~~§ 45.1-259. Applicability of chapter to public agencies, utilities and corporations.~~

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

**Drafting note: Existing §§ 45.1-253 and 45.1-259 are relocated from existing Article 3 and combined. The catchline is updated to reflect the content of the statute and technical changes are made.**

~~§ 45.1-230~~ 45.2-1003. Authority and duties of Director.

A. The authority to ~~publish and promulgate such~~ adopt regulations ~~as may be necessary to carry out the purposes and provisions of this chapter is hereby vested in the Director. Regulations~~ Such regulations shall be consistent with regulations ~~promulgated~~ adopted by the Secretary pursuant to the federal act or in conformity ~~to~~ with any court ruling construing such act. ~~In promulgating such~~ 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 provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance comply with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

~~A1.~~ B. In addition to the adoption of regulations under this chapter, the Director may ~~at his discretion~~ issue or distribute to the public interpretative, advisory, or procedural bulletins ~~or guidelines~~ pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). ~~The~~ 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 ~~under this chapter or under any other provision of this Code.~~

~~B.~~ C. The authority to administer and enforce the provisions of this chapter is ~~hereby~~ vested in the Director. In administering and enforcing the provisions of this chapter, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to ~~insure~~ 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 ~~of the provisions~~ provision of this chapter or any ~~rules and regulations~~ regulation adopted ~~thereunder~~ hereunder;

2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (~~§ 45.1-260~~ 45.2-1031 et seq.) ~~of this chapter~~;

3. To encourage and conduct investigations, research, experiments, and demonstrations; and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;

4. To receive any federal ~~or~~ state ~~funds~~, or ~~any~~ other funds; and to enter into any contracts for which funds are available to carry out the purposes of this chapter; and

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

~~C.~~D. The Division of Mined Land Reclamation shall have the responsibilities provided under this chapter and such duties and responsibilities as the Director may assign; or as may be provided for in regulations ~~promulgated~~ adopted by the Director.

**Drafting note: A provision of existing § 45.1-229 regarding definitions is relocated to proposed subsection A because it authorizes certain regulations. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. The proviso "unless otherwise directed by law" is added to the Administrative Process Act and Virginia Register Act compliance requirement in subsection A to accommodate any future exception contained in this title. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-256~~ 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 ~~is authorized to promulgate~~ 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 ~~subdivision A of~~ this section.

**Drafting note: The section is relocated from existing Article 3. In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made.**

~~§ 45.1-231~~ 45.2-1005. Conflicts of interest prohibited.

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

~~A.~~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 ~~promulgate~~ adopt regulations ~~by which~~ for the monitoring and enforcement of the provisions of this section ~~will be monitored and enforced~~, including ~~provisions~~ regulations (i) for the filing and review of statements and supplements by employees concerning any financial interest ~~which may~~ 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 ~~may be~~ are consistent with federal law.

D. ~~[Repealed.]~~

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

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

**Drafting note: Existing subsection B is relocated as subsection A in keeping with Code style that definitions are provided at the beginning of a section. The term "promulgate regulations" in subsection C is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In proposed subsection E, two references to "this article" are replaced with "this section" because this is the only section in this article that pertains to conflicts of interest.**

~~§ 45.1-257 45.2-1006. Impeding Resisting, etc., Director or agents a misdemeanor agent of the Director; penalty.~~

~~It shall be~~ is a misdemeanor, punishable by a fine of not more than \$5,000 ~~or by~~,  
confinement in jail for not more than one year, or both, for any person, except as permitted by law,  
to willfully resist, prevent, impede, or interfere with the Director or any ~~of his agents~~ agent of the  
Director in the performance of duties pursuant to this chapter.

**Drafting note: The section is relocated from existing Article 3. Language is updated for modern usage.**

~~§ 45.1-232. Repealed.~~

**Drafting note: Repealed by Acts 1984, c. 590.**

§ 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.

**Drafting note: This section, with its nonreverting fund language for the Coal Surface Mining Regulatory Fund, is proposed to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. This section formally establishes the special fund referenced in proposed § 45.2-1010 in Article 2.**

Article 2.

Regulation of Mining Activity.

**Drafting note: Existing Article 2, relating to regulation of mining activity, is retained as proposed Article 2 of Chapter 10.**

~~§ 45.1-233~~ 45.2-1008. Coal exploration operations.

A. ~~Coal~~ Any coal exploration operations which operation that substantially ~~disturb~~ disturbs the natural land surface shall be conducted in accordance with exploration regulations ~~promulgated~~ adopted by the Director. Such regulations shall ~~include~~, at a minimum, (i) ~~the requirement~~ require that any person, prior to conducting any exploration under this section, ~~any person must~~ file with the Director notice of intention to explore ~~and such notice shall include~~ that includes a description of the exploration area and the proposed period of ~~supposed~~ exploration; and (ii) include provisions for the reclamation, in accordance with the performance standards established pursuant to ~~§ 45.1-242~~ 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 ~~which 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 ~~available for public examination~~ disclosed.

C. Any person who conducts any coal exploration ~~activities which~~ activity that substantially disturbs the natural land surface in violation of this section or ~~regulations~~ any regulation issued pursuant thereto ~~shall be~~ is subject to the provisions of ~~§ 45.1-246~~ 45.2-1021.

D. No person shall remove more than 250 tons of coal while engaged in a coal exploration ~~operations~~ operation without a specific written coal exploration permit issued by the Director.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A cross-reference to the Virginia Freedom of Information Act is added in subsection B and the prohibition on making information available is replaced with a prohibition on disclosure for clarity. Language is updated for modern usage.**

~~§ 45.1-234 45.2-1009. Permits~~ Permit required for coal surface mining operation; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. ~~On and after eight months from the date on which a permanent state regulatory program is approved for the Commonwealth by the Secretary, no~~ No person shall engage in or carry out any coal surface mining ~~operations~~ operation without having first obtained a permit to engage in the ~~operations~~ such operation issued by the Director; in accordance with ~~the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et seq.) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing those sections~~ regulations.

B. ~~No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.~~

C. ~~Coal~~ Each coal surface mining ~~permits~~ permit issued pursuant to the requirements of this chapter shall be for a term of five years. The rights granted under a such permit shall not be transferred, assigned, or sold without the written approval of the Director in accordance with ~~regulations promulgated~~ adopted by ~~him~~ the Director. The Director shall also ~~promulgate~~ 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 ~~operations~~ operation, right of and procedure for permit renewal, and extension of boundaries of a mining ~~operations~~ operation.

**Drafting note: Obsolete provisions regarding the future adoption of a regulatory program, which has occurred, and the grandfathering of mining operations that existed prior to the adoption of the regulatory program are proposed for deletion.**

~~§ 45.1-235 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, ~~or his legal representative,~~ intending to engage in the surface mining of coal, or the person's legal representative.

B. The application shall contain ~~such~~ the information ~~as shall be required by regulations adopted by the Director, including, but not limited to,~~ the information required under the provisions of ~~§ 507 (b)~~ 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 (e)~~ 507(c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an ~~operations~~ operation plan and a reclamation plan ~~which shall~~ that meet the requirements of this chapter and regulations ~~promulgated~~ 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. ~~An anniversary~~ A payment of \$13 per acre for ~~areas~~ 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 ~~chapter~~ section shall be paid into ~~a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose~~ 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 ~~which~~ that pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content ~~which~~ 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 ~~be required to~~ submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation ~~operations~~ 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 ~~persons~~ person who is injured or whose property is damaged as a result of a surface coal mining and reclamation ~~operations~~ 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 ~~terms~~ term of the permit ~~or~~ and any renewal, ~~and~~ including the length of all reclamation operations. The Director ~~is authorized to promulgate~~ may adopt regulations ~~which~~ 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.

**Drafting note: In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subsection C, the name of the federal Office of Surface Mining Reclamation and Enforcement is updated. In subsection E, reference to a special fund is changed to specify the Coal Surface Mining Regulatory Fund created in proposed § 45.2-1007. Technical**

changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for clarity and modern usage.

~~§ 45.1-236~~ 45.2-1011. ~~Operations~~ Operation and reclamation plans.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for modern usage.**

~~§ 45.1-237~~ 45.2-1012. Revision of permits.

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

1. During the term of ~~the~~ a permit, the permittee may submit an application for a revision of ~~the~~ such permit, together with a revised ~~operations~~ 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 ~~the permanent state regulatory program 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 ~~guidelines~~ 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 ~~which~~ that propose significant alterations in the ~~operations~~ operation plan ~~and~~ 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 ~~revisions~~ revision, ~~must~~ shall be made by application for another permit.

B. The Director shall, within a time limit prescribed in regulations ~~promulgated~~ adopted by him, review each outstanding ~~permits~~ permit and may require reasonable revision or modification of the permit provisions during the term of ~~such~~ any permit; however, such revision

or modification shall be based upon a written finding and subject to notice and hearing requirements.

**Drafting note: Technical changes are made, including the addition of an introductory sentence at the beginning of subsection A and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. In accordance with title-wide conventions, the conjunction "and" is replaced with "or" in subdivision A 2 because the meaning of "or" encompasses both "or" and "and." Language is updated for modern usage.**

§ ~~45.1-238~~ 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 ~~the approved permanent state regulatory program 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 ~~the permanent state regulatory program regulations~~. Within ~~ten~~ 10 days after the granting of a permit, the Director shall notify the government officials in the ~~city or 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 will~~ 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 ~~the permanent state regulatory program regulations~~ have been complied with;

2. The applicant has demonstrated that reclamation as required by the federal act and ~~the permanent state regulatory program regulations~~ can be accomplished under the reclamation plan contained in the permit application;

3. ~~The~~ 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 ~~nor is it or located~~ within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, ~~unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit; and~~

5. ~~In cases where~~ 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; ~~or~~

b. A conveyance that expressly grants or reserves the right to extract ~~the~~ coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, evidence that the surface-subsurface legal relationship ~~shall~~ will be determined in accordance with the laws of ~~this~~ the Commonwealth; ~~provided, however, that nothing~~. Nothing herein shall be construed to authorize the Director to adjudicate any property rights ~~disputes~~ dispute.

C. The applicant shall file with ~~his~~ each permit application a schedule listing ~~any and~~ all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the United States ~~or of this, the~~ Commonwealth, ~~or of~~ any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of ~~any 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 ~~the laws~~ 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 ~~which that~~ that has jurisdiction over such violation; ~~and no~~. No permit shall be issued to an applicant after a finding by the Director ~~after, following an~~ opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled any mining operations ~~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. ~~In addition to finding the~~ If the Director finds an application in compliance with subsection B ~~of this section, if~~ and the area proposed to be mined contains prime farmland pursuant to ~~§ 507 (b) (16)~~ § 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.

**Drafting note: Changes are made for clarity, including the insertion of the word "evidence" and the substitution of "will" for "shall" in subdivision B 5 c, the division of the last sentence in subsection C into two sentences, and the rephrasing of subsection D to avoid the implication that the Director is required to find an application in compliance with subsection B. In subdivision B 4, an obsolete provision regarding the grandfathering of a mining operation in an unsuitable area for which the applicant made legal and financial commitments prior to 1977 is proposed for deletion. Technical changes are made, including the replacement of "guidelines" with "parameters" and changes pursuant to § 1-227, which**

**states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-239~~ 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 ~~which that~~ is or ~~may~~ might be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority ~~shall have, 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 ~~thirty~~ 30 days after the last publication of the applicant's notice required by the regulation ~~promulgated~~ adopted pursuant to subsection A hereof. If ~~no~~ written ~~objections are~~ 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 ~~all the parties~~ every party requesting the informal hearing ~~stipulate~~ stipulates agreement prior to the requested informal hearing and ~~withdraw their~~ withdraws such request therefor.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.**

~~§ 45.1-240~~ 45.2-1015. Decision of Director upon permit application; hearing; appeal.

A. The Director shall notify ~~the~~ 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 ~~such~~ written objections ~~as may~~ 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 ~~§ 45.1-239~~ 45.2-1014, the Director shall issue to the applicant and the parties to the hearing his written decision within ~~sixty~~ 60 days of such ~~hearings~~ hearing.

B. If ~~the~~ such application is approved ~~the,~~ a permit shall be issued. If ~~the~~ such application is disapproved, specific reasons ~~therefor~~ shall be ~~set forth~~ given in the notification. Within ~~thirty~~ 30 days after the applicant is notified of the final decision of the Director on ~~the~~ such permit application, the applicant, or any person with an interest ~~which that~~ is or ~~may~~ 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 ~~thirty~~ 30 days thereafter shall issue to the applicant and ~~all persons~~ 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 ~~§ 45.1-239~~ 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 ~~herein~~, the Director, under such conditions as he ~~may prescribe~~ prescribes, may grant ~~such~~ temporary relief ~~as he deems appropriate~~ pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on a 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 any person with~~ who has an interest ~~which~~ that is or ~~may~~ might be adversely affected and ~~who~~ 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 ~~shall have~~, has a right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting note: Language is updated for clarity and modern usage.**

~~§ 45.1-241~~ 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 ~~will~~ plans to initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As ~~each succeeding increments~~ increment of coal surface mining and reclamation operations ~~are~~ is initiated and conducted within the permit area, the permittee shall file with the Director an additional bond ~~or bonds~~ to cover such ~~increments~~ 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, shall and (ii) reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work ~~has to be~~ 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 ~~the~~ 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 ~~promulgated~~ adopted pursuant to ~~§ 45.1-242~~ 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 ~~Government~~ or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

~~D.~~ C. Cash or securities ~~so~~ 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.

~~E.~~ 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. ~~The letters~~ Such letter of credit shall be irrevocable, and unconditional, shall be payable to the Department upon demand, and shall afford ~~to~~ 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 ~~the~~ 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 ~~violations~~ violation of a regulatory ~~requirements~~ requirement ~~which~~ 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, ~~and the~~. The Department shall then issue a notice to the permittee specifying a reasonable period, ~~which shall not exceed ninety~~ 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 ~~the~~ its reclamation plan. ~~Coal~~ No coal extraction ~~and or~~ coal processing ~~operations~~ operation shall ~~not~~ resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until an acceptable bond is posted. ~~The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.~~

F. The Director ~~is further authorized to~~ may develop and ~~promulgate~~ adopt an alternative system ~~that will~~ to achieve the objectives and purposes of the bonding program established under this section.

E. 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.

**Drafting note:** The section is proposed for reorganization by placing the text of subsection D after the subsection to which it refers, subsection B; by moving general provisions regarding the letter of credit from the end of subsection C to the beginning of that subsection, where such letters are addressed; by separating provisions regarding the failure of a letter of credit in proposed subsection D; and by separating a provision authorizing alternative systems in proposed subsection E. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Other technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

§ ~~45.1-242~~ 45.2-1017. Performance standards.

A. The Director shall, by regulation, establish performance standards ~~meeting that meet~~ the requirement of § 515 of the federal act ~~and, are~~ consistent with regulations adopted thereunder by the Secretary ~~thereunder which shall be, 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 ~~operations~~ operation shall require that such ~~operations meet~~ operation meets all applicable performance standards established by the Director.

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

D. ~~Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in Virginia, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for coal surface mining and reclamation operations should rest with the Commonwealth, and accordingly, the~~ The Director is encouraged and authorized to ~~develop and promulgate~~ 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 ~~promulgated~~ adopted under this section and § ~~45.1-243~~ 45.2-1018.

**Drafting note:** The superfluous and nonstatutory policy text of subsection D is proposed for deletion because it is obsolete, referring to future regulations that have been adopted. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

~~§ 45.1-243~~ 45.2-1018. Surface effects of underground coal mining operations.

A. The Director shall ~~promulgate~~ adopt regulations directed toward the surface effects of underground coal mining operations and embodying the requirements of §§ 516 and ~~720(a)(1)~~ 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 operations and~~ operation or ~~surface impacts~~ 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 ~~distinct difference~~ differences between surface and underground coal mining. Nothing in ~~§ 720(a)(1)~~ 720(a)(1) of the federal act shall be construed to prohibit or interrupt any ~~underground coal mining operations~~ operation.

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

C. ~~In order to protect the stability of the land, the~~ The Director shall suspend underground coal mining under any ~~elementary and~~ or ~~secondary schools~~ school, institutions institution of higher education, ~~urbanized areas~~ area, cities city, towns and communities town, or community, and adjacent to any ~~industrial or commercial buildings~~ building, ~~major impoundments~~ impoundment, or ~~permanent streams~~ stream, if he finds imminent danger to ~~the inhabitants or~~ occupants of the elementary and secondary schools, institutions of higher education, urbanized areas, cities, towns and communities people from such underground coal mining.

**Drafting note: In subsection A, the term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Subsection C is rephrased to clarify that any danger to people caused by coal mining under or adjacent to certain locations is cause for suspension of underground coal mining. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-244~~ 45.2-1019. Inspections and monitoring.

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

2. For ~~those~~ any coal surface mining and reclamation ~~operations which remove~~ operation that removes or disturb disturbs strata that serve as aquifers ~~which~~ and thereby significantly ~~insure~~

ensure the hydrologic balance of water use, either on or off the mining site, the Director shall specify ~~those~~ (i) monitoring sites to at which the permittee shall record (i) the quantity and quality of surface drainage above and below the mine site as well as and in the potential zone of influence; and to record; (ii) the level, amount, and characteristics of samples of ground water groundwater and aquifers that are potentially affected by mining, and also or are located directly below the deepest coal seam to be mined; and to record (iii) amount of precipitation; and (ii). 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 ~~promulgated~~ adopted by the Director in order to assure their reliability and validity; and

3. ~~The~~ Any authorized ~~representatives~~ representative of the Director, without advance notice and upon presentation of appropriate credentials, ~~(i) shall have~~ has (i) the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) shall have the right to inspect any monitoring equipment, ~~any~~ method of exploration, ~~any~~ method of operation, or ~~any~~ records required by this chapter; and ~~shall have the right to copy any such records.~~

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. ~~The inspections~~ Inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation operations operation covered by each permit; (ii) occur without prior notice to the permittee or his agents any agent or employees 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 to carry out the its terms and purposes of this chapter.

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

D. Each inspector, upon detection of ~~each a~~ violation of any requirement of this chapter or of ~~the regulations promulgated~~ a regulation adopted hereunder, shall ~~forthwith~~ promptly inform the operator in writing and shall report ~~in writing any~~ 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.~~ However, information ~~which that~~ that pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content ~~which that~~ is potentially toxic in the environment, shall be kept confidential and ~~not made a matter of public record~~ be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: Subdivision A 2 is reorganized for clarity, including by dividing the first sentence into two sentences. A cross-reference to the Freedom of Information Act is added and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.**

§ ~~45.1-245~~ 45.2-1020. Enforcement of chapter generally.

A. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that any condition ~~or practices exist,~~ practice ~~or that any violation by a permittee is in violation of any requirement of this chapter or of any,~~ regulation promulgated adopted hereunder, ~~or of any permit condition, which condition, practice or violation also~~ (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 ~~or his authorized representative~~ 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 ~~or his authorized representative~~ determines that the condition, practice, or violation has been abated; or until such order is modified, vacated, or terminated by the Director ~~or his authorized representative~~. Whenever the Director ~~or his authorized representative~~ finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, ~~will~~ 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 ~~order of the operation~~, impose affirmative obligations on the operator and require ~~him~~ such operator to take whatever steps the Director ~~or his authorized representative~~ determines necessary to abate the imminent danger or the significant environmental harm.

B. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that ~~any~~ a permittee is in violation of any requirement of this chapter ~~or,~~ any regulation thereunder 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 ~~or his authorized representative~~ shall issue a notice of violation to the permittee or his agent setting a reasonable ~~time but~~ period of not more than ninety 90 days for the abatement of the violation and shall provide an opportunity for public hearing. ~~If, upon~~

C. Upon expiration of the period of time ~~as originally set pursuant to subsection B~~ or subsequently extended for good cause shown upon the written finding of the Director ~~or his authorized representative~~, if the Director ~~or his authorized representative~~ finds that a violation has not been abated, he shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Director ~~or his authorized representative~~ determines that the violation has been

abated, or until such order is modified, vacated, or terminated by the Director ~~or his authorized representative~~ pursuant to subsection ~~D of this section~~ E. The Director ~~or his authorized representative~~ shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

~~C. D.~~ Whenever the Director ~~or his authorized representative~~ determines that a pattern of violations of the requirements of this chapter, ~~or regulations promulgated thereunder~~ any regulation adopted hereunder, or any permit ~~conditions exist~~ condition exists or ~~have~~ has existed, and if the Director ~~or his authorized representative~~ also finds that such violations are (i) caused by the unwarranted failure of the permittee to comply with any such requirements; or ~~that such violations are~~ (ii) willfully caused by the permittee, the Director ~~or his authorized representative~~ shall ~~forthwith~~ 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 ~~or his authorized representative~~ shall ~~forthwith~~ promptly suspend or revoke the permit.

~~D. Notices and order~~ 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 ~~or his authorized representative~~ issuing such notice or order, and all such notices and orders shall be in writing and signed by ~~such authorized representatives~~ the Director. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Director ~~or his authorized representative~~. Any notice or order issued pursuant to this section ~~which~~ that requires cessation of mining by the operator shall expire within ~~thirty~~ 30 days of actual notice to the operator unless an informal public hearing, ~~unless waived by the operator~~, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing. Such informal public hearing may be waived by the operator.

~~E. 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; ~~or~~
2. Interferes with, hinders, or delays the Director in carrying out the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~
3. Refuses to admit ~~such authorized representative~~ the Director to ~~the~~ a mine; ~~or~~
4. Refuses to permit inspection of ~~the~~ a mine; ~~or~~
5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~

6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; or

7. Conducts any coal surface mining or coal exploration ~~operations~~ operation without first obtaining a permit, ~~or~~ after a permit has lapsed, or after suspension or revocation of a permit.

**Drafting note: Changes are proposed for clarity, including the reorganization of existing subsection A and the addition of subsection designation C to the second paragraph of existing subsection B. The phrase "or his authorized representative" is proposed for deletion because such agent will be proposed for inclusion in the definition of "Director" in § 45.2-100 in Chapter 1. Language is updated for clarity and modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

~~§ 45.1-246~~ 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 ~~thereunder~~ 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. ~~Where~~ After such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty ~~which~~ that is warranted, incorporating therein, when appropriate, an order ~~therein~~ requiring that the penalty be paid. When appropriate, the Director shall consolidate such ~~hearings~~ 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 (~~Chapter 40~~ (§ 2.2-4000 et seq.) ~~of Title 2.2~~). ~~When~~ If the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted; and issues an order requiring that the penalty be paid.



C. Upon the issuance of a notice or order charging that a violation described under subsection A ~~of this section~~ has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. ~~The~~ Such permittee ~~charged with the penalty shall then have, within 30 days of being so informed,~~ pay the proposed penalty in full or, if the permittee ~~wishes to contest~~ 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 Treasurer's office~~ 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 ~~should~~ will be reduced, the Director shall within 30 days of ~~that~~ such determination remit the appropriate amount to the permittee with accrued interest thereon. ~~Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.~~

D. If a permittee ~~who is~~ required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is ~~so~~ sent shall record ~~it~~ such final order, as a judgment is required by law to be recorded, and ~~shall index the same as well~~ it in the name of the Commonwealth ~~as~~ and the name of the person owing the penalty, ~~and thereupon.~~ 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 ~~which 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 Treasurer's office~~ 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 Virginia Coalfield Regional Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts any coal surface mining or coal exploration ~~operations~~ operation without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; ~~or~~ (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, or fails or refuses to comply with ~~the regulations~~ any regulation adopted or orders promulgated or order issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B ~~of this section~~, shall, upon conviction, be punished by a fine of not more than \$10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, or fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B ~~of this section~~, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal ~~shall be~~ is subject to the same civil penalties, fines, and confinement in jail ~~that to which a person~~ may be imposed upon a person subject under subsections A and E ~~of this section~~.

G. Whoever knowingly makes any false statement, representation, or certification, or knowingly fails to make any required statement, representation, or certification, in any application, objection, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, ~~the regulations promulgated thereunder~~ any regulation adopted hereunder, or any order or decision issued by the Director under this chapter shall, upon conviction ~~thereof~~, be punished by a fine of not more than \$10,000, ~~or~~ by confinement in jail for not more than 12 months, or both.

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

**Drafting note: Organizational changes are proposed for clarity, including the moving of the last sentence in subsection C to a different location within that subsection and the moving of the last phrase in subsection H to a different location within that subsection. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.**

~~§ 45.1-246.1~~ 45.2-1022. Citizen suits; rights of citizens to accompany inspectors.

A. Except as provided in ~~subsections~~ subsection B or C ~~of this section~~, any person having an interest ~~which that~~ is or may 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 ~~or~~, any other governmental instrumentality or agency, or any ~~other~~ person ~~that is~~ alleged to be in violation of ~~the provisions~~ any provision of this chapter or of any ~~rule~~, regulation, order, or permit issued pursuant thereto; or

2. The Director, when there is alleged a failure of the Director to perform any act or duty under this chapter ~~which that~~ is not a discretionary ~~with~~ act on the part of the Director.

B. No action ~~may~~ shall be commenced under subdivision A 1 ~~of this section~~:

1. Prior to ~~sixty~~ 60 days after the plaintiff has given written notice of the violation to ~~(i)~~ the Secretary, ~~(ii)~~ the Director, and ~~(iii)~~ any alleged violator; or

2. If the Commonwealth of ~~Virginia~~ or the Secretary of ~~the Interior~~ has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or ~~this~~ the Commonwealth to require compliance with the provisions of this chapter, or any ~~rule~~, regulation, order, or permit issued pursuant to this chapter, ~~provided, however, that~~ so long as in any such action in a court of the Commonwealth, any person may is entitled to intervene as a matter of right ~~in any such action in a court of the Commonwealth;~~

C. No action ~~may~~ shall be commenced under subdivision A 2 ~~of this section~~ prior to 60 days after the plaintiff has given written notice of such action to the Director; ~~in such a~~ manner as ~~shall be~~ prescribed by regulation, ~~provided, however, that~~. 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 ~~the regulations thereunder~~ 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 ~~he~~ the Director is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A ~~of this section~~, may award costs of litigation, including attorney and expert witness fees, to any party; ~~provided that~~ 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 ~~which~~ of any person or class of persons ~~may have~~ to seek enforcement of any ~~of the provisions~~ provision of this chapter ~~and or the regulations thereunder, 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 ~~rule~~, regulation, order, or permit issued pursuant to this chapter; suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action ~~may~~ 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 ~~Title 65.2~~ 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.

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide**

conventions, the conjunction "and" is replaced with "or" in subsection F because the meaning of "or" encompasses both "or" and "and."

§ ~~45.1-247~~ 45.2-1023. Forfeiture or release of performance bond.

A. The Director shall ~~promulgate~~ adopt regulations, consistent with regulations ~~promulgated~~ 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 ~~thereunder~~ adopted hereunder are fully met.

B. Any person with a valid legal interest ~~which might~~ that could be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency ~~which~~ 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, ~~shall have~~ has the right to file written objections to the proposed release from bond by the Director within ~~thirty~~ 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 ~~thirty~~ 30 days of the request for such hearing.

C. Without prejudice to the rights of ~~the objectors~~, 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 ~~promulgated~~ adopted pursuant to § ~~45.1-239~~ 45.2-1014, to resolve written objections.

D. For the purpose of ~~such~~ the hearing specified in subsection B, the Director ~~is authorized to~~ may administer oaths, subpoena witnesses; or written or printed materials, compel the attendance of witnesses; or production of materials, and take evidence, including ~~but not limited to~~ inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Director.

**Drafting note: In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. In subsection D, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for clarity and modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-248~~ 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 Treasurer's office~~ 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 ~~he may~~ enter into contracts for performance of such reclamation with any ~~individual, corporation, partnership, association, or any other legal entity~~ 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.

**Drafting note: Language is updated for modern usage and technical changes are made. References to various legal entities are replaced with the term "person" pursuant to the definitions section for the chapter.**

~~§ 45.1-249~~ 45.2-1025. Administrative review of notice or order issued under ~~§ 45.1-245~~ 45.2-1020.

A. A permittee who is issued a notice or order pursuant to ~~§ 45.1-245~~ 45.2-1020, or any person having an interest ~~which that~~ is or ~~may 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 ~~the such~~ notice or order within ~~thirty~~ 30 days of the receipt thereof or within ~~thirty~~ 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, ~~which~~. Such investigation shall include an opportunity for a public formal hearing, at the request of the applicant or the person having an interest ~~which that~~ is or ~~may 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 ~~and~~. Such order shall incorporate his the Director's findings therein of fact. ~~When~~ 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 ~~B~~ C of ~~§ 45.1-245~~ 45.2-1020, the Director shall issue the written decision within ~~thirty~~ 30 days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C ~~of this section~~ or by a court pursuant to ~~§ 45.1-251~~ 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 ~~§ 45.1-245~~ 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. ~~Where~~

If the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or ~~B, C~~ of § ~~45.1-245~~ 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 ~~he may prescribe~~ 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 ~~him~~ 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 § ~~45.1-245~~ 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 ~~sixty~~ 60 days following the formal hearing, the Director shall issue and furnish to the permittee and ~~all every other parties~~ 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 ~~is authorized to promulgate~~ 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 ~~to~~ may assess such costs and expenses against any other party; ~~as may be the Director deems proper~~. For the purpose of this subsection, ~~the term "party" shall include~~ includes the Commonwealth or any of its agents, officers, or employees.

**Drafting note: The conjunction "or," apparently omitted in error from the first sentence of the section, is inserted. In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for clarity and modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-250~~ 45.2-1026. Hearings.

A. ~~[Repealed.]~~

B. ~~All Every~~ formal hearing shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, ~~he such officer~~ shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless ~~he~~ 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.

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-251~~ 45.2-1027. Judicial review of final order or decision or ~~of~~ decision under ~~§ 45.1-263~~ 45.2-1035.

A. Any party aggrieved by a final order ~~or~~, decision, ~~and any or~~ decision for entry upon property pursuant to ~~§ 45.1-263~~ 45.2-1035, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, ~~shall have~~ 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 Virginia Administrative Process Act (~~§ 2.2-4020~~ 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 ~~may prescribe~~ 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. ~~To any proceeding under this section, the~~ The court may award costs and expenses, including ~~attorneys'~~ attorney fees, to any party to any proceeding under this section and ~~to~~ may assess such costs and expenses against any other party as the court ~~may deem~~ deems proper. For the purpose of this subsection, ~~the term "party" shall include~~ includes the Commonwealth or any of its agents, officers, or employees.

**Drafting note: Language is updated for clarity and modern usage and technical changes are made.**

~~§ 45.1-252~~ 45.2-1028. Designating areas unsuitable for coal surface mining.

A. 1. The Director shall establish a planning process ~~enabling~~ that enables objective decisions, based on competent and scientifically sound data and information ~~as to~~, regarding which, ~~if any~~, land areas of the Commonwealth, if any, are unsuitable for ~~all or certain types of~~ coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 ~~of this subsection but such~~. Such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

2. Upon petition pursuant to subsection C ~~of this section~~, the Director shall designate ~~an a~~ land area as unsuitable for all or certain types of coal surface mining operations if ~~he~~ 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 ~~of this section~~, the Director may designate a surface area ~~may be designated as~~ unsuitable for certain types of coal surface mining operations if such operations will (i) be incompatible with existing land use plans or programs; ~~or~~ (ii) affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific ~~and~~, or aesthetic values ~~and~~ or natural systems; ~~or~~ (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, ~~and such lands to include aquifers and aquifer recharge areas~~; 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, ~~such lands to include areas subject to frequent flooding and areas of unstable geology~~.

4. ~~Determinations~~ Any determination of the unsuitability of a land area for coal surface mining, ~~as provided for in~~ 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 ~~lands~~ any land area (i) ~~on which a coal surface mining operation was~~ operation was being conducted on August 3, 1977, ~~or~~; (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 ~~areas~~ area as unsuitable for a coal surface mining ~~operations~~ 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 ~~which that~~ is or may could be adversely affected ~~shall have~~ 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 ~~a~~ petition shall contain allegations of facts with supporting evidence ~~which that~~ would tend to establish the allegations. Within ~~ten~~ 10 months after receipt of the petition, the Department shall hold a public hearing in the locality ~~of~~ 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 ~~which that~~ is or may could be adversely affected has filed a petition ~~and but~~ before the hearing, ~~as required by this subsection~~ has taken place, any person may intervene by filing allegations of facts with supporting evidence ~~which that~~ would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within ~~sixty~~ 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 ~~request~~ requests, such hearing need not be held.



D. ~~On and after March 20, 1979, and subject~~ Subject to valid existing rights, no coal surface mining ~~operations operation~~, except ~~those which were existing~~ an operation that existed on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of ~~units~~ any unit of the National Park System, the National Wildlife Refuge ~~Systems System~~, the National Trails System ~~of Trails~~, 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 ~~and;~~ any National Recreation ~~Areas Area~~ designated by act of Congress ~~and;~~ or any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;

2. ~~Which That~~ will adversely affect any publicly owned park or ~~places included~~ any site listed in the National Register of Historic ~~Sites 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 ~~roads road~~ or haulage ~~roads join road joins~~ such right-of-way line ~~and except that the~~. However, the Director may permit such ~~roads~~ 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 ~~from~~ of any occupied dwelling, unless waived by the owner thereof; ~~nor;~~ within 300 feet of any public building, school, church, community; or institutional building, or public park; or within 100 feet of a cemetery.

**Drafting note: The names of the National Trails System and the National Register of Historic Places are corrected and the meaning of subdivision A 5 is clarified as referring to, among others, any land area on which a coal surface mining operation was being conducted under federal permit. An obsolete reference to March 20, 1979, is proposed for deletion from subsection D. References to January 4 and August 3, 1977, are retained because they could apply to current operations established earlier. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

### Article 3.

~~Miscellaneous Provisions~~ National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.

**Drafting note: Existing Article 3, relating to miscellaneous provisions, is renamed and retained as proposed Article 3 of Chapter 10. Existing §§ 45.1-253, 45.1-256, 45.1-257, and 45.1-259 are relocated to Article 1.**

~~§ 45.1-254 45.2-1029. National pollutant discharge elimination system~~ Pollutant Discharge Elimination System permits.

~~H. A.~~ For the purpose of this section, ~~the terms "sewage,"~~

"Board" means the State Water Control Board.

"industrial Industrial wastes" and means the same as that term is defined in § 62.1-44.3.

"NPDES" means the National Pollutant Discharge Elimination System.

"~~other~~ Other wastes" shall have means the same as that term is defined in § 62.1-44.3.

"Sewage" means the meanings ascribed to them same as that term is defined in § 62.1-44.3.

~~A. B.~~ The authority to issue, amend, revoke, and enforce ~~national pollutant discharge elimination system~~ National Pollutant Discharge Elimination System permits under the State Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes, and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided ~~herein~~ 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.

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

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

~~D. E.~~ ~~No national pollutant discharge elimination system~~ NPDES permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed ~~national pollution discharge elimination system~~ NPDES permit, the ~~State Water Control~~ Board objects in writing to the issuance of such permit. Whenever the ~~State Water Control~~ Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions ~~which that~~ such permits permit would include if it were issued by the ~~State Water Control~~ Board.

~~E. F.~~ An applicant who is aggrieved by an objection made under subsection ~~D~~ of this section ~~shall have~~ E has the right to a hearing before the ~~State Water Control~~ Board pursuant to § 62.1-44.25. If the ~~State Water Control~~ Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the ~~State Water Control~~ Board made pursuant to this subsection, ~~shall have~~ has the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

~~F. G.~~ Whenever, on the basis of any information available to it, the ~~State Water Control~~ Board finds that any person is in violation of any condition or limitation contained in ~~a national pollutant discharge elimination system~~ a NPDES permit issued by the Director, it shall notify the person allegedly in ~~alleged~~ violation and the Director. If ~~beyond~~ after the thirtieth day ~~after~~

following notification by the ~~State Water Control~~ Board, the Director has not commenced appropriate enforcement action, the ~~State Water Control~~ Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

~~G. H.~~ The Director shall ~~promulgate such~~ adopt regulations as deemed necessary for the issuance, administration, monitoring, and enforcement of ~~national pollutant discharge elimination system~~ NPDES permits for coal surface mining operations.

I. The Director, by examining the available and relevant data, shall determine whether a discharge ~~may~~ 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 ~~State Water Control~~ Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge ~~may~~ 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 ~~may~~ 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.

**Drafting note: Subsection H, which contains definitions, is moved to the beginning of the section and the frequently recurring phrases National Pollutant Discharge Elimination System and State Water Control Board are given short references. Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-255.~~

~~Repealed.~~

**Drafting note: Repealed by Acts 1984, c. 714.**

~~§ 45.1-255.1.~~

~~Repealed.~~

**Drafting note: Repealed by Acts 1988, c. 489.**

~~§ 45.1-258~~ 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 ~~his~~ 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 ~~mine~~ mining operation.

~~B. Underground Every underground coal mining operations conducted after October 24, 1992, 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 ~~which and that~~ has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. ~~Until amendments to the regulations governing the permanent state regulatory program implementing the provisions of this subsection are effective, the Director shall issue guidelines in accordance with subsection A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection.~~ Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.~~

~~C. Each operator of an underground coal mine shall record the daily progress of mining operations on a one or more mine map or maps maintained at the mine site or in the company office. ~~The Such map or maps shall, at a minimum, include information on the daily progress of mining operations conducted after October 24, 1992, and be maintained until the completion of the mining. The operator shall provide the such map or maps 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 ~~of this section~~ and the operator subject to the order has failed to provide the required map ~~or maps~~ in accordance with subsection C ~~of this section~~, 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 ~~of this section~~ and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.~~

~~E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.~~

**Drafting note: Obsolete pre-1992 provisions are proposed for deletion from subsections B and C, and subsection E is proposed for deletion because it expired when state primacy was approved by the federal government on December 15, 1981. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article 4.

Abandoned Mine Reclamation.

**Drafting note: Existing Article 4, relating to abandoned mine reclamation, is retained as proposed Article 4 of Chapter 10.**

~~§ 45.1-260~~ 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 ~~and fund~~, 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 ~~his~~ approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects; and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan; consistent with this article.

C. The Director ~~is authorized~~ may:

1. ~~To prepare~~ Prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;

2. ~~To enter~~ Enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;

3. ~~To administer~~ Administer the State Reclamation Plan and ~~the~~ annual reclamation projects and ~~to~~ receive and administer grants from the Secretary therefor; and

4. ~~To prepare~~ Prepare and submit such information and reports as the Secretary ~~may request~~ 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.

**Drafting note: In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may" in subsection C and technical changes are made.**

~~§ 45.1-261~~ 45.2-1032. Abandoned Mine Reclamation Fund.

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

B. ~~The fund shall consist of deposits, made from time to time, of:~~

1. ~~Amounts~~ All funds granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;

2. ~~Use~~ use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;

3. ~~Moneys~~ moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;

4. ~~Moneys~~ moneys recovered from sale of lands acquired by the Director pursuant to this article; and

5. ~~Donations~~ 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 deposited in the fund~~ Fund shall be used ~~to carry~~ 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.

**Drafting note: The nonreverting fund language for the Abandoned Mine Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.**

~~§ 45.1-261.1 45.2-1033. Operators~~ Operator may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator ~~shall be~~ 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 (~~§ 45.1-270.1 45.2-1043 et seq.~~), ~~provided 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 ~~Chapter 19 (§ 45.1-226 et seq.)~~ 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 ~~amount~~ 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 ~~promulgate~~ adopt regulations to implement this section.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-262~~ 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 ~~which~~ that were (i) mined for coal or ~~which were~~ (ii) affected by ~~such~~ 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 ~~laws~~ 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.

**Drafting note: Technical changes are made.**

~~§ 45.1-263~~ 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. ~~If~~ The provisions of subsection C shall apply if the Director, pursuant to an approved state program, makes ~~a finding~~ findings of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;
2. The adverse effects are ~~at a state where~~ 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 ~~must~~ 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

4. ~~The owners~~ (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, ~~then, upon~~.

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 ~~municipality or 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 ~~nor of~~ 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 ~~§ 45.1-264,~~ 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; ~~provided, however, that this.~~ 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.

~~C.~~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 ~~nor~~ or trespass thereon.

~~D.~~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 ~~a determination~~ determinations that acquisition of such land is necessary ~~to~~ 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 ~~recreation and historic purposes~~ recreational, historical, conservation and, or reclamation purposes or provide open space benefits; and

2. ~~Permanent~~ 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

~~3. Acquisition~~ (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.

~~E.~~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 ~~such~~ terms as that will insure 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 ~~which 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 ~~such~~ regulations promulgated adopted to insure ensure that such lands are put to proper use consistent with local, state, or federal land use ~~plan~~ 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 ~~and after~~. 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 ~~purposes~~ purpose upon such terms as the Secretary ~~may require~~ requires.

~~F.~~ 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 ~~city or county or city or cities or counties or cities~~ city or county where the land is located. The hearing shall be held at a time ~~which~~ 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.

~~G.~~ 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, ~~which~~ 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 ~~he~~ the Director finds in writing that a waiver is in the public interest.

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

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Proposed subsection E is reorganized for clarity.**

~~§ 45.1-264~~ 45.2-1036. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as ~~hereinafter~~ 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, ~~except that~~. 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 ~~neither consented~~ did not consent to, ~~nor participated~~ participate in, ~~nor exercised or exercise control over the mining operation~~ which that necessitated the reclamation performed under this article, ~~nor~~. Nor shall any such lien attach to or be filed against any property if the Director waives the lien as ~~hereinafter~~ provided in § 45.2-1037.

**Drafting note: Changes are proposed for clarity, including the division of the section's single sentence into three sentences and, to avoid ambiguity, the replacement of "hereinafter" with a more specific description in the first sentence and the last sentence. Language is updated for modern usage.**

~~§ 45.1-265~~ 45.2-1037. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of ~~§ 45.1-264, 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 ~~situate~~ located, a statement consisting of the ~~names~~ name of the owner ~~or owners~~ of record of the property sought to be charged; an itemized account of moneys expended for the reclamation work; ~~and~~; notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work; and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien ~~exceeds~~ 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; ~~or if~~. 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.

**Drafting note: Language is updated for modern usage and technical changes are made by dividing the single sentence of subsection B into two sentences for clarity and a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-266~~ 45.2-1038. Recordation and indexing of lien; notice.

It ~~shall be~~ is the duty of the clerk in whose office the statement described in § ~~45.1-265~~ 45.2-1037 is filed to record ~~the same~~ such statement in the deed books of such office; and to index ~~the same~~ 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 ~~showing~~ shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

**Drafting note: Language is updated for modern usage and technical changes are made.**

~~§ 45.1-267~~ 45.2-1039. Priority of lien.

~~Liens~~ 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.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-268~~ 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 ~~sixty~~ 60 days of such filing, petition the circuit court ~~of equity~~ having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director, the court shall hold a hearing to determine 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.

**Drafting note: The reference to a court of equity is updated to refer to a circuit court and technical changes are made.**

~~§ 45.1-269~~ 45.2-1041. Satisfaction of lien.

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

**Drafting note: Outdated terms used in the old equitable pleading practice are replaced with modern terminology and technical changes are made, including a change made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-270~~ 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 ~~the plant~~ such plants. No such control or treatment shall in any way be less than that required under the federal Clean Water Pollution Control Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

**Drafting note: The name of the Clean Water Act is updated and a technical change is made.**

## Article 5.

### Coal Surface Mining Reclamation Fund.

**Drafting note: Existing Article 5, relating to the Coal Surface Mining Reclamation Fund, is retained as proposed Article 5 in Chapter 10.**

~~§ 45.1-270.1~~ 45.2-1043. ~~Creation of~~ Coal Surface Mining Reclamation Fund.

There is hereby created in the ~~office of the State Treasurer~~ state treasury a special nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, ~~hereinafter~~ referred to in this article as "the Fund, ~~which shall be administered as set forth in this article.~~" The Fund shall ~~consist of all~~ be established on the books of the Comptroller. All payments made into the Fund in accordance with the provisions of this article, ~~as well as all interest~~ shall be paid into the state treasury and credited to the Fund. Interest earned on ~~money contained~~ 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.

**Drafting note: The nonreverting fund language for the Coal Surface Mining Reclamation Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.**

~~§ 45.1-270.2~~ 45.2-1044. Participation in Fund.

A. Participation in the Fund ~~shall be~~ is open to ~~all operators~~ any operator applying for a permit under ~~Chapter 19 (§ 45.1-226 et seq.) of this title, chapter~~ who can demonstrate to the Director a history of at least a three consecutive ~~three-year history~~ years of compliance under this ~~act~~ chapter or any other comparable state or federal act.

B. Participation in the Fund ~~shall be~~ 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 ~~§ 45.1-241~~ 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 herein in this article~~ shall preclude compliance with ~~§ 45.1-241~~ 45.2-1016 in lieu of participation in the Fund, prior to commencement of ~~the~~ such participation. Commencement of participation in the Fund, as to the applicable permit, ~~shall constitute~~ 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 operations~~ 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 ~~provided~~ (i) the applicant (i) can demonstrate to the Director a history of at least a seven consecutive ~~year history~~ years of compliance with this ~~act~~ chapter or with any other comparable state or federal act; or (ii) ~~the applicant~~ submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C ~~above, times,~~ multiplied by an approved cost estimate of reclamation prepared for the permit.

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-270.3~~ 45.2-1045. Initial payments into Fund; renewal payments; bonds.

A. ~~Operators~~ Any operator filing a permit ~~applications~~ application for a coal surface mining ~~operations~~ operation participating in the pool fund shall ~~be required to~~ pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of

\$5,000 shall be required of ~~all operators~~ each operator who ~~elect~~ elects to participate in the Fund ~~when if~~ the Director has determined that the total balance of the Fund is less than ~~\$1,750,000~~ \$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 ~~all permittees~~ 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 ~~forfeitures~~ any forfeiture on which engineering cost estimates have been prepared; but no money from the Fund has actually been expended ~~from the Fund~~.

2. ~~Should~~ If the actual expenditures from the Fund ~~be~~ are less than the engineering cost estimate, ~~then~~ the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

B. In addition to the initial payments into the Fund described in subsection A ~~of this section~~, ~~all operators that participate~~, every operator who participates in the Fund shall furnish to the Fund a bond ~~which that~~ that meets the criteria of ~~§ 45.1-241~~ 45.2-1016 and regulations issued pursuant thereto as follows:

1. ~~For these~~ an underground mining ~~operations~~ 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 ~~permits which have~~ a permit that has completed all mining and for which ~~a completion reports have been~~ report was approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

2. For an underground mining ~~operations~~ operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded ~~on or after July 1, 1991~~ such date, the amount of \$3,000 per acre. In no event shall the total bond for such underground ~~operations~~ operation entering the Fund on or after July 1, 1991, be less than \$40,000.

3. For any other coal mining ~~operations~~ 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 ~~permits which have~~ a permit that has completed all mining and for which ~~a completion reports have been~~ report was approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

4. For any other coal mining ~~operations~~ operation entering the Fund on or after July 1, 1991, and for any additional acreage bonded ~~on or after July 1, 1991~~ such date, the amount of \$3,000 per acre. In no event shall the total bond for such ~~operations~~ 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 ~~§ 45.1-235~~ 45.2-1010 or any other payments required in compliance with this chapter.

D. Each Fund participants participant shall be allowed to post incremental bonds as set forth in ~~§ 45.1-241~~ 45.2-1016. Such bonds ~~will~~ 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 ~~which 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 ~~which 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 ~~which 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, ~~provided if~~ the permittee has posted bond pursuant to subsection B ~~of this section~~.

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-270.3:1. Repealed.~~

**Drafting note: Repealed by Acts 1991, c. 495.**

~~§ 45.1-270.4~~ 45.2-1046. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by ~~operators~~ each operator participating in the Fund under ~~permits~~ a permit issued under this chapter as set forth ~~herein~~ 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, ~~all operators~~ 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 ~~facilities~~ 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~~ surface-mined by that operator or in excess of four and one-half cents per ton on coal originally ~~deep-mined~~ 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.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-270.4:1~~ 45.2-1047. Special assessment.

A. In addition to the tax assessed pursuant to § ~~45.1-270.4~~ 45.2-1046, and in order to ensure Fund solvency, the ~~Commissioner~~ Director of the Division of ~~Mined Land Reclamation~~ shall require each permittee to pay any special assessment made pursuant to subsection B of this section.

B. On and after July 1, 1990, the ~~Commissioner~~ Director of the Division of ~~Mined Land Reclamation~~ shall assess each permit in the Fund the amount of \$500. ~~This~~ 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 ~~Commissioner~~ Director of the Division of ~~Mined Land Reclamation~~ shall assess an amount not to exceed \$500,000. The amount of the assessment shall be \$250 for each permit participating in the Fund ~~which 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 of ~~Mined Land Reclamation~~ 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.

~~E.~~ D. Failure to tender moneys assessed pursuant to the provisions of this section within ~~thirty~~ 30 calendar days of assessment shall constitute a violation of ~~the Virginia Coal Surface Mining Control and Reclamation Act (§ 45.1-226 et seq.)~~ this chapter. Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

**Drafting note: Short references to the defined term Division of Mined Land Reclamation are used and the title Commissioner is updated to Director. Technical changes are made.**

~~§ 45.1-270.5~~ 45.2-1048. Collection of reclamation tax and penalties for nonpayment.

A. Payment of taxes under this section shall be made no later than ~~thirty~~ 30 days after the end of each calendar quarter when taxes are applicable in accordance with ~~§ 45.1-270.4~~ 45.2-1046. The Division shall notify each operator holding a permit under ~~Chapter 19 (§ 45.1-226 et seq.)~~ of this ~~title~~ chapter of those periods during which the taxes are applicable, ~~and shall~~ provide forms for reporting coal production figures subject to taxes, ~~and shall~~ collect all taxes for the Fund.

B. Pursuant to regulations ~~promulgated~~ adopted by the Director, and consistent with the provisions of ~~§ 45.1-248~~ 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 ~~§ 45.1-236~~ 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 ~~promulgate~~ 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 § 45.1-245 B 45.2-1020. The notice of violation shall state that upon failure of payment within ~~fifteen~~ 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 ~~§ 45.1-245 et seq.~~ Article 2 shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A cross-reference to the procedure for issuing an order of cessation is added to subsection D and technical changes are made.**

~~§ 45.1-270.5:1~~ 45.2-1049. Forfeiture of bonds on operations participating in the Fund; alternative remedies.

A. Forfeiture of bonds of ~~operations~~ an operation participating in the Fund shall be accomplished as set forth in ~~§ 45.1-247~~ 45.2-1023 and the regulations ~~promulgated~~ adopted by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of ~~the~~ a surface coal mining operation; under the provisions of subsection F of § 45.1-245 E, 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 ~~the~~ approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm, and no bond shall be required.



C. Proceedings under either subsection A or ~~subsection B~~ shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made.**

~~§ 45.1-270.6~~ 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 ~~as a result thereof~~ shall not be eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit application under this chapter but shall not affect the operator's ~~need~~ 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 ~~the a~~ reclamation. Such expenditures shall include ~~but not be limited to~~ construction costs, engineering costs, administrative costs, and legal costs. In any action to recover ~~these~~ such costs, the defendant ~~may~~ shall not relitigate the facts giving rise to the forfeiture ~~nor may the defendant or~~ defend by claiming the forfeiture was improper.

**Drafting note: Language is updated for modern usage and technical changes are made. In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."**

~~§ 45.1-270.7~~ 45.2-1051. ~~Coal Surface Mining Reclamation Fund Advisory Committee~~ continued as Coal Surface Mining Reclamation Fund Advisory Board.

A. ~~The Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the~~ Coal Surface Mining Reclamation Fund Advisory Board (the 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 Reclamation Fund~~ 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 of whom shall represent the coal industry, one of whom shall be a representative of the Director, and two of whom shall represent conservation interests and such any other public and or private interests as may be are appropriate in accordance with Article V of the Interstate Mining Compact (§ 45.1-271 45.2-201). The Director of the Division or his designee shall be a continuing serve ex officio with nonvoting member of the Reclamation Fund Advisory Board privileges and shall serve as Secretary thereto 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.

~~B.-D.~~ ~~The voting nonlegislative citizen~~ members of the ~~Reclamation Fund~~ Advisory Board shall initially be appointed for terms of one, two, three, four, and five years, such terms to be assigned by lot. Thereafter, all members shall be appointed for five-year 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.

~~C.-E.~~ ~~The Reclamation Fund~~ 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.

~~D.-F.~~ ~~The voting nonlegislative citizen~~ members of the ~~Reclamation Fund~~ Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

~~E.-G.~~ ~~The Reclamation Fund~~ Advisory Board shall meet not less than twice each year ~~for the purpose of formulating recommendations to the Director concerning oversight of the general operation of the Fund, with such meetings held at the call of the chairman or whenever the majority of the members so request.~~

~~H.~~ ~~The Reclamation Fund~~ Advisory Board shall ~~report~~ have the following powers and duties:

1. ~~Report~~ biannually to the Director and ~~to~~ the Governor on the status of the Fund ~~and shall recommend;~~ and

2. Recommend to the Director regulations or changes ~~thereto~~ 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, in his discretion,~~ may adopt the recommendations of the ~~Reclamation Fund~~ Advisory Board through regulatory action from time to time in accordance with the provisions of Chapter 19 (§ 45.1-226 et seq.) this chapter and otherwise in accordance with law.

~~F.-K.~~ ~~The Reclamation Fund~~ Advisory Board shall serve as the advisory body required by Article V of the Interstate Mining Compact (§ ~~45.1-271~~ 45.2-201).

**Drafting note: The membership and activity language for the Coal Surface Mining Reclamation Fund Advisory Board is updated to reflect preferred Code style. An obsolete reference to the Coal Surface Mining Reclamation Fund Advisory Committee is removed. Language is updated for modern usage and technical changes are made.**

SUBTITLE III.  
MINERAL MINES.

**Drafting note: Proposed Subtitle III is created to logically organize provisions relating to mineral mines and contains proposed Parts A (Mineral Mines Generally), B (Underground Mineral Mines), and C (Surface Mineral Mines).**

PART A.  
MINERAL MINES GENERALLY.

**Drafting note: In proposed Subtitle III, proposed Part A (Mineral Mines Generally) is created to logically organize provisions relating to mineral mines and contains the following three chapters: Chapter 11 (Mineral Mine Safety Act), Chapter 12 (Permits for Certain Mining Operations; Reclamation of Land), and Chapter 13 (Mineral Mining Retaining Dams; Adjacent Owners).**

~~CHAPTER 14.4:1~~ 11.  
MINERAL MINE SAFETY ACT.

**Drafting note: Existing Chapter 14.4:1, concerning the Mineral Mine Safety Act, is retained as proposed Chapter 11. As indicated in proposed § 45.2-1100, three chapters make up the Mineral Mine Safety Act: this chapter plus proposed Chapters 14 and 15. The articles in existing Chapter 14.4:1 are retained in proposed Chapter 11 as follows: Article 1 (General Provisions), Article 2 (Director and Mining Inspectors), Article 3 (Certification of Mineral Mine Workers), Article 4 (Licensing of Mineral Mines), Article 5 (Mine Rescue Teams), Article 6 (Mine Explosions; Mine Fires; Accidents), Article 7 (Mine Inspections), Article 8 (Enforcement and Penalties; Reports of Violations), and Article 9 (Miner Training).**

Article 1.  
General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1.**

~~§ 45.1-161.292:1~~ 45.2-1100. Short title Mineral Mine Safety Act.

~~This~~ For purposes of this title, this chapter and Chapters ~~14.5~~ 14 (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6~~ 15 (~~§ 45.1-161.304~~ 45.2-1500 et seq.) ~~of this title shall be known as the~~ "Mineral Mine Safety Act."

**Drafting note: The catchline of this section is changed to more accurately reflect its content. Technical changes are made.**

~~§ 45.1-161.292:2~~ 45.2-1101. Definitions.

As used in ~~this chapter and in Chapters 14.5~~ (~~§ 45.1-161.293~~ et seq.) and ~~14.6~~ (~~§ 45.1-161.304~~ et seq.) the Mineral Mine Safety Act and in regulations ~~promulgated~~ adopted under ~~such chapters~~ the Act, unless the context requires a different meaning:

"Abandoned area" means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned mine fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a rock outburst that causes withdrawal of miners or ~~which that~~ disrupts regular mining activity for more than one hour; (x) an unstable condition at ~~an~~ impoundment, a water or silt retaining dam or mine refuse pile ~~which that~~ requires emergency action in order to prevent failure; or ~~which~~ causes individuals to evacuate an area; or; failure of ~~an impoundment,~~ such retaining dam or refuse pile; (xi) damage to hoisting equipment in a shaft or slope ~~which that~~ endangers an individual or ~~which~~ interferes with use of the equipment for more than 30 minutes; and (xii) an event at a mine ~~which that~~ causes death or bodily serious personal injury to ~~an~~ any individual not at a mine at the time the event occurs.

"Active ~~areas~~" area means ~~all places~~ any place in a mine that ~~are~~ is ventilated, if underground, and examined regularly.

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

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

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

"Approved competent person" means a person with more than two years of experience designated by the Department as having the authority to function as a mine foreman even though the person has less than five ~~years'~~ years of experience ~~but more than two years' experience~~. If an approved competent person ~~has met~~ meets all the criteria for certification as a mine foreman ~~certification~~ other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

"Armored cable" means a cable provided with a wrapping of metal, plastic, or other approved material.

"Authorized person" means a person who is assigned by the operator or agent to perform a specific type of duty ~~or duties~~ or to be at a specific location ~~or locations~~ in the mine ~~who~~ and is ~~task trained~~ task-trained in accordance with requirements of the federal mine safety law.

"Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working place.

"Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

"Cable" means (i) a stranded conductor ~~(, known as single-conductor cable),~~ or (ii) a combination of conductors insulated from one another ~~(, known as multiple-conductor cable).~~

"Certified person" means a person ~~holding~~ who holds a valid certificate from the Department authorizing him to perform the particular task to which he is assigned.

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

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

"Competent person" means a person having abilities and experience that fully qualify him to perform the particular duty to which he is assigned.

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

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

"Division" means the Division of Mineral Mining.

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

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

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 91-173, as amended by P.L. 95-164); and regulations ~~promulgated~~ adopted thereunder.

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

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

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

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

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

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

"Independent contractor" means any person ~~that~~ who contracts to perform services or construction at a mine.

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed ~~entrances~~ entrance to an abandoned ~~areas~~ area and by analysis contains ~~not less~~

~~than~~ at least 19.5 percent oxygen ~~and not more than 0.5 percent of carbon dioxide, nor any and does not contain a hazardous quantities~~ quantity of flammable gas ~~nor any or a harmful amounts~~ quantity of poisonous gas.

"Interested persons" means members of the ~~Mine Safety Committee~~ mine safety committee and other duly authorized representatives of the employees at a mine; ~~federal Mine Safety and Health Administration, MSHA employees;~~ mine inspectors; and, to the extent required by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act, any other person.

"Licensed operator" means the operator who has obtained the license for a particular mine under ~~§ 45.1-161.292:30~~ 45.2-1124.

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

"Mine" means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and ~~which that~~ are administered as distinct units ~~shall be~~ are considered as separate mines. A site ~~shall is~~ is not be considered a mine unless the mineral extracted or excavated ~~therefrom~~ from it is offered for sale or exchange; or used for any other commercial ~~purposes~~ purpose.

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

"Mine foreman" means a person ~~holding~~ who holds a valid certificate of qualification as a foreman issued by the Department.

"Mine inspector" means a public employee assigned by the Director to make mine inspections as required by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~, and the Mineral Mine Safety Act or other applicable laws law.

"Miner" means any individual working in a mineral mine.

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

"Mineral mine" means a surface mineral mine or an underground mineral mine.

"Mineral Mine Safety Act" or "the Act" ~~shall mean~~ means this chapter and Chapters ~~14.5 14~~ 14 (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6 15~~ 15 (~~§ 45.1-161.304~~ 45.2-1500 et seq.); and ~~shall include~~ includes any regulations ~~promulgated~~ adopted thereunder, where applicable.

"Mine Safety and Health Administration" or "MSHA" means the federal Mine Safety and Health Administration.

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

"Panel entry" means a room entry.

"Permissible" means ~~a~~ any device, process, ~~or~~ equipment, or method ~~heretofore or hereafter~~ classified by such term at any time as permissible by the ~~Mine Safety and Health Administration~~

MSHA, when such classification is adopted by the Director, ~~and~~. "Permissible" includes, unless otherwise herein expressly stated, ~~all requirements, restrictions, exceptions, limitations, and conditions~~ any requirement, restriction, exception, limitation, or condition attached to such classification by ~~the Administration~~ MSHA.

"Return air" means air that has passed through (i) the last active working place on each split; or ~~air that has passed through~~ (ii) an abandoned or worked-out ~~areas~~ area. ~~Area~~ No area within a panel shall ~~not~~ be deemed abandoned until it is inaccessible or sealed.

"Room entry" means any entry or set of entries from which ~~rooms are~~ a room is turned.

"Serious personal injury" means any injury ~~which~~ that (i) has a reasonable potential to cause death or ~~any injury~~ (ii) is other than a sprain or strain ~~which~~ and requires an admission to a hospital for 24 hours or more for medical treatment.

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

"Surface mineral mine" means (i) the pit and any other active ~~and~~ or inactive ~~areas~~ area of surface extraction of minerals; (ii) ~~on-site mills, shops~~ any onsite mill, shop, loadout ~~facilities~~ facility, ~~and~~ or related ~~structures~~ structure appurtenant to the excavation and processing of minerals; (iii) ~~impoundments, retention dams~~ any impoundment, water or silt retaining dam, tailing ~~ponds~~ pond, ~~and~~ mine refuse pile, or other ~~areas~~ area appurtenant to the extraction of minerals from the site; (iv) ~~on-site~~ any onsite surface ~~areas~~ area for the transportation ~~and~~ or storage of minerals excavated at the site; (v) equipment, machinery, tools, and other property used in, or to be used in, the work of extracting minerals from the site; (vi) any private ways and roads way or road appurtenant to such area; and (vii) ~~the areas~~ any area used for surface-disturbing exploration ~~(, other than by drilling or seismic testing), or for~~ preparation of a site for surface mineral extraction ~~activities~~ activity. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration ~~activities~~ activity other than exploratory drilling or seismic testing; and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless the mineral (a) ~~the mineral~~ is extracted for its unique or intrinsic characteristics; or (b) ~~the mineral~~ requires processing prior to its intended use.

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

"Underground mineral mine" means (i) the working face and any other active ~~and~~ or inactive ~~areas~~ area of underground excavation of minerals; (ii) any underground travel ~~ways~~, ~~shafts, slopes, drifts, inclines and tunnels~~ way, shaft, slope, drift, incline, or tunnel connected to such ~~areas~~ area; (iii) ~~on-site mills~~ any onsite mill, loadout ~~areas, shops, and~~ area, shop, or related ~~facilities~~ facility appurtenant to the excavation and processing of minerals; (iv) ~~on-site~~ any onsite surface ~~areas~~ area for the transportation ~~and~~ or storage of minerals excavated at the site; (v) ~~impoundments~~ any impoundment, retention dams dam, tailing ~~ponds and~~ pond, or waste ~~areas~~ area

appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) any private ways and roads way or road appurtenant to such area; and (viii) ~~the areas~~ any area used to prepare a site for underground mineral excavation activities. A site ~~shall commence~~ commences being an underground mineral mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and ~~shall cease~~ ceases to be an underground mineral mine upon completion of initial reclamation activities.

"Work area," as used in Chapter ~~14.4 9~~ (§ ~~45.1-161.253~~ 45.2-900 et seq.), means ~~those areas~~ an area of a mine in production or being prepared for production ~~and those areas~~ or an area of ~~the a~~ a mine ~~which that~~ that may pose a danger to miners at such ~~areas~~ area in production or being prepared for production.

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

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

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

**Drafting note: The term "Mineral Mine Safety Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Definitions of the terms "Division of Mineral Mining" and "Mine Safety and Health Administration" are added. In the definition of the term "accident," terms relating to impoundments are updated and made consistent with the rest of the chapter and the unique term "bodily injury" is replaced by the defined term "serious personal injury." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.292:3~~ 45.2-1102. Safety and health.

In safety and health, all mineral miners are to be governed by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and Chapter 18.1 (§ 45.1-225.1 et seq.) of this title, and the Act, Article 1 (§ 45.2-1300 et seq.) of Chapter 13,~~ any other sections section of the Code relating to the safety and health of miners, and ~~rules and~~ rules and regulations promulgated adopted by the Department.

**Drafting note: The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**



~~§ 45.1-161.292:4~~ 45.2-1103. Special safety rules.

The operator of ~~every a mine shall have the right to~~ may adopt special safety rules for the safety and operation of his mine ~~or mines, covering regarding~~ the work pertaining thereto inside and outside of the ~~same, which~~ mine. Such rules, however, shall not ~~be in~~ conflict with the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act. Such rules, ~~when if~~ established, shall be posted at some conspicuous place about the ~~mines, mine~~ mine where the rules they may be seen by all miners subject to such rules, ~~or in~~. In lieu thereof of posting the rules, the operator ~~shall~~ may furnish a printed copy of such rules to each miner subject to such rules.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrase "shall have the right to" is replaced with "may." The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:5~~ 45.2-1104. Persons permitted to work in mines; age requirements.

A. No person under ~~eighteen~~ 18 years of age shall be permitted to work in any mine, and ~~in all cases~~ any case of doubt, the operator, agent, or mine foreman shall obtain a birth certificate or other documentary evidence, from the State Registrar of Vital Records, or other authentic sources source as to the age of such person.

B. The Department shall conform to § 212 of the federal Fair Labor Standards Act, 29 U.S.C. ~~§ 212~~ 201 et seq., and federal regulations adopted pursuant to that Act with respect to ~~persons~~ any person under 18 years of age working around any mine.

~~B. C.~~ No operator, agent, or mine foreman shall make a false statement as to the age of any person under ~~eighteen~~ 18 years of age applying for work in or around any mine.

**Drafting note: The citation to the federal fair Labor Standards Act is corrected. Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:6~~ 45.2-1105. Prohibited acts by miners or other persons; miners to comply with law.

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct ~~airways~~ any airway; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution or a warning sign or barricade; or (vi) disobey any order issued pursuant to the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

B. Each miner at any mine shall comply fully with the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act and other mining laws of ~~this the~~ the Commonwealth, including regulations adopted by the Department, that pertain to his duties.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. A reference to a warning sign or barricade is added to clause (v) of subsection A. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term, and the regulations of the Department are included in the reference to the mining laws of the Commonwealth. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:7~~ 45.2-1106. Safety materials and supplies.

It ~~shall be~~ is the duty of ~~every each~~ operator or agent to keep on hand, at all times at each mine, or within convenient distance of each mine, ~~at all times~~ a sufficient quantity of all materials and supplies required to preserve the safety of ~~the miners working in those areas~~ any area in which the operator is responsible for their health and safety, as required by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act. If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause ~~the all~~ miners to withdraw from the mine, or from the affected portion thereof affected of the mine, until such ~~material~~ materials or supplies are received.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:8~~ 45.2-1107. Notifying miners of violations; compliance with Act.

A. The operator and his agent shall cooperate with the mine foreman, competent person, and other officials in the discharge of their duties as required by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and the Act.~~ Such operator and agent shall direct that all miners to comply with all provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) the Act, especially when his the attention of such operator or agent is called by the Director or a mine inspector to any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) by the Director or a mine inspector the Act.

B. The operator of any mine or his agent shall operate at all times in full conformity with ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act and any other mining law of the Commonwealth ~~at all times,~~ including any regulation of the Department. This requirement shall not relieve any other person who is subject to the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the

Act from his duty to comply with the requirements of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

C. Nothing in ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.

D. No operator, agent, competent person, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

**Drafting note: The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term, and the regulations of the Department are included in the reference to the mining laws of the Commonwealth. Technical changes are made and language is updated for modern usage and clarity.**

## Article 2.

### Director and Mining Inspectors.

**Drafting note: Existing Article 2, relating to the Director and mining inspectors, is retained as proposed Article 2.**

~~§ 45.1-161.292:9~~ 45.2-1108. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.

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

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

**Drafting note: Technical changes are made, including organizational changes, and language is updated for modern usage.**

~~§ 45.1-161.292:10~~ 45.2-1109. Appointment and general qualifications of mine inspectors. Mine inspectors-A. Each mine inspector shall be appointed by the Director.

~~§ 45.1-161.292:11~~. Qualifications of mine inspectors generally.

B. Each mine inspector shall (i) be ~~not less than~~ at least 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1, 2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

**Drafting note: Existing §§ 45.1-161.292:10 and 45.1-161.292:11 are combined. A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage.**

~~§ 45.1-161.292:12~~ 45.2-1110. Qualifications of mine inspectors ~~of mines~~.

Each mine inspector conducting inspections of mineral mines shall have a thorough knowledge of the various systems of working and ventilating underground mineral mines and working surface mineral mines; the control of mine roof and ground control; methods of rescue and recovery in mining operations; the application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; and mine haulage.

**Drafting note: The catchline is changed to reflect the terminology used in the section, and technical changes are made.**

~~§ 45.1-161.292:13~~ 45.2-1111. Duties of Director.

A. The Director shall (i) supervise the execution and enforcement of all laws pertaining to the safety and health of persons employed within or at mineral mines within the Commonwealth; and the protection of property used in connection therewith; and ~~to~~ (ii) perform all other duties required pursuant to ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

B. The Director shall keep a record of all inspections of mineral mines made by him or his authorized representatives. ~~He~~ The Director shall also keep a permanent record ~~thereof~~ of such inspections, properly indexed, ~~which and such~~ record shall at all times be open to inspection by any citizen of the Commonwealth.

**Drafting note: The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term and technical changes are made.**

~~§ 45.1-161.292:14~~ 45.2-1112. Technical specialists.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

Article 3.

Certification of Mineral Mine Workers.

**Drafting note: Existing Article 3, relating to the certification of mineral mine workers, is retained as proposed Article 3.**

~~§§ 45.1-161.292:15, 45.1-161.292:16. Repealed.~~

**Drafting note: Repealed by Acts 2012, cc. 803, 835, cl. 49.**

~~§ 45.1-161.292:17~~ 45.2-1113. Records of Board of Mineral Mining Examiners.

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

**Drafting note: The name of the Division of Mineral Mining is shortened to correspond to the definition of that term as added to proposed § 45.2-1101.**

~~§ 45.1-161.292:18. Repealed.~~

**Drafting note: Repealed by Acts 2012, cc. 803, 835, cl. 49.**

~~§ 45.1-161.292:19~~ 45.2-1114. Certification of certain persons employed in mineral mines; powers of the Department.

A. The Department may require certification of ~~persons~~ each person who ~~work~~ works in a mineral ~~mines and persons~~ mine or whose duties and responsibilities in relation to mineral mining require competency, skill, or knowledge in order to perform ~~consistently~~ the tasks required of him in a manner consistent with the preservation of the health and safety of persons and property. ~~The~~ Each of the following ~~certifications~~ certificates shall be issued by the Department, and a person holding who holds such a ~~certification~~ certificate is authorized to perform the tasks ~~which this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated by the Department that the Act requires to be performed by such a certified person:~~

1. Surface foreman;
2. Surface foreman open pit;
3. Underground foreman;
4. Surface blaster;
5. Electrical repairman;
6. Underground mining blaster;
7. General mineral miner; and
8. Mine inspector.

B. Certification shall also be required for ~~such~~ any additional tasks ~~as~~ that the Department ~~may require~~ requires by regulation.

C. The Department ~~shall have the power to promulgate~~ may adopt regulations necessary or incidental to the performance of duties or the execution of powers conferred under this title, ~~which~~.

Such regulations shall be ~~promulgated~~ adopted in accordance with the provisions of Article 2 (§ ~~2.2-4007~~ 2.2-4006 et seq.) of the Administrative Process Act.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. An erroneous citation to the Administrative Process Act is corrected. In accordance with title-wide conventions, the phrase "shall have the power to" is replaced with "may." Language is updated for modern usage and clarity.**

§ ~~45.1-161.292:20~~ 45.2-1115. Examinations required for Mineral Mining Certifications.

A. The Department may require ~~the~~ each examination of ~~applicants~~ each applicant for certification; ~~however, the~~ The Department shall require ~~the~~ each examination of ~~applicants~~ each applicant for a mine inspector certification. The Department may require such other information from ~~applicants~~ an applicant as ~~may be~~ necessary to ascertain competency and qualifications for each task.

B. Except as provided by ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act for a general mineral miner and or surface foreman certifications certification, the Department shall prescribe the qualifications for ~~any each type of~~ certification. The examinations shall be conducted under ~~such rules, conditions and regulations as that~~ the Department shall promulgate establishes or adopts. Such ~~rules, when promulgated, established conditions and adopted regulations~~ shall be made a part of the permanent record of the Department, shall periodically be published periodically, and shall be of uniform application applied uniformly to all applicants.

~~B. C.~~ Any certificate issued by the Department, except the general mineral miner ~~certification~~ certificate, shall be valid from the date of issuance for a period of five years; unless renewed; or unless revoked pursuant to § ~~45.1-161.292:26~~ 45.2-1120. The general mineral miner ~~certification~~ certificate shall be valid from the date of issuance until it ~~may be~~ is revoked pursuant to § ~~45.1-161.292:26~~ 45.2-1120.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Language is updated for modern usage and clarity. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

§ ~~45.1-161.292:21~~ 45.2-1116. Performance of certain tasks by uncertified persons; penalty.

It is unlawful for any person to perform any task requiring Department certification ~~by the Department until~~ unless he has been certified. It is unlawful for an operator or his agent to permit any uncertified person to perform such ~~tasks~~ task. A violation of this section ~~shall constitute~~ constitutes a Class 1 misdemeanor. Each day of operation without a required certification ~~shall~~

~~constitute~~ constitutes a separate offense. A certificate issued by the Board of Mineral Mining Examiners prior to July 1, 2012, shall be acceptable as a certificate issued by the Department until the Department ~~shall provide~~ provides otherwise by appropriate regulations.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:22~~ 45.2-1117. Examination fees; Mineral Mining Examiners' Fund.

A. A fee of \$10 shall be paid to the Director by each person examined. ~~All fees shall be paid~~ before the commencement of the examination.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mining Examiners' Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All ~~such~~ fees collected pursuant to subsection A, together with moneys collected pursuant to § ~~45.1-161.292:25~~ 45.2-1119, shall be ~~retained by the Department and shall be promptly paid by the Director~~ into the state treasury and ~~shall constitute the Mineral Mining Examiners' 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.~~

C. ~~The fund~~ Fund shall be administered by the Director, and moneys in the Fund shall be used solely for the purposes of payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. 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. The Director shall keep accounts and records concerning the receipts and expenditures of the ~~fund~~ Fund as required by the Auditor of Public Accounts.

**Drafting note: The nonreverting fund language for the Mineral Mining Examiners' Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made.**

~~§ 45.1-161.292:23. Repealed.~~

**Drafting note: Repealed by Acts 2012, cc. 803 and 835, cl. 49.**

~~§ 45.1-161.292:24~~ 45.2-1118. Reciprocal acceptance of other certifications.

In lieu of conducting an examination prescribed by law or regulation, the Department may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in ~~this the~~ the Commonwealth, ~~provided that~~ so long as (i) the Department finds that the requirements for certification in such other state are substantially equivalent to those of ~~Virginia~~ the Commonwealth and (ii) holders of certificates issued by the Department are permitted to perform similar tasks in such state, and obtain similar certification from such state if required,

upon presentation of the certificate issued by the Department and without additional testing, training, or other requirements not directly related to program administration.

**Drafting note: A technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.**

~~§ 45.1-161.292:25~~ 45.2-1119. Renewal of certificates.

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance with the procedure set forth in ~~subsection A of § 45.1-161.292:20~~ 45.2-1115. The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal ~~which~~ that is not renewed by the fifth anniversary of its issuance, ~~or of a previous renewal, shall be is~~ invalid. As a condition to renewal, the holder shall provide the Department with ~~such~~ all administrative information ~~as is~~ reasonably required and ~~shall~~ pay the examination fee as provided in ~~§ 45.1-161.292:22~~ 45.2-1117.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-161.292:26~~ 45.2-1120. Revocation of certificates.

A. The Department may revoke any certificate upon finding that ~~(i) the holder has (i) (a)~~ (a) been intoxicated while ~~in on~~ on duty ~~status; (ii) (b)~~ (b) neglected his duties; ~~(iii) (c)~~ (c) violated any provision of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) the~~ the Act or any other mineral mining law of the Commonwealth, including any regulation adopted by the Department; ~~(iv) or (d)~~ (d) used any controlled substance without the prescription of a licensed physician; ~~or (v) (ii)~~ (ii) other sufficient cause exists.

B. The Department may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division ~~of Mineral Mining~~ or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) 10 persons working at the mine at which such person is employed, or, ~~if less~~ fewer than 10 persons are working at the mine, a majority of the workers at the mine.

C. Prior to revoking a certificate, the Department shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing shall be conducted by a hearing officer as provided in § 2.2-4024.

D. Any person ~~who has been~~ aggrieved by a decision of the Department ~~shall be is~~ entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article ~~4~~ 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.



**Drafting note: Technical changes are made, including in subsection A, where the organization of the list of findings for which the Department may revoke a certificate is clarified. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term, and the regulations of the Department are included in the reference to the mining laws of the Commonwealth. An erroneous citation to Article 4 of the Administrative Process Act is corrected. Language is updated for modern usage and the name of the Division of Mineral Mining is shortened to correspond to the definition of that term as added to proposed § 45.2-1101.**

~~§ 45.1-161.292:27~~ 45.2-1121. Reexamination.

The holder of a certificate revoked pursuant to ~~§ 45.1-161.292:26~~ shall be 45.2-1120 is entitled to examination by the Department after a period of three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

**Drafting note: Technical changes are made to modernize language.**

~~§ 45.1-161.292:28~~ 45.2-1122. General mineral miner certification.

A. Every person ~~commencing~~ beginning work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners or the Department. Any person who has worked in a mineral mine in ~~Virginia~~ the Commonwealth prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act and applicable regulations pertaining to mineral mining health and safety.

**Drafting note: A technical change is made and the term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term.**

~~§ 45.1-161.292:29~~ 45.2-1123. Foreman certification.

A. At any mineral mine where three or more persons work at the same time during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only ~~persons~~ a person holding a foreman certificate in accordance with ~~§ 45.1-161.292:19~~ 45.2-1114 shall be employed as a mine foreman. The holder of such a certificate shall present the certificate, or a ~~photostatic~~ copy thereof, to the operator where he is employed, ~~who~~. Such operator shall file the certificate or its copy in the office at the mine; and ~~the operator shall~~ make it available for inspection by interested persons.

B. ~~Applicants~~ Every applicant for a foreman certificate shall have ~~had~~ at least five years of experience at mineral mining, or other experience deemed appropriate by the Department, and shall demonstrate to the Department a thorough knowledge of the theory and practice of mineral

mining by making a score of 85 percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman at each mine shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected ~~prior to miners starting before any miner starts~~ work in the affected area.

D. ~~Independent contractors~~ Any independent contractor working in a mineral mine who ~~are~~ is engaged in ~~activities~~ an activity other than the extraction or processing of minerals and is working in a clearly demarcated area where (i) no mining-associated ~~hazards exist~~ hazard exists and (ii) no other ~~miners travel or work~~ miner travels or works while engaged in an extraction or processing ~~activities~~ activity shall employ a competent person ~~who shall~~ to examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to ~~personnel~~ any person starting work in the affected area.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

#### Article 4.

#### Licensing of Mineral Mines.

**Drafting note: Existing Article 4, relating to the licensing of mineral mines, is retained as proposed Article 4.**

~~§ 45.1-161.292:30~~ 45.2-1124. License required for operation of mineral mines; term.

A. No person shall engage in the operation of any mineral mine within ~~this~~ the Commonwealth without first obtaining a license from the Department. ~~A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated.~~ Licenses shall be in ~~such~~ a form ~~as that~~ that the Director ~~may prescribe~~ prescribes. The license for each mine shall be posted in a conspicuous place near the main entrance to ~~the~~ such mine.

B. A license is required prior to commencement of the operation of a mine, and a separate license shall be secured for each mine operated. The Director may transfer a license to a successor operator, ~~provided that~~ so long as the successor operator has complied with the requirements of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) the Act.~~ Every change in ownership of a mine shall be reported to the Department as provided in subsection D of ~~§ 45.1-161.292:35~~ 45.2-1129.

~~B. Licenses~~ C. Each license shall be valid for a period of one year following the date of issuance, and a mine operator shall be renewed on their secure the renewal of a license by its anniversary date.

~~C. D.~~ Within ~~thirty~~ 30 days after the occurrence of any change in the information required by subsection ~~A~~ B, the licensed operator shall notify the Department, in writing, of such change.

**Drafting note: Subsection A is divided into two subsections for clarity, and the second and third sentences in existing subsection A, requiring a license prior to operation and a**

separate license for each mine, are relocated to the beginning of proposed subsection B. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and language is updated for modern usage and clarity.

~~§ 45.1-161.292:31~~ 45.2-1125. Fee to accompany application for license; ~~fund~~ Mineral Mine License Fund; disposition of fees.

A. Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, of \$400 payable to the State Treasurer, in the amount of \$180 except an application submitted electronically, which shall be accompanied by a fee of \$330. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of ~~\$48~~ \$100, except an application submitted electronically, which shall be accompanied by a fee of \$80. All such fees collected shall be retained by the Department and paid into the ~~state treasury and shall constitute a fund under the control of the Director.~~ Expenditures Mineral Mine License Fund created pursuant to subsection B.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mine License 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 subsection A 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. Expenditures from this fund may the Fund shall be made by the Department solely for the purpose of acquiring or providing safety equipment, safety training, or safety education or for any expenditure to further the safety program in the mineral mining industry. All expenditures and disbursements from this fund must be approved the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**Drafting note: Mineral mine license fees are updated to reflect Acts 2020, c. 1289, Item 124. The nonreverting fund language for the Mineral Mine License Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made and subsection designations are added for clarity.**

~~§ 45.1-161.292:32~~ 45.2-1126. Application for license.

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

1. ~~Identity regarding~~ The identity of the applicant. If the applicant is a sole proprietorship, the The applicant shall state: (i) ~~his full name and address;~~ (ii) the name and address of the mine and its federal mine identification number; ~~(iii),~~ (ii) the name and address of the person with overall responsibility for operating decisions at the mine; ~~(iv),~~ (iii) the name and address of the person

with overall responsibility for health and safety at the mine; ~~(v)~~, and (iv) the federal mine identification ~~numbers~~ number of all every other mines mine in which the ~~sole proprietor applicant~~ has a ~~twenty~~ 20 percent or greater ownership interest and ~~(vi)~~;

2. If the applicant is a sole proprietorship, in addition to the information required by subdivision 1, (i) his full name and address and (ii) the trade name, if any, and the full name, address of record, and telephone number of the proprietorship;

3. If the applicant is a partnership, ~~the applicant shall state:~~ in addition to the information required by subdivision 1, (i) ~~the name and address of the mine and its federal mine identification number;~~ (ii) ~~the name and address of the person with overall responsibility for operating decisions at the mine;~~ (iii) ~~the name and address of the person with overall responsibility for health and safety at the mine;~~ (iv) ~~the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership interest;~~ (v) the full name and address of all partners; ~~(vi)~~ each partner; (ii) the trade name, if any, and the full name and address of record and telephone number of the partnership; and ~~(vii)~~ (iii) the federal mine identification ~~numbers~~ number of all every other mines mine in which any partner has a ~~twenty~~ 20 percent or greater ownership interest;

4. If the applicant is a corporation, ~~the applicant shall state:~~ in addition to the information required by subdivision 1, (i) ~~the name and address of the mine and its federal mine identification number;~~ (ii) ~~the name and address of the person with overall responsibility for operating decisions at the mine;~~ (iii) ~~the name and address of the person with overall responsibility for health and safety at the mine;~~ (iv) ~~the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest;~~ (v) the full name, address of record, and telephone number of the corporation and the state of incorporation; ~~(vi)~~ (ii) the full name and address of each officer and director of the corporation; ~~(vii)~~ if the corporation is a subsidiary corporation, the applicant shall state (iii) the full name, address, and state of incorporation of the parent corporation if the corporation is a subsidiary corporation; and ~~(viii)~~ (iv) the federal mine identification numbers of ~~all every other mines mine~~ in which any corporate officer has a ~~twenty~~ 20 percent or greater ownership interest;

5. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, ~~the applicant shall state:~~ in addition to the information required by subdivision 1, (i) the nature and type, or legal identity, of the organization; (ii) ~~the name and address of the mine and its federal mine identification number;~~ (iii) ~~the name and address of the person with overall responsibility for operating decisions at the mine;~~ (iv) ~~the name and address of the person with overall responsibility for health and safety at the mine;~~ (v) ~~the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest;~~ ~~(vi)~~ the full name, address of record, and telephone number of the organization; ~~(vii)~~ (iii) the name and address of each individual who has an ownership interest in the organization; ~~(viii)~~ (iv) the name and address of the principal organization officials or members; and ~~(ix)~~ (v) the federal mine

identification ~~numbers~~ number of ~~all every other mines~~ mine in which any official or member has a ~~twenty~~ 20 percent or greater ownership interest;

~~2-6.~~ The names name and ~~addresses~~ address of any agent of the applicant with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the minerals to be mined;

~~3-Information~~ 7. The following information about each independent contractor working at the mine: (i) the independent contractor's trade name, business address, and business telephone number; (ii) a description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed; (iii) the independent contractor's MSHA identification number, if any; (iv) the independent contractor's address of record for service of citations and other documents; (v) the names and addresses of persons with overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

~~4-8.~~ The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

~~5-9.~~ Such 9. Any information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

~~6-10.~~ For any license renewal, the annual report required pursuant to § ~~45.1-161.292:35~~ 45.2-1129.

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

C. Within ~~thirty~~ 30 days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department, in writing, of such change.

**Drafting note: Subdivision A 1 is divided further into subdivisions for clarity and duplicative elements are removed. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.292:33~~ 45.2-1127. Denial or revocation of license.

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

B. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, ~~who~~ if such person has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § ~~45.1-161.233~~ 45.2-849.

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, ~~who if such person~~ has been convicted of violating subsection A of § ~~45.1-161.177 45.2-856 or § 45.1-161.178 45.2-857.~~

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

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-161.292:34 45.2-1128.~~ Operating without license; penalty.

A. In addition to any other power conferred by law, the Director, or his designated representative, ~~shall have the authority to~~ may issue an order closing any mineral mine ~~which that~~ is operating without a license. The procedure for issuing a closure order shall be as provided in § ~~45.1-161.292:64 45.2-1158.~~

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

**Drafting note: Technical changes.**

~~§ 45.1-161.292:35 45.2-1129.~~ Annual reports; condition to issuance of license following transfer of ownership.

A. The licensed operator of ~~every~~ each mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the ~~preceding twelve~~ 12 months, ending ~~with December 31~~ prior to the preceding January 1. Such report shall state: (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the ~~quantity~~ amount of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § ~~45.1-161.292:32 45.2-1126;~~ and (iv) ~~such~~ any other information, not of a private nature, ~~as may that~~ from time to time be is required by the Department on ~~blank~~ forms furnished or approved by the Department.

B. Each independent contractor who is working or ~~who~~ has worked at a mine during the preceding ~~twelve~~ 12 months shall annually, by February 15, mail or deliver to the Department a report for the ~~preceding twelve~~ 12 months, ending ~~with December 31~~ prior to the preceding January 1. Such report shall state: (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine,

listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above \$1,000, listed by mine name and license number.

C. For purposes of subsection B, "independent contractor ~~shall mean~~" means any (i) extraction and or processing contractors contractor, including, ~~but not limited to,~~ drillers a driller, blasters blaster, portable crushers crusher, and or stripping and or land clearing contractors contractor; (ii) maintenance and or repair contractors contractor for mobile ~~and or~~ stationary extraction ~~and or~~ processing equipment, including, ~~but not limited to,~~ welders a welder, mechanics mechanic, painters and electricians painter, or electrician; and (iii) construction contractors contractor involved in mine site construction maintenance or repair, including, ~~but not limited to,~~ a plant construction contractors contractor, concrete fabricators and fabricator, or equipment erectors erector.

D. ~~Whenever~~ If the owner of a mine ~~shall transfer~~ transfers the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the ~~tons~~ amount of minerals produced since the January 1 ~~previous~~ prior to the date of such ~~sale or~~ transfer of such mine ownership. ~~A~~ No license shall ~~not~~ be issued covering such transfer of ownership until the report is furnished.

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be published or made open to public inspection in any manner revealing the employing unit's identity, ~~except that~~. However, such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title. Wage data aggregated ~~in such a manner that it does so as to~~ so as to not reveal the employing unit's identity shall not be ~~considered confidential~~ exempt from such disclosure.

**Drafting note: Technical changes are made, including in subsection E where references to provisions of the Virginia Freedom of Information Act are updated. Technical changes are made in subsection C, where "but not limited to" is removed following the term "include" on the basis of § 1-218, which states that throughout the Code, "'Includes' means includes, but not limited to," and pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:36~~ 45.2-1130. Notices to Department; resumption of mining following discontinuance.

A. The licensed operator or his agent shall send notice of intent to abandon or discontinue the working of an underground mine for a period of ~~thirty~~ 30 days, or a surface mine for a period of ~~sixty~~ 60 days, to the Department at least ~~ten~~ 10 days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine.

B. The licensed operator, or his agent, shall send to the Department ~~ten~~ 10 days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine ~~which that~~

is inspected by ~~the Mine Safety and Health Administration~~ MSHA, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

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

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

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

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101. An apparently erroneous reference to the name of the "operation" of a mine is corrected to "operator." Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:37~~ 45.2-1131. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the licensed operator of a mineral mine, or his agent, shall ~~make, or cause to be made~~ submit, unless already ~~made and filed~~ submitted, an accurate map of such mine, ~~on a~~. The scale of such map shall be stated thereon of and shall be between 100 to feet and 400 feet to the inch. Such map shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions airways with darts or arrows showing direction of air currents. Such map shall also show any portion of such mine or mines as may have that has been abandoned, and so much any portion of the property lines and the outcrop of the mineral of the tract of land on which the mine is located, as may be that are located within 1,000 feet of any part of the workings of such mine, and for. For an underground mines mine only, such map shall show the general inclination of the mineral strata.

B. The licensed operator of such mine shall annually, beginning on the anniversary date of the mine permit issued pursuant to Chapter ~~16~~ 12 (~~§ 45.1-180~~ 45.2-1200 et seq.), and continuing while the mine is in operation, cause ~~the~~ such map ~~thereof~~ to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described ~~above~~ in subsection A, and shall forward ~~the same~~ such updated map to the Department to be kept on record, subject to the conditions stated in subsection ~~C~~ D. If there are no changes in the information required by



this section, ~~an updated map~~ the licensed operator shall not be required to ~~be submitted~~ submit an updated map to the Department.

~~B. The licensed operator of any surface mineral mine, or his agent, shall not be required to submit a map of such mine to the Department unless the mine may intersect (i) underground workings or (ii) workings from auger, thin seam, or highwall mining operations. The C. Each map required pursuant to this section shall be filed and preserved among the records of the Department and made. The Department shall make such map available at a reasonable cost to all persons any person owning, leasing, or residing on or having an equitable interest in any surface areas area or coal or mineral interests interest within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon a sworn affidavit that such person requesting a map has a proper the required legal or equitable interest; however. However, the Director shall provide to the such person requesting a map only that portion of the map which that abuts or is contiguous to the property in which such requesting party has a legal or equitable interest. In no case shall any copy of the same such map be made for any other person who does not possess the required legal or equitable interest without the consent of the licensed operator or his agent. The Director shall promptly deliver notice of such request to the licensed operator of such mining operation.~~

~~C. D. The original version of a map required by this section, or a true copy thereof, shall be kept by such the licensed operator at the active mine, open at all reasonable times for the examination and use of the mine inspector.~~

~~D. E. Copies of such the maps required pursuant to this section shall be made available at a reasonable cost to the governing body of any county, city or town locality in which the mine is located upon written request; however, such copies shall be provided on the condition that they not be released to any person who does not have a legal or equitable interest in any surface areas area or mineral interests interest within 1,000 feet of the mining operation without the written consent of the licensed operator or his agent. The governing body shall promptly deliver notice of any such request for a copy of such a map to the licensed operator or his agent.~~

**Drafting note: Technical changes are made, including organizational changes that divide subsection A into two subsections and divide the first two sentences in subsection A into five sentences. The first sentence of existing subsection B, which exempts certain maps from the filing requirement, is deleted to reflect current Department practice and to remove the conflict with § 45.2-1205, which requires that every mining permit application be accompanied by an accurate map of the area to be mined. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:38~~ 45.2-1132. When the Director may cause maps to be made; payment of expense.

~~A. If the a licensed mine operator, or his agent, of any mine shall neglect neglects or fail fails to furnish to the Director a copy of any map or extension thereof, as provided in § 45.1-161.292:37~~ 45.2-1131, the Director is authorized to may cause a correct survey and map of said such mine, or extension thereof, to be made at the expense of the licensed operator of such mine;

~~the cost.~~ The expense of which making such survey and map or extension thereof shall be recovered from the such licensed operator as other debts are recoverable by a civil action at law.

B. If at any time the Director has reason to believe that such a map, or extensions thereof, extension furnished pursuant to § 45.1-161.292:37 45.2-1131 is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such survey and map or extension thereof shall be paid by the licensed operator. The expense shall be and recovered from the such licensed operator as other debts are recoverable by a civil action at law. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

**Drafting note: Technical changes are made, the section is divided into subsections for clarity, and language is updated for modern usage and clarity. In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may."**

§ 45.1-161.292:39 45.2-1133. Making false statements; penalty.

~~A. It shall be is~~ unlawful for any person charged with the responsible for making of maps any map or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) pursuant to the Act to (i) fail to correctly show, within the limits of error, the data required-

~~B. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to or (ii) knowingly make any false statement or return in connection therewith with such map or other data.~~

~~C.~~ A violation of this section is a misdemeanor, and a person convicted of violating this section shall be fined not less than \$50 nor and not more than \$200.

**Drafting note: The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Technical changes are made, including organizational changes that condense the section and remove duplicative text and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

## Article 5.

### ~~Rescue Crews;~~ Mine Rescue Teams.

**Drafting note: Existing Article 5, relating to mine rescue teams, is retained and renamed to better reflect the terminology used in the article.**

§ 45.1-161.292:40 45.2-1134. Mine rescue and first aid stations.

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

**Drafting note: Technical changes.**

§ ~~45.1-161.292:41~~ 45.2-1135. Mine rescue ~~crews~~ teams.

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

**Drafting note: "Mine rescue crew" is replaced with the term currently in use, "mine rescue team." In accordance with title-wide conventions, the phrase "is hereby authorized to" is replaced with "may," and other technical changes are made.**

§ ~~45.1-161.292:42~~ 45.2-1136. Duty to train ~~crew~~ team.

It ~~shall be~~ is the duty and responsibility of the Department to see that ~~all crews be~~ every mine rescue team is properly trained by a qualified instructor of the Department or ~~such other persons~~ another person who ~~have~~ has a certificate of training from the Department or ~~the Mine Safety and Health Administration~~ MSHA.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage. "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101.**

§ ~~45.1-161.292:43~~ 45.2-1137. Qualification for ~~crew~~ team membership; direction of ~~crews~~ teams.

A. To qualify for membership in a mine rescue ~~crews~~ team, an applicant shall (i) be an experienced miner, (ii) ~~be not more than~~ be 50 years of age or younger, and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the ~~crew members~~ team member and a copy shall be furnished to the Director.

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

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101.**

~~§ 45.1-161.292:44~~ 45.2-1138. ~~Crew Team~~ members ~~to be~~ considered employees of the mine where emergency exists; compensation; workers' compensation.

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

**Drafting note: Technical changes are made, including in the catchline, and "mine rescue crew" is replaced with the term currently in use, "mine rescue team."**

~~§ 45.1-161.292:45~~ 45.2-1139. Requirements of recovery work.

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

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

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

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

E. A mine rescue ~~crew team~~ shall immediately return to the fresh air base ~~should if~~ any ~~crew team~~ member's breathing apparatus ~~malfunction~~ malfunctions or the ~~atmospheric pressure of any apparatus deplete to sixty atmospheres~~ low-oxygen alarm activates.

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

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. "Mine rescue crew" is replaced with the term currently in use, "mine rescue team," and a reference to the depletion of the atmospheric pressure of a breathing apparatus is replaced with a reference to the safety standard currently in use, a low-oxygen alarm. Language is updated for modern usage.**

~~§ 45.1-161.292:46~~ 45.2-1140. State-designated mine rescue teams.

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

**Drafting note: A change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101 and language is updated for modern usage.**

~~§ 45.1-161.292:47~~ 45.2-1141. Mine Rescue Fund.

~~The A. There is hereby created in the state treasury a special nonreverting fund to be known as the Mine Rescue Fund is created as a special fund in the office of the State Treasurer., referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected from licensed operators pursuant to the provisions of § 45.1-161.292:46 45.2-1140 shall be paid into the Mine Reseue 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.~~

B. Moneys in the Fund shall be used solely for the purposes of administering the state-designated mine rescue team program. 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.

C. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, ten 10 percent of the fund moneys in the Fund shall be transferred from the fund Fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum which that is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert to the general fund.

**Drafting note: The nonreverting fund language for the Mine Rescue Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Technical changes are made, including the addition of subsection designations for clarity.**

§ ~~45.1-161.292:48~~ 45.2-1142. Inspections; Mine Rescue Coordinator.

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

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.292:49~~ 45.2-1143. Workers' compensation; liability.

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, ~~members~~ each member of the state-designated team shall be deemed to be within the employment of the licensed operator of the mine at which the disaster occurred.

B. ~~Any~~ No member of a state-designated team engaging in rescue work at a mine shall ~~not~~ be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. ~~Any~~ No operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall ~~not~~ be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity.**

## Article 6.

Mine Explosions; Mine Fires; Accidents.

**Drafting note: Existing Article 6, relating to mine explosions, mine fires, and accidents, is retained as proposed Article 6.**

§ ~~45.1-161.292:50~~ 45.2-1144. Reports of explosions and mine fires; procedure.

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. ~~Independent contractors~~ Any independent contractor shall notify the licensed operator of such ~~incidents~~ incident. All facilities of the mine shall be made available for rescue and recovery operations and ~~fire fighting~~ firefighting.

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

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

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

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

F. The Director shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mineral mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plans shall be published annually and furnished to all licensed operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all licensed operators of mines.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity. In subsection E, the phrase "official in charge" is changed to the plural to correspond with the phrase as it appears in subsection C.**

§ ~~45.1-161.292:51~~ 45.2-1145. Operators' reports of accidents; investigations; reports by Department.

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident involving serious personal injury or death to any person ~~or persons~~, whether employed in the mine or not. The scene of the accident shall not be disturbed pending an investigation, except to prevent the suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. ~~In cases where~~ any case in which reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any ~~changes are~~ change is made.

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

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

D. The Department ~~will~~ shall render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department ~~will~~ shall furnish one copy of the report to the licensed operator, one copy to any other operator whose employees were exposed to hazards as a result of the accident, and one copy to the employee representative ~~when~~ if he has been present at the investigation. The Director ~~will~~ shall maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-161.292:52~~ 45.2-1146. Reports of other accidents and injuries.

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

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

**Drafting note: Technical changes.**

§ ~~45.1-161.292:53~~ 45.2-1147. Duties of mine inspectors.

Each mine inspector shall:

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

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

3. Take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs; and ~~shall~~ supervise the reopening of ~~all mines any~~ mine or ~~sections~~ section thereof that ~~have~~ has been sealed or abandoned on account of fire or any other cause.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

## Article 7.

### Mine Inspections.

**Drafting note: Existing Article 7, relating to mine inspections, is retained as proposed Article 7.**

§ ~~45.1-161.292:54~~ 45.2-1148. Frequency of mine inspections.

A. The Director shall conduct a complete inspection of ~~every each~~ each underground mineral mine ~~not less frequently than at least~~ every 180 days, and of ~~those any~~ any surface mineral ~~mines which are mine that is~~ not inspected by the Mine Safety and Health Administration ~~not less frequently than MSHA at least once per year.~~ Additional inspections An additional inspection of such mineral



~~mines~~ mine shall be made when deemed appropriate by the Director based on an evaluation of risks at ~~the mines~~, such mine or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct ~~inspections~~ an inspection of a surface mineral ~~mines~~ mine that is inspected by ~~the Mine Safety and Health Administration~~ MSHA; however, a mine ~~inspectors and inspector or other employees~~ employee of the Department may enter such ~~mines~~ mine in order to (i) respond to ~~complaints~~ a complaint of ~~violations~~ a violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), ~~the Act~~; (ii) respond to and investigate any serious personal injury or ~~fatality~~, death; and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a particular surface mineral mine is inspected by ~~the Mine Safety and Health Administration~~ MSHA. The Director shall make such determination based on information provided by ~~the Mine Safety and Health Administration~~ MSHA and Department records.

D. The Director shall request representatives of ~~the Mine Safety and Health Administration~~ MSHA to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division of ~~Mineral Mining~~ and such additional Division employees as the Director ~~shall designate~~ designates. The committee shall meet ~~not less than~~ at least twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of ~~the~~ state and federal agencies with respect to surface mineral mines in the Commonwealth.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term, and the name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101. Existing subsection C is divided into two subsections for clarity. In subsection B, the term "fatality," is replaced with "death" for consistency with the rest of the chapter and language is updated for modern usage and clarity.**

~~§ 45.1-161.292:55~~ 45.2-1149. Evaluation of risks at mines.

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

notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost. Risk assessments shall be developed for both independent contractors and individual mine sites.

B. The Director shall schedule additional inspections at each underground mineral ~~mines~~ mine, and at each surface mineral ~~mines which are~~ mine that is not inspected by the ~~Mine Safety and Health Administration~~ MSHA, based on the rating assigned to ~~a mine~~ it reflecting the assessment of its risks compared to other such mines in the Commonwealth.

**Drafting note: Technical changes are made, including in subsection A, where "but not be limited to" is removed following the term "include" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101. Language is updated for modern usage.**

~~§ 45.1-161.292:56~~ 45.2-1150. Review of inspection reports and records.

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by the ~~Mine Safety and Health Administration~~ MSHA. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine ~~which that~~ that are required to be maintained pursuant to ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act, for the ~~thirty day~~ 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

**Drafting note: The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101 and the term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Technical changes are made.**

~~§ 45.1-161.292:57~~ 45.2-1151. Advance notice of inspections; confidentiality of trade secrets.

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

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

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage. The form of a reference to the U.S. Code is corrected.**

~~§ 45.1-161.292:58~~ 45.2-1152. Scheduling of mine inspections.

A. The Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by ~~the Mine Safety and Health Administration~~ MSHA. To this end, the Director shall endeavor to coordinate the timing of inspections with ~~Mine Safety and Health Administration~~ MSHA personnel.

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

**Drafting note: The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101.**

~~§ 45.1-161.292:59~~ 45.2-1153. Denial of entry.

No person shall deny the Director or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or into any office at the site where maps or records relating to the mine are located, pursuant to ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

**Drafting note: Technical changes are made and the term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term.**

~~§ 45.1-161.292:60~~ 45.2-1154. Duties of operator.

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

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

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.292:61~~ 45.2-1155. Duties of inspectors.

A. During a complete inspection of ~~a~~ any mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel

ways; entrances to abandoned areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions ~~may~~ might exist; electric installations and equipment; haulage facilities; ~~first-aid~~ first aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice, or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for ~~gas and~~ oxygen deficiency and gas, in each place ~~which~~ that he is required to inspect in an underground mine.

B. ~~In mines operating~~ a mine that operates more than one shift in a ~~twenty-four-hour~~ 24-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons ~~may~~ might work or travel during the period the mine is an inactive mine.

~~B-C.~~ The inspector shall make a personal examination of (i) the interior of ~~the~~ each mine, inspected and of (ii) the outside of ~~the~~ such mine where any danger ~~may~~ to the miners might exist ~~to the miners~~.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:62~~ 45.2-1156. Certificates of inspection.

A. Upon completing a mine inspection, ~~a~~ each mine inspector shall complete a certificate ~~regarding such inspections of inspection.~~ The Such certificate of inspection shall show the date of inspection, the condition in which the mine ~~is~~ was found, a statement regarding any ~~violations~~ violation of this chapter ~~and Chapters 14.5 or Chapter 14~~ (~~§ 45.1-161.293~~ 45.2-1400 et seq.) ~~and 14.6 or 15~~ (~~§ 45.1-161.304~~ 45.2-1500 et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the ~~number~~ numbers of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as ~~may be~~ are useful and proper.

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

C. ~~With respect to underground mineral mines,~~ The Department shall provide access to certificates of inspection of underground mineral mines ~~to the Mine Safety and Health Administration~~ MSHA.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The name of the Mine Safety and Health Administration is shortened to**

correspond to the definition of that term as added to proposed § 45.2-1101 and language is updated for modern usage and clarity.

Article 8.

Enforcement and Penalties; Reports of Violations.

**Drafting note: Existing Article 8, relating to enforcement and penalties and reports of violations, is retained as proposed Article 8.**

§ ~~45.1-161.292:63~~ 45.2-1157. Notices of violations.

A. If the Director or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person ~~who~~ is responsible for the violation. Each notice of violation shall be in writing ~~and~~, shall describe with particularity the nature of the violation ~~or violations~~, including a reference to the ~~provisions~~ provision of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Mineral Mine Safety Act or the appropriate ~~regulations~~ regulation violated, and shall include an order of abatement and ~~fix~~ set a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the licensed operator, ~~or~~ or his agent, ~~or the~~ or the mine foreman and ~~to~~ to any independent contractor whose employees were exposed to ~~hazards~~ a hazard related to the violation.

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

D. The notice of violation shall be deemed ~~to be~~ the final order of the Department and shall not be subject to review by any court or agency unless, within ~~twenty~~ 20 days following its issuance, the person to whom the notice of violation ~~has been~~ was issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding ~~has been~~ is waived, or if it ~~has failed~~ fails to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of ~~the such~~ decision ~~shall be~~ is entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

§ ~~45.1-161.292:64~~ 45.2-1158. Closure orders.

A. The Director or a mine inspector shall issue a closure order requiring ~~any~~ that a mine or section thereof be cleared of all persons, or that equipment be removed from use, and refusing further entry into the mine of ~~all persons~~ any person except ~~those~~ a person who is necessary to correct or eliminate a hazardous condition, when (i) a violation of ~~this chapter and Chapters 14.5~~ (~~§ 45.1-161.293 et seq.~~) and 14.6 (~~§ 45.1-161.304 et seq.~~) the Act has occurred, ~~which~~ and creates an imminent danger to the life or health of ~~persons~~ any person in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, ~~as may be~~ making it necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § ~~45.1-161.292:30~~ 45.2-1124; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; ~~however.~~ However, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § ~~45.1-161.292:63~~ 45.2-1157. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to (i) the licensed operator of the mine, ~~or~~ his agent, or the mine foreman and (ii) any independent contractor working in the area of the mine affected by the closure order.

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

D. The issuance of a closure order shall constitute a final order of the Department, and the owner, licensed operator ~~and,~~ or independent contractor to whom such closure order was issued shall not be entitled to administrative review of such decision. ~~The~~ Such owner, licensed operator, or independent contractor ~~to whom a closure order has been issued~~ may, within ~~ten~~ 10 days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such ~~a~~ proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner ~~or,~~ operator, or independent contractor. In any such action the court shall receive the records of the Department ~~with respect to~~ regarding the issuance of the order; and shall receive additional

evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Language is updated for modern usage and clarity.**

~~§ 45.1-161.292:65~~ 45.2-1159. Tolling of time for abating violations.

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

**Drafting note: Clause designations are added and language is updated for clarity.**

~~§ 45.1-161.292:66~~ 45.2-1160. Injunctive relief.

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

B. Any person failing to abate any violation of this chapter ~~and Chapters 14.5 or Chapter 14~~ (~~§ 45.1-161.293~~ 45.2-1400 et seq.) ~~and 14.6 or 15~~ (~~§ 45.1-161.304~~ 45.2-1500 et seq.) ~~which that~~ has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine ~~or mines~~ in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon a finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of ~~this chapter and Chapters 14.5~~ (~~§ 45.1-161.293~~ et seq.) ~~and 14.6~~ (~~§ 45.1-161.304~~ et seq.) the Act or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing

to operate in compliance with the provisions of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act.

**Drafting note: Language is updated for modern usage. Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term.**

~~§ 45.1-161.292:67~~ 45.2-1161. Violations; penalties.

Any person convicted of willfully violating any ~~provisions~~ provision of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ or any regulation promulgated pursuant to ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act, unless otherwise specified in ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act, shall be is guilty of a Class 1 misdemeanor.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "the Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. Language is updated for modern usage.**

~~§ 45.1-161.292:68~~ 45.2-1162. Prosecution of violations.

A. It ~~shall be~~ is the duty of every attorney for the Commonwealth to whom the Director or his authorized representative ~~has reported~~ reports any violation of ~~this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.)~~ the Act, or on his own initiative, to cause proceedings to be prosecuted in such ~~eases~~ case.

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

**Drafting note: Language is updated for modern usage. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "act Act" is substituted for references to the chapters that comprise the Mineral Mine Safety Act in accordance with the definition of that term. In accordance with title-wide conventions, the phrase "shall have the authority to" is replaced with "may."**

~~§ 45.1-161.292:69~~ 45.2-1163. Fees and costs.

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

**Drafting note: Technical change.**



~~§ 45.1-161.292:70~~ 45.2-1164. Reports of violations.

A. Any person aware of a violation of this chapter and ~~Chapters 14.5 or Chapter 14~~ (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6 or 15~~ (~~§ 45.1-161.304~~ 45.2-1500 et seq.) may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department, or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and ~~Chapters 14.5~~ 14 (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6~~ 15 (~~§ 45.1-161.304~~ 45.2-1500 et seq.) to ~~every~~ each miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of ~~every~~ each mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at a prominent place at the mine site where it can be read conveniently by the miners, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, ~~which that~~ may be used to report any violation of this chapter and ~~Chapters 14.5 or Chapter 14~~ (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6 or 15~~ (~~§ 45.1-161.304~~ 45.2-1500 et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter and ~~Chapters 14.5 or Chapter 14~~ (~~§ 45.1-161.293~~ 45.2-1400 et seq.) and ~~14.6 or 15~~ (~~§ 45.1-161.304~~ 45.2-1500 et seq.) ~~which that~~ is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report ~~being~~ omitted or deleted, to the licensed operator of the mine or his agent and to any independent contractor who is alleged to have committed the violation. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting ~~the a~~ a violation ~~shall be is~~ is excluded from ~~access under the the~~ access under the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: Technical changes are made, including changes in the reference to the Virginia Freedom of Information Act, and language is updated for modern usage.**

## Article 9.

### Miner Training.

**Drafting note: Existing Article 9, relating to miner training, is retained as proposed Article 9.**

~~§ 45.1-161.292:71~~ 45.2-1165. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Department. The Director shall establish the curriculum and teaching materials for ~~the each~~ each ~~training programs~~ program, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge ~~persons~~ each person attending ~~the~~ a training ~~programs~~ program reasonable fees to cover the costs of administering ~~such programs~~ the program. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or ~~such~~ any other criteria ~~as~~ the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose, or are collected from fees charged to attendees.

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

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-161.292:72~~ 45.2-1166. Mineral mining safety training.

The Director ~~is authorized to~~ may implement a program of voluntary safety talks for mineral miners. Safety training may include topical training and talks conducted by inspectors or other Department personnel either on site or in a classroom provided for such purpose.

**Drafting note: In accordance with title-wide conventions, the phrase "is authorized to" is replaced with "may."**

~~§ 45.1-161.292:73~~ 45.2-1167. Mineral mining safety training ~~program~~ programs.

A. Each operator shall have a plan containing the following programs: training for new miners, training for ~~newly employed~~ experienced miners who are newly employed, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include a ~~scientific~~ workers worker; ~~delivery~~ workers worker; ~~customers~~ customer, including a commercial over-the-road truck ~~drivers~~ driver; ~~vendors~~ vendor; or ~~visitors~~ visitor.

B. ~~The~~ Such plan shall be available to the Director for review upon request.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

## CHAPTER ~~16~~ 12.

### PERMITS FOR CERTAIN MINING OPERATIONS; RECLAMATION OF LAND.

**Drafting note: Existing Chapter 16, relating to permits for certain mining operations and reclamation of land, is retained as proposed Chapter 12 (Permits for Certain Mining Operations; Reclamation of Land). The articles in existing Chapter 16 are retained in proposed Chapter 12 as follows: Article 1 (General Provisions), Article 2 (Regulation of Mining Activity), Article 3 (Orphaned Lands), and Article 4 (Minerals Reclamation Fund).**

Article 1.  
General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1.**

~~§ 45.1-180~~ 45.2-1200. Definitions.

~~The following words and phrases when As used in this chapter shall have the meanings respectively ascribed to them in this section except where, unless the context clearly requires a different meaning:~~

~~(b) Disturbed land. — The areas~~ "Disturbed land" means the area from which overburden has been removed in any mining operation, plus the area covered by the spoil and refuse, plus any ~~areas~~ area used in such mining operation, including land used for processing, stockpiling, ~~and or~~ settling ponds.

~~(m) Division. — The~~ "Division" means the Division of ~~Mined Land Reclamation~~ Mineral Mining.

~~(l) Mineral. — Ore,~~ "Mineral" means ore, rock, and any other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.

~~(a) Mining. — Means~~ "Mining" means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals; or any activity constituting all or part of a process for the extraction or removal of minerals so as to make them suitable for commercial, industrial, or construction use; ~~but shall.~~ "Mining" does not include ~~those aspects (i) any aspect of deep mining that does not having have a significant effect on the surface; and shall not include or (ii) excavation or grading when conducted solely in aid of on-site onsite farming or construction. Nothing herein shall apply in this section applies to the mining of coal. This definition shall "Mining" does not include, nor shall and this title, chapter, or section shall not be construed to apply to, the process of searching, prospecting, exploring, or investigating for minerals by drilling.~~

~~(j) Mining operation. — Any~~ "Mining operation" means any area included in an approved plan of operation.

~~(e) Operator. — Any~~ "Operator" means any individual, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, or any legal entity ~~which that~~ is engaged in mining.

~~(f) through (i) [Repealed.]~~

"Orphaned lands" means lands disturbed by surface mining of minerals, other than coal operations, that were not required by law to be reclaimed or that have not been reclaimed.

~~(e) Overburden. — All~~ "Overburden" means all of the earth and other ~~material which materials that~~ lie above a natural deposit of minerals, ores, rock, or other solid matter and also other materials after removal from their natural deposit in the process of mining.

~~(k) Reclamation. — The~~ "Reclamation" means the restoration or conversion of disturbed land to a stable condition ~~which that~~ minimizes or prevents adverse disruption and the injurious

effects ~~thereof~~ of such disruption and presents an opportunity for further productive use if such use is reasonable.

(n) Refuse.—All "Refuse" means all waste soil, rock, mineral tailings, slimes, and other material directly connected with the mine, or with the cleaning and preparation of substances mined, including all waste material deposited in the permit area from other sources.

(d) Spoil.—Any "Spoil" means any overburden or other material removed from its natural state in the process of mining.

**Drafting note: Terms are moved into alphabetical order and language is updated for modern usage and clarity. The definition of "Division" is changed from the Division of Mined Land Reclamation to the Division of Mineral Mining to reflect the practice that has been current since the Division of Mineral Mining was formed in 1985. The definition of "orphaned lands" is relocated from existing § 45.1-197.3.**

§ 45.1-180.1. Repealed.

**Drafting note: Repealed by Acts 1974, c. 96.**

§ 45.1-180.2 45.2-1201. Legislative findings; declaration Construction of policy chapter.

A. ~~The General Assembly finds that the mining of minerals within the Commonwealth is an activity that makes a contribution to the standard of living of the citizens of the Commonwealth; and that it is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Uncontrolled mining of such minerals and unreclaimed land can adversely affect the environment through the destruction of vegetative cover, the disruption of drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, and the temporary and, in some circumstances, permanent destruction of scenic beauty and wildlife habitats. The General Assembly further finds that it is often not practicable to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original contour; but that it is essential to conduct mining in such a way as to minimize its effects on the environment.~~

B. ~~The General Assembly recognizes that there are wide variations in the circumstances and conditions surrounding and arising out of the mining of minerals and that rehabilitation and conservation of land affected by mining of minerals will be assured only through proper planning, proper use of appropriate methods of mining, consideration of the impact of mining upon the environment as well as the land use of surrounding areas, and through the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of the mining of minerals.~~

C. ~~The General Assembly declares that it is in the public interest and shall be the policy of the Commonwealth to require and encourage the proper control of mining of minerals so as to protect the public health, safety and welfare consistent with the protection of physical property and with maximum employment and the economic well-being of the Commonwealth through good industry and sound conservation practices, and to require and encourage thorough operations and~~

~~reclamation planning, consideration of the surrounding environment, and incorporation of control techniques and reclamation actions in mining operations insofar as economically and physically practicable to assure such proper control of mining. To these ends, the Director is mandated to enforce this chapter and to adopt whatever regulations are found necessary to accomplish the provisions of this chapter.~~

~~D. The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated statewide program to aid in the protection of wildlife, in restoring these lands to productive purposes and to control present and future problems associated with mining resources and the reclamation of disturbed lands to the end that mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.~~

~~E. Nothing in this chapter is intended, nor shall anything in this chapter be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantively or procedurally, the right or rights of any person who is a party to any dispute involving property rights, or the right of any person to seek damages or other relief on account of injury to persons or property due to mining activities regulated by this chapter ~~and~~ or to maintain any action or other appropriate procedure therefor; ~~nor~~. Nothing in this chapter is intended, nor shall anything in this chapter be construed, to affect the powers of the Commonwealth to initiate, prosecute, and maintain actions to abate public nuisances.~~

**Drafting note: Subsections A through D, containing a statement of legislative findings and a declaration of policy, have been stricken in accordance with the Code Commission's policy that purpose statements do not have general and permanent application and thus are not to be included in the Code. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-180.3~~ 45.2-1202. Authority of Director; enforcement of chapter by injunction.

~~A. The authority to promulgate rules and~~ Director may adopt regulations to effectuate the provisions and the policy of this chapter ~~and the authority to~~ may adopt definitions for use in interpreting this chapter ~~are hereby vested in the Director.~~

~~B. The authority to~~ Director may administer and enforce the provisions of this chapter ~~is hereby vested in the Director.~~ In administering and enforcing the provisions of this chapter pursuant to the findings and legislative policy adopted by the General Assembly, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. ~~To supervise~~ Supervise the administration and enforcement of this chapter and all ~~rules and~~ regulations and orders ~~promulgated~~ adopted thereunder;

2. ~~To issue~~ Issue orders to enforce the provisions of this chapter, all ~~rules and~~ regulations ~~promulgated~~ adopted thereunder, and the terms and conditions of any permit;

3. ~~To make~~ Make investigations and inspections to ~~insure~~ ensure compliance with any provision of this chapter or any ~~rules, regulations, regulation or orders promulgated~~ order adopted thereunder;

4. ~~To encourage~~ Encourage and conduct investigations, research, experiments, and demonstrations; and ~~to~~ collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining; and

5. ~~To receive~~ Receive any federal funds, state funds, or any other funds and ~~to~~ enter into any contracts; for which funds are available; to carry out the purposes of this chapter.

C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against ~~any a~~ a violation of ~~the provisions any~~ provision of this chapter, ~~and the rules, regulations and orders promulgated~~ or any regulation or order adopted hereunder or to compel the performance of ~~aets~~ any act required ~~thereby~~ by such provision, regulation, or order without regard to any adequate remedy ~~which that~~ that may exist at law, and such injunction ~~to~~ shall be issued without bond. However, with regard to the suspension of mining operations, ~~§ 45.1-193.1~~ 45.2-1225 shall control.

**Drafting note: Language is updated for modern usage. In accordance with title-wide conventions, the statement that the Director shall have "the authority to" is replaced with the Director "may." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

~~§ 45.1-180.4~~ 45.2-1203. Exemption for restricted mining.

Any operator ~~engaging~~ engaged in mining ~~and disturbing~~ who disturbs less than one acre of land and ~~removing~~ removes less than 500 tons of minerals at any particular site; is exempt from all mining permit fees ~~and~~, renewal fees, and bond requirements of this chapter; ~~provided, however, each~~ if such person intending to engage in such restricted mining ~~shall submit~~ submits an application for a permit, a sketch of the mining site, and an operations plan, ~~which shall to~~ be adhered to in accordance with ~~§§ 45.1-181~~ 45.2-1205 and ~~45.1-182.1~~ 45.2-1206. The Director shall approve the application if he determines that the issuance of the permit ~~shall will~~ will not violate ~~the provisions any provision~~ any provision of this chapter.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

## Article 2.

### Regulation of Mining Activity.

**Drafting note: Existing Article 2, relating to regulation of mining activity, is retained as proposed Article 2.**

§ 45.2-1204. Permit Fee Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Permit Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All permit fees and renewal fees collected pursuant to § 45.2-1205 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 purpose of the administration of this chapter. 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.

**Drafting note: The Permit Fee Fund section is added to accommodate the fund referenced in existing § 45.1-181 and to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.**

~~§ 45.1-181~~ 45.2-1205. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department.

A. It is unlawful for any operator to engage in any mining operation in ~~Virginia the Commonwealth~~ without ~~having first obtained~~ first obtaining from the Department a permit to engage in such operation and paying a permit fee ~~therefor~~ of \$50 per acre for every acre of land to be affected by the total operation for which plans have been submitted, ~~which~~. Such permit fee shall be deposited in the state treasury in a special fund to be used by the Director for the administration of this chapter Permit Fee Fund pursuant to § 45.2-1204. A permit shall be obtained prior to the start of any mining operation.

B. ~~A separate permit shall be secured for each mining operation conducted.~~ ~~Application~~ An application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to ~~such~~ other information ~~as may be~~ reasonably required by the Director, shall contain the following information: (i) the common name and geologic title, where applicable, of the mineral to be extracted; (ii) a description of the land upon which the applicant proposes to conduct mining operations, ~~which description shall set~~ setting forth: the name of the county or city in which such land is located; the location of its boundaries, and any other description of the land to be disturbed ~~in order that~~ necessary to allow it ~~may to~~ be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (iii) the name and address of the owner or owners of the surface of the land; (iv) the name and address of the owner or owners of the mineral, ore, or other solid matter; (v) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (vi) the total number of acres of land to be covered by the permit; (vii) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (viii) whether any mining ~~permits~~ permit of any type ~~are~~ is now held by the applicant, and the number ~~thereof~~ of such permits; (ix) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (x) if known, whether the applicant, ~~or~~ any subsidiary or affiliate ~~or~~ of the applicant, any partnership, association, trust, or corporation controlled by or under common control with the applicant, or any person required to be identified by clause (ix); has ever had a mining permit of any type issued under the laws of ~~this~~ the Commonwealth or any

other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited. Clause (iv) shall not apply to the shell, container chamber, passage, or open space set forth in ~~§ 45.1-161.311-10~~ 45.2-402.

C. The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan ~~and meeting that meets~~ the following requirements:

1. ~~Be Is~~ prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service or in ~~such a manner as to be~~ acceptable to the Director;

2. ~~Identify Identifies~~ the area ~~to correspond~~ corresponding with the land described in the application;

3. ~~Show Shows~~ adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area ~~which that~~ lie within 100 feet of any part of the affected area;

4. ~~Be Is~~ drawn to a scale of 400 feet to the inch or better;

5. ~~Show Shows~~ the names and ~~location~~ locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, ~~oil and gas and oil~~ wells, and utility lines on the area affected and within 500 feet of such area;

6. ~~Show Shows~~ by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or the deposit to be mined, and the total number of acres involved in the area of land affected;

7. ~~Show Shows~~ the date on which the map was prepared, the north arrow, and the quadrangle name; and

8. ~~Show Shows~~ the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.

D. No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and ~~§ 45.1-182.1~~ 45.2-1206 and the bond from the applicant as required in ~~§ 45.1-183~~ 45.2-1208.

E. If the operator believes that changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation ~~which that shall be approved~~ reviewed for approval by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ ~~45.1-182.1~~ 45.2-1206 and ~~45.1-183~~ 45.2-1208.

F. If within 10 days of the anniversary date of the permit, the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator for land to be affected by the total operation in the next ensuing year according to the following schedule:



Anniversary Date:	Renewal Fee:
Beginning July 1, 2019	\$18 per disturbed acre
Beginning July 1, 2020	\$20 per disturbed acre
Beginning July 1, 2021	\$22 per disturbed acre
Beginning July 1, 2022	\$24 per disturbed acre

The renewal fees shall be deposited in the ~~state treasury in the special fund set out above~~ Permit Fee Fund pursuant to § 45.2-1204.

G. Upon receipt of a written request by any landowner on whose property a sand and gravel operation is permitted pursuant to this section, the operator of the sand and gravel operation shall provide a copy of the map, photograph, or plan to the landowner.

**Drafting note: This section is divided into paragraphs that are reordered logically and given subsection designations. In proposed subsection E, a statement that a plan "shall be approved" is rephrased to state that it "shall be reviewed for approval." A reference to the Permit Fee Fund is added. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-182. Repealed.~~

**Drafting note: Repealed by Acts 1977, c. 312.**

~~§ 45.1-182.1~~ 45.2-1206. Operations plan; reclamation; policy of Director.

A. ~~The~~ Each application for a permit shall be accompanied by an operations plan ~~in such that follows the form and with such contains the~~ accompanying material ~~as that the Director shall require~~ requires. The operations plan shall describe the specifications for surface grading and restoration, including sketches delineating placement of spoil, stockpiles, and tailing ponds, to a surface that is suitable for the proposed subsequent use of the land after reclamation is completed.

B. The operations plan shall include a provision for reclamation of all land estimated to be affected by the mining operation for which the permit is sought. The reclamation provision shall ~~be in such follow the form and contain such contain the~~ accompanying material ~~as that the Director shall require~~ requires and shall state:

1. The planned use to which the affected land is to be returned through reclamation;
2. ~~Proposed~~ The proposed actions to ~~assure~~ ensure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as practicable. The Director shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.

C. It ~~shall be~~ is the policy of the Director to encourage adoption of productive land use, such as use for pasture, agricultural ~~use~~ purposes, recreational areas, sanitary landfills, forestry and timberland operations, and industrial and building sites, and to consider the general original contour in determining the particular reclamation program for the acreage. The Director may

require an amendment to the operations plan to meet the exigencies of any unanticipated circumstance or event.

**Drafting note: Language is updated for modern usage.**

§ 45.2-1207. Special Reclamation Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Special Reclamation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All forfeited bonds collected pursuant to 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 the purpose of performing reclamation pursuant to the provisions of this chapter. 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.

**Drafting note: This Special Reclamation Fund section is added to accommodate the fund referenced in existing § 45.1-186.2 and to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.**

~~§ 45.1-183~~ 45.2-1208. Bond of operator.

Each operator at the time of filing his application shall furnish bond on a form ~~to be~~ that is prescribed by the Director. Such bond shall be payable to the Department and conditioned that on the faithful performance by the operator shall faithfully perform all of the all requirements of this chapter and of the operations plan as approved and directed by the Department. The amount of bond shall be \$3,000 per acre, based upon the number of acres of land which that the operator estimates will be affected by mining operations during the next ensuing year. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this the Commonwealth; provided, however, that. However, in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-184~~ 45.2-1209. Review of operations plan and reclamation provision by Director; issuance of permit.

A. Upon receipt of a reasonable an operations plan acceptable to the Director and bond prescribed above as required by this article, the Director shall review the plan and if it meets with his approval. If the Director approves the plan, he shall issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant shall amend amends his operations plan to meet the Director's reasonable objections and file files a satisfactory amended plan with the Director, no permit shall be issued.

B. In reviewing such the operations plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or

proper drainage control is not feasible, he may disapprove the permit application. ~~Provided, however, that~~ However, the Director may approve the permit after deleting the areas from the permit application ~~held that he holds in his findings~~ to be objectionable ~~in the Director's findings~~.

C. The Director shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust, or corporation ~~which that~~ has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by ~~the laws of this State law~~, in which event no permit shall be issued. ~~Except, however~~ However, if an operator who ~~has heretofore~~ forfeited a bond pays, within ~~thirty~~ 30 days of notice and demand by the Director ~~pays~~, the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or greater than the cost of reclamation, such operator shall then become eligible for another permit.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-184.1~~ 45.2-1210. Application for permit; adjoining landowners; local official.

A. ~~The~~ Each application for a permit shall be accompanied by a statement showing the names and addresses of the owners of each property within ~~one thousand~~ 1,000 feet of the property line of any land proposed to be permitted ~~and, as well as~~ certification that such landowners have been notified by certified mail of the application for a permit unless notified previously. Such residents may file written objections with the Director; and may request a hearing.

B. ~~The~~ Each application for ~~the~~ a permit shall also be accompanied by a statement certifying that the chief administrative official of the ~~local political subdivision~~ county or city in which the land proposed to be permitted is located has been notified of the proposed operation by certified mail.

C. This section ~~shall apply~~ applies to an initial applications application for ~~permits a permit~~ only, and no new notice shall be required for a renewal applications application or for ~~permits a permit~~ for acreage in addition to that originally permitted.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity. The term "local political subdivision" is replaced with the standard phrase "county or city" for consistency. The final sentence in existing subsection A is moved to the end of this section and designated as subsection C.**

~~§ 45.1-184.2~~ 45.2-1211. Succession of one operator by another at uncompleted project.

~~Where~~ If one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation and transfer the permit to the successor operator; ~~provided, however, that~~ However, the successor operator ~~has~~ shall have complied with the requirements of this chapter; and ~~the successor operator assumes~~ shall assume as part of his obligation under this chapter; all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first

operator shall be calculated according to the following schedule, except as provided by § ~~45.1-180.4~~ 45.2-1203:

Date of Succession:	Permit Fee:
Beginning July 1, 2019	\$18 per disturbed acre
Beginning July 1, 2020	\$20 per disturbed acre
Beginning July 1, 2021	\$22 per disturbed acre
Beginning July 1, 2022	\$24 per disturbed acre

The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

**Drafting note: Language is updated for modern usage and clarity.**

§ ~~45.1-185~~ 45.2-1212. Additional bond to be posted annually; release of previous bond; report of reclamation work.

A. Within 10 days following the anniversary date of any permit, the operator shall post additional bond in the amount of \$3,000 per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for ~~the areas~~ each area disturbed in the last 12 months if reclamation work has been completed or transferred to additional acres to be disturbed.

~~The~~ B. ~~To obtain the approval of the Director to release the bond shall be obtained in accordance with the following: The,~~ the operator shall file with the Department a written report on a form ~~to be~~ prescribed by the Department stating under oath that reclamation has been completed on certain lands and shall submit ~~the following:~~ (i) ~~Identification~~ the identity of the operation; (ii) the county or city in which ~~it~~ the operation is located and its location with reference to the nearest public highway; (iii) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable ~~it~~ the operation to be located and distinguished from other lands; and (iv) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or ~~in such a manner as to be acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area, and the methods of access to the area from the nearest public highway.~~

**Drafting note: The final sentence of the existing first paragraph is set off as the beginning of a new paragraph and subsection designations are added. Language is updated for modern usage.**

§ ~~45.1-186~~. Repealed.

**Drafting note: Repealed by Acts 1977, c. 312.**

§ ~~45.1-186.1~~ 45.2-1213. Notice of noncompliance served on operator.

A. The Director may cause a notice of noncompliance to be served on ~~the~~ an operator whenever the operator fails to obey any order by the Director to:

1. Apply ~~the~~ a control techniques and technique or institute ~~the actions~~ an action approved in his operations ~~and~~ or reclamation plan;

2. Comply with any required ~~amendments~~ amendment to the operations or reclamation plan; or

3. Comply with any other requirement of this chapter or any ~~rules or regulations promulgated pursuant thereto which affect~~ regulation adopted pursuant to this chapter that affects the health, safety ~~and~~ or welfare of the Commonwealth.

B. A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in writing ~~in what respects~~ how the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice.

C. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, ~~which, when. When the bond is~~ collected, it shall be deposited in the state treasury in a special reclamation fund ~~to be used by the Director in performing reclamation under the provisions of this chapter~~ Special Reclamation Fund created pursuant to § 45.2-1207. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: ~~(i) of the bond shall be returned to the corporate surety; or (ii), and any additional funds from the forfeiture~~ of the collateral security, certified check, or cash that has been was deposited in lieu of bond; shall be returned to the person who provided it originally or to the operator. Within 30 days of the issuance of any permit revocation or bond forfeiture made under this section, the operator may request a review pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage. In accordance with title-wide conventions, the conjunction "and" is replaced with "or" in subdivision A 3 because the meaning of "or" encompasses both "or" and "and." A cross-reference to the Special Reclamation Fund created pursuant to § 45.2-1207 is added.**

~~§ 45.1-186.2~~ 45.2-1214. Collection of debts.

The amount by which the cost of reclamation exceeds the amount of the operator's forfeited bond shall constitute a debt of the operator to the Commonwealth ~~of Virginia~~. The Director is authorized to collect such debts, together with the cost of collection, through appropriate legal action or by declaring the forfeiture of other payments. Moneys collected through legal action, less the cost of collections, shall be deposited in the special reclamation fund Special Reclamation Fund created under pursuant to § 45.1-186.1 45.2-1207.

**Drafting note: The name of the reclamation fund is updated and technical changes are made.**

~~§ 45.1-186.3~~ 45.2-1215. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as provided in subsection A of ~~§ 45.1-186.4~~ 45.2-1216, on land owned by the operator and reclaimed by the Director pursuant to this chapter for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person if the Director waives the lien as provided in subsection B of ~~§ 45.1-186.4~~ 45.2-1216.

**Drafting note: Technical changes.**

~~§ 45.1-186.4~~ 45.2-1216. Perfection of lien; waiver of lien.

A. Except as provided in subsection B, the Director shall perfect the lien given under the provisions of ~~§ 45.1-186.3~~ 45.2-1215 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 names of all owners 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 (i) the direct and indirect costs of filing such lien exceed the increase in fair market value resulting from reclamation or (ii) if reclamation is necessitated by an unforeseen occurrence, the reclamation will not result in a significant increase in the fair market value of the land.

**Drafting note: Technical change.**

~~§ 45.1-186.5~~ 45.2-1217. Recordation and indexing of lien; notice.

~~It shall be~~ is the duty of the clerk in whose office the statement described in ~~§ 45.1-186.4~~ 45.2-1216 is filed to record the statement in the deed books of such office, and index the statement in the general index of deeds, in the name of the Commonwealth as well as the owner of the property, showing the type of ~~such~~ the lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

**Drafting note: Technical changes.**

~~§ 45.1-186.6~~ 45.2-1218. Priority of lien.

~~Liens~~ 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.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-186.7~~ 45.2-1219. 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 of ~~equity having jurisdiction wherein the county or city in which~~ the property or some portion thereof is located to hold a hearing to determine the increase in the fair 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~~ such amount.

**Drafting note: Technical changes are made and an outdated reference to the court of equity is deleted and updated with current terminology.**

~~§ 45.1-186.8~~ 45.2-1220. Satisfaction of lien.

~~Liens~~ 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~~ may be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided ~~herein in this section~~, the Director may proceed to enforce the lien by a ~~bill~~ petition filed in a ~~the circuit~~ court of ~~equity having jurisdiction wherein the county or city in which~~ the property or some portion thereof is located.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. An outdated reference to the court of equity and a term used in the old equitable pleading practice are deleted and updated with current terminology.**

~~§ 45.1-187~~ 45.2-1221. Additional bond to cover amended estimate of land to be disturbed.

If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the Director shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be disturbed by such operation.

**Drafting note: No change.**

~~§ 45.1-188~~ 45.2-1222. Interference with reclamation unlawful; other mining operations on land.

It ~~shall be~~ is unlawful for any owner ~~or owners~~ of surface rights or ~~the owner or owners of~~ mineral rights to interfere with the operator in the discharge of his obligations to the Commonwealth for the reclamation of lands disturbed by him. If ~~the an~~ an owner ~~or owners~~ of surface rights or ~~the owner or owners of~~ mineral rights ~~desire~~ desires to conduct other mining operations on lands disturbed by the operator furnishing bond ~~hereunder~~ pursuant to this chapter, such owner or other person shall be in all respects subject to the provisions of this chapter and the Director shall then release an equivalent amount of bonds to the operator originally furnishing bond on the disturbed area.

**Drafting note:** Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.

~~§ 45.1-189. Repealed.~~

**Drafting note:** Repealed by Acts 1977, c. 312.

~~§ 45.1-190. Repealed.~~

**Drafting note:** Repealed by Acts 1974, c. 312.

~~§ 45.1-191~~ 45.2-1223. Penalty for violation of chapter, etc.

Any violation of any provision of this chapter or of any order of the Director ~~shall be~~ is a misdemeanor punishable by a maximum fine of \$1,000 or a maximum of ~~+~~ one year in jail, or both.

**Drafting note:** Technical changes.

~~§ 45.1-192~~ 45.2-1224. Assistance of federal, state, and local agencies.

In approving plans of operation and in issuing rules and regulations for reclamation, the Director may avail himself and ~~his~~ the Department of the advice, assistance, and facilities of local soil and water conservation district supervisors or any other federal, state, or local agency.

**Drafting note:** Technical changes are made and language is updated for modern usage.

~~§ 45.1-193. Repealed.~~

**Drafting note:** Repealed by Acts 1977, c. 312.

~~§ 45.1-193.1~~ 45.2-1225. Injunction prohibiting mining operation.

Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or endanger the health, safety, welfare ~~and, or~~ or property rights of citizens of ~~Virginia the Commonwealth~~, and abatement ~~is not feasible~~ by the application of control techniques is not feasible, the Director shall petition the appropriate circuit court for an injunction to prohibit further operations. Such injunction shall not relieve the operator ~~from his~~ of the duty to reclaim lands previously affected according to the terms and conditions of ~~this~~ the applicable permit.

**Drafting note:** Technical changes are made and language is updated for modern usage.

~~§ 45.1-194~~ 45.2-1226. Appeals from decisions of the Department.

An appeal from any order of the Department shall be conducted in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. The appeal shall be taken within 30 days following the issuance of the order by forwarding to the Director by certified mail a notice of appeal designating the order from which the appeal is taken.

**Drafting note:** No change.



~~§§ 45.1-195, 45.1-196. Repealed.~~

**Drafting note: Repealed by Acts 2012, cc. 803 and 835, cl. 47.**

~~§ 45.1-197~~ 45.2-1227. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter.

~~Counties, cities and towns~~ A. Any locality may establish standards and adopt regulations dealing with the same ~~subject, provided, however, subjects dealt with in this chapter so long as such standards and regulations shall not be below~~ are no less stringent than those adopted by the Director.

B. This chapter shall not be construed to repeal any local ordinance or regulation or charter provision ~~now in effect in any county, city or town locality where the provisions are not such provision is no less stringent than the standards standard~~ adopted by the Director. The Director may waive the application of this chapter if, in his opinion, a ~~county, city or town locality~~ in which mining operations are being conducted has enacted and is enforcing zoning ordinances dealing with the subject matter, and prescribing standards and regulations not below less stringent than those set forth in this chapter. If the Director waives ~~the provisions hereof~~ any provision of this chapter, the operator shall comply strictly with all the provisions of the ordinances of ~~such counties, cities and towns~~ the locality in which his operations are the operation is located.

C. The Director may also waive the application of this chapter as to any mining or borrow pit operation ~~which that~~ is conducted solely and exclusively for a state project and ~~which that~~ is subject by contract to the control and supervision of a state agency, ~~provided~~ so long as regulations satisfactory to the Director have been ~~promulgated~~ adopted and are incorporated ~~in~~ into any contract for such removal. The ~~county, city, town locality~~ or state agency shall ~~assure~~ ensure strict compliance with all ~~the~~ provisions of the ordinances, regulations, or contracts and the Director shall from time to time review ~~the such~~ ordinances, regulations, or contracts and ~~the their~~ enforcement programs to ~~assure~~ ensure compliance with this chapter. If the Director determines that ~~there is not such~~ strict compliance with this chapter is not present, then he may rescind ~~his the~~ waiver of the application of this chapter.

**Drafting note: The first sentence is expanded for clarity. Technical changes are made, including the addition of subsection designations and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.**

~~§ 45.1-197.1. Repealed.~~

**Drafting note: Repealed by Acts 1974, c. 96.**

~~§ 45.1-197.2. Repealed.~~

**Drafting note: Repealed by Acts 1984, c. 590.**

Article 3.  
Orphaned Lands.

**Drafting note: Existing Article 3, relating to orphaned lands, is retained as proposed Article 3.**

~~§ 45.1-197.3.~~ Definition.

~~For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed.~~

**Drafting note: The definition of the term "orphaned lands" is relocated to the chapter-wide definitions section.**

~~§ 45.1-197.18~~ 45.2-1228. Orphaned Lands Reclamation funding Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Orphaned Lands Reclamation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. An amount equal to the average interest rate earned for all funds in the state treasury as applied to the Minerals Reclamation Fund created pursuant to § 45.2-1234 shall be paid annually to into the Department to state treasury and credited to the Fund. Moneys in the Fund shall be used only solely for the purpose of the reclamation of orphaned lands pursuant to Article 3 (§ 45.1-197.3 et seq.) and is hereby allocated for such purposes. Funds paid to the Department pursuant to this section this article. 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. 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.

**Drafting note: The text of existing § 45.1-197.18, which deals with the funding of the orphaned lands reclamation program, is relocated from the end of existing Article 4. The nonreverting fund language for reclamation funding is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code.**

~~§ 45.1-197.4~~ 45.2-1229. Survey; priorities for reclamation.

~~The Director shall cause conduct a survey to be conducted to determine the extent of the orphaned lands in this the Commonwealth and shall establish priorities for the reclamation thereof of such lands.~~

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-197.5~~ 45.2-1230. Agreements with owners or lessees; reclamation by Director.

~~The Director is authorized to enter into agreements with owners or lessees of orphaned lands land when the owners agree to the reclamation of such lands land by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the The Director shall not return orphaned land to any use other than the minimum potential use thereof~~

~~which obtained~~ of the land that existed prior to the initiation of mining operations unless the landowner or owners, or lessee or lessees, agree to bind ~~himself or themselves~~ to the payment of the additional cost upon ~~such terms as~~ that the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, ~~but in no event~~ and shall the Director not enter into any such agreement unless funds are immediately available for the performance of the agreement by the Director as ~~hereinafter~~ provided in this article.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-197.6~~ 45.2-1231. Contracts for reclamation.

The Director is authorized to contract with any state agency, federal agency, or private contractor through the Division for the purpose of reclaiming orphaned lands pursuant to the agreements ~~herein~~ specified in this article.

**Drafting note: Language is updated for modern usage and clarity.**

~~§ 45.1-197.7~~ 45.2-1232. Acceptance of federal funds, gifts, etc.

The Director is authorized (i) to accept federal funds or gifts or grants from any source for the purposes of this article ~~and is further authorized;~~ (ii) to acquire by gift or purchase, but not by the exercise of the power of eminent domain, ~~such any orphaned lands as in his judgment is whose acquisition he judges to be~~ in the public interest; and (iii) to utilize any such funds, gifts, or grants for the purposes of this article.

**Drafting note: Technical changes are made and language is updated for modern usage.**

#### Article 4.

##### Minerals Reclamation Fund.

**Drafting note: Existing Article 4, relating to the Minerals Reclamation Fund, is retained as proposed Article 4.**

§ 45.2-1233. Definition.

For purposes of this article, "Fund" means the Minerals Reclamation Fund created pursuant to § 45.2-1234.

**Drafting note: This definition section is added to define "Fund" for the article.**

~~§ 45.1-197.8~~ 45.2-1234. Creation of Minerals Reclamation Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Minerals Reclamation Fund, ~~referred to in this section as "the Fund."~~ The Fund shall be established on the books of the Comptroller. All payments made by operators 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 reclamation of mining operations pursuant to ~~§ 45.1-197.12~~ 45.2-1238. 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.

**Drafting note: Technical changes are made, including updating the catchline to reflect the name of the fund. The provision regarding interest is stricken to resolve a potential conflict with proposed § 45.2-1228, which requires an amount equal to the interest earned on moneys in the Minerals Reclamation Fund pursuant to this section to be credited to a separate fund.**

~~§ 45.1-197.9~~ 45.2-1235. Membership in Fund; payments required.

Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter ~~16 12~~ (~~§ 45.1-180~~ 45.2-1200 et seq.) ~~of this title~~ shall become a member of the Fund by making an initial payment to the Fund of ~~fifty dollars~~ \$50 for each acre estimated to be affected by mining operations during the next ~~ensuing~~ year. Thereafter, the member shall, within ~~ten~~ 10 days following the anniversary date of each permit issued to the member, make a payment to the Fund of ~~twelve dollars and fifty cents~~ \$12.50 for each acre estimated to be affected by mining operations during the next ~~ensuing~~ year. Such payments shall continue to be made until the member has paid into the Fund a total of \$500 for each acre, estimated to be affected under the permits issued to the member.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-197.10~~ 45.2-1236. Release of bonds and other securities.

All bonds and other securities issued by an operator pursuant to ~~§ 45.1-183~~ 45.2-1208 or ~~45.1-185~~ 45.2-185 shall be released upon the acceptance ~~in~~ into the Fund of such bonds or securities and the payment of required fees.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-197.11~~ 45.2-1237. Return of member payments.

Subject to the provisions of ~~§ 45.1-197.14~~ 45.2-1240, the Director shall return from the Fund to the member, ~~the payments which~~ any payment that the member has ~~paid~~ previously paid to the Fund, ~~when once~~ determines the Director ~~has determined~~ determines that the member has completed satisfactory reclamation, in accordance with ~~§ 45.1-185~~ 45.2-1212. The payments returned shall be only those payments ~~which that~~ that the member ~~has~~ has made for the acres ~~which that~~ that have been satisfactorily reclaimed. In lieu of ~~a~~ such return, the member may request that the Director ~~to~~ retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-197.12~~ 45.2-1238. Revocation of permits; reclamation work.

If a permit ~~which has been~~ issued to a member is revoked pursuant to ~~§ 45.1-186.1~~ 45.2-1213, then the payments ~~which that~~ the member has made to the Fund; in connection with respect to the such permit ~~so forfeited~~, shall be forfeited to the Fund. The Director shall use ~~the such forfeited payments so forfeited~~, or as much ~~thereof~~ of such payments as ~~shall be~~ necessary, for the reclamation of the mining operation to which the permit ~~had~~ applied. ~~In the event that~~ If the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit; in accordance with ~~§ 45.1-186.1~~ 45.2-1213, except that if all ~~members' of the member's~~ bonds and other securities have been released pursuant to ~~§ 45.1-197.10~~ 45.2-1236, then the Director shall draw upon the Fund for the entire cost of reclamation.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity. An apparent error is corrected by replacing "members' bonds" with "member's bonds" in the last sentence in the section.**

~~§ 45.1-197.13~~ 45.2-1239. Collection of debt where cost of reclamation exceeds member's forfeited payments, etc.

The amount by which the cost of reclamation exceeds the amount of a member's forfeited payments and, ~~if any~~, the member's forfeited bond or other security ~~also forfeited~~, if any, shall constitute a debt of the member to the Commonwealth ~~of Virginia~~. The Director is authorized to collect such debts together with the cost of collection; through appropriate legal action; or by declaring the forfeiture of other payments made by the member to the Fund. Moneys collected through legal action, less the costs of collection, shall be deposited in the Fund.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-197.14~~ 45.2-1240. Decreases in size of Fund.

Whenever the size of the Fund decreases to less than \$2 million, the Director shall suspend the return of payments pursuant to ~~§ 45.1-197.11~~ 45.2-1237 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to \$2 million. In lieu of such ~~an~~ assessment, all members shall at the request of the Director post bonds or other securities; within six months after the Director so notifies the members. Failure of a member to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with ~~§ 45.1-197.12~~ 45.2-1238.

**Drafting note: Technical changes are made and language is updated for modern usage and clarity.**

~~§ 45.1-197.15~~ 45.2-1241. Order of return of payments.

The return of payments to members shall be made in the order in which the Director approves the completion of reclamation pursuant to ~~§ 45.1-185~~ 45.2-1212.

**Drafting note: Technical changes.**

~~§ 45.1-197.16~~ 45.2-1242. Discontinuance of Fund.

~~In the event of the discontinuance of~~ If the Fund is discontinued, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-197.17~~ 45.2-1243. Construction of article; Fund used solely for reclamation.

Nothing in this article shall be construed as vesting in any member any right, title, or interest in the Fund, or the disposition ~~thereof~~ of the Fund. The Fund shall be used solely for reclamation of land pursuant to this chapter.

**Drafting note: Language is updated for modern usage.**

#### ~~CHAPTER 17.~~

#### ~~SURFACE MINING OF COAL.~~

~~§§ 45.1-198 through 45.1-220.5. Repealed.~~

**Drafting note: Repealed by Acts 2013, cc. 47 and 129, cl. 2.**

#### CHAPTER 13.

#### MINERAL MINING RETAINING DAMS; ADJACENT OWNERS.

**Drafting note: Proposed Chapter 13 includes the following articles: Article 1 (Mineral Mining Retaining Dams and Refuse Piles), which is derived from existing Chapter 18.1, relating to mineral mining refuse piles and water and silt retaining dams, and Article 2 (Rights of Owners of Land Adjacent to Mineral Mines), which is derived from existing Chapter 14.7:1, relating to the rights of owners of land adjacent to mineral mines.**

#### ~~CHAPTER 18.1.~~

#### ~~MINERAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.~~

#### Article 1.

#### Mineral Mining Retaining Dams and Refuse Piles.

**Drafting note: Existing Chapter 18.1, relating to permits for certain mineral mining retaining dams and refuse piles, is retained as proposed Article 1, and the name is changed to better reflect the content.**

~~§ 45.1-225.3~~ 45.2-1300. Definitions.

~~For the purpose of~~ As used in this chapter, the term article, unless the context requires a different meaning:

"Impound water" means to impound water for use in carrying out any part of the process necessary in the production or preparation of minerals.

"Refuse" means waste material resulting from a mineral mining operation.

"Silt" means fine particles resulting from a mineral mining operation, suspended in or deposited by water.

"Water" means water used in a mining operations operation.

**Drafting note: The definitions section is relocated from the end of the article. Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-225.1~~ 45.2-1301. Dams and mine refuse piles ~~to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director; construction.~~

A. ~~On and after July 1, 1974, new water~~ Any water-retaining or silt retaining dam, silt-retaining dam or a mine refuse pile, or the modification of an existing mine water water-retaining or silt silt-retaining dam or mine refuse retaining dams pile shall be designed and constructed by, or under the direction of, a qualified engineer, if such ~~retaining dam; or pile~~

1. ~~Is~~ is designed to impound water or silt to a height of (i) five feet or more above the lowest natural ground level within the impounded area; and

2. ~~Has~~ has a storage volume of ~~fifty~~ 50 acre-feet or more; or

3. ~~Is~~ is designed to impound water or silt to a height of ~~twenty~~ (ii) 20 feet or more, regardless of storage volume.

B. ~~Water and silt retaining dam or mine refuse piles, designs~~ Designs, construction specifications, and other related data, including final abandonment plans, for a water-retaining or silt-retaining dam or mine refuse pile shall be approved and certified by the qualified engineer as specified in subsection A of this section, and by the licensed operator or his agent.

C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B ~~of this section~~ shall be submitted for approval to the Director. If ~~the submittal is approved by the Director~~ approves the submittal, he shall notify the licensed operator in writing. If ~~he the Director~~ disapproves the submittal, he shall notify the licensed operator with his written objections ~~thereto~~ and his required amendments. ~~But in no event shall the~~ The Director fail to shall approve or disapprove the submittal within ~~thirty~~ 30 days following the receipt thereof.

**Drafting note: The date in subsection A for the application of the law to dams is stricken as obsolete. Language is updated for modern usage and clarity and technical changes are made.**

~~§ 45.1-225.2~~ 45.2-1302. Examination of dams and mine refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.

A. ~~All water and silt retaining dams~~ Every water-retaining or silt-retaining dam or mine refuse ~~piles~~ pile shall be examined daily for visible structural weakness, volume overload, and other hazards by a qualified person designated by the licensed operator. When rising water and silt reaches ~~eighty~~ 80 percent by volume of the safe design capacity of the dam or pile, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations ~~must~~ shall be made during periods of rainfall that could create flooding conditions.

B. When a potentially hazardous condition exists, the operator shall initiate procedures to:

1. Remove all persons from the area ~~which may~~ that can reasonably be expected to be affected by ~~the such~~ potentially hazardous condition;

2. Eliminate ~~the such~~ potentially hazardous condition; and

3. Notify the Director.

C. Records of the inspections required by subsection A ~~of this section~~ shall be kept and certified by the licensed operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.

D. The licensed operator of each mineral mine on which a ~~water and silt retaining~~ water-retaining or silt-retaining dam is located shall adopt a plan for carrying out the requirements of subsections A and B ~~of this section~~. The plan shall be submitted for approval to the Director ~~on or before October 31, 1974~~. The plan and shall include:

1. A schedule and procedures for the inspection of the retaining dam by a qualified person;

2. Procedures for evaluating any potentially hazardous ~~conditions~~ condition;

3. Procedures for removing all persons from the area ~~which that~~ that may reasonably be expected to be affected by ~~the such~~ potentially hazardous ~~conditions~~ condition;

4. Procedures for eliminating ~~the such~~ potentially hazardous ~~conditions~~ condition;

5. Procedures for notifying the Director; and

6. Any additional information ~~which that~~ that may be required by the Director.

E. Before making any ~~changes~~ change or ~~modifications~~ modification in the plan approved in accordance with subsection D ~~of this section~~, the licensed operator shall obtain approval of such ~~changes~~ change or ~~modifications~~ modification from the Director.

**Drafting note: The date in subsection D for the submission of certain plans to the Director is stricken as obsolete. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

#### CHAPTER 14.7:1.

#### RIGHTS OF OWNERS OF LAND ADJACENT TO MINERAL MINES.

#### Article 2.

#### Rights of Owners of Land Adjacent to Mineral Mines.

**Drafting note: Existing Chapter 14.7:1, relating to rights of owners of land adjacent to mineral mines, is retained as proposed Article 2.**

~~§ 45.1-161.311:1~~ 45.2-1303. Consent required before working mine near land of another.

No owner or tenant of any land within the Commonwealth containing minerals, ~~within this Commonwealth~~, shall open or sink, dig, excavate, or work in any mine on such land within five feet of the line dividing such land from that of another person; without the written consent, ~~in writing~~, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion, or remainder, or of the guardian of any such person that may be under a disability. ~~If any~~ Any person ~~violates~~ violating this section, he shall forfeit \$500 to ~~any~~ each person



injured by such ~~activity~~ violation and to ~~anyone~~ each person whose consent ~~is~~ was required but not obtained.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-161.311:2~~ 45.2-1304. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

~~A. The owner, tenant, or occupant of any land or minerals, on or in which a mine is opened and worked, or his agent, shall permit any~~ If a person who is interested in or having has title to any land or mineral rights coterminal with that the land or mineral rights on or in which such a mine is located, if he has reason to believe his property is being trespassed upon, then the owner, tenant, or occupant of the land or minerals on or in which such mine is opened and worked, or his agent, shall permit such interested person to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the purpose of ascertaining whether a violation of § 45.1-161.311:1 45.2-1203 has occurred; ~~however, such.~~ Such exploration and survey shall occur at the expense of the interested person, and such person shall not be entitled to enter the mine property more often than once a each month. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey shall forfeit twenty dollars for each refusal, to the person so refused.

~~B. The~~ If such interested person is refused entry to such mine, he may file a complaint before the judge of the general district court of the county or city in which such mine is located; ~~before whom complaint of such refusal shall be made,.~~ Such judge may issue a summons to such mine owner, tenant, occupant, or agent; to answer such the complaint. ~~On~~ Upon the return of the ~~executed~~ summons executed, and the submission of proof that the complainant has right of entry; and that ~~it~~ such right of entry has been refused without sufficient cause, the judge shall designate ~~an early a prompt~~ and convenient time for such entry to be made; and issue ~~his a~~ his a warrant, commanding the sheriff of the county or city to attend and prevent obstructions ~~and or~~ or impediments to such entry, exploration, and survey.

C. Any owner, tenant, occupant, or agent who refuses permission, exploration, or survey pursuant to subsection A shall forfeit \$20 for each refusal to the person so refused. The costs of such summons, and a fee of ~~three dollars~~ \$3 to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs of such summons and execution shall be paid by the party making the complaint.

**Drafting note: The first sentence of subsection A is reorganized and divided into two sentences for clarity. The last sentence of subsection A, dealing with the forfeiture of \$20 for refusing entry to a mine, is relocated to proposed subsection C for clarity. Technical changes are made and language is simplified and updated for modern usage.**

PART B.

UNDERGROUND MINERAL MINES.

**Drafting note: In proposed Subtitle III, proposed Part B (Underground Mineral Mines) is created to logically organize provisions relating to underground mineral mines and contains one chapter: Chapter 14 (Requirements Applicable to Underground Mineral Mines).**

~~CHAPTER 14.5~~ 14.

REQUIREMENTS APPLICABLE TO UNDERGROUND MINERAL MINES.

**Drafting note: Existing Chapter 14.5 is retained as proposed Chapter 14 (Requirements Applicable to Underground Mineral Mines).**

~~§ 45.1-161.293~~ 45.2-1400. Scope of chapter.

This chapter ~~shall be~~ is applicable to the operation of any underground mineral mine in the Commonwealth; and shall supplement the provisions of Chapter ~~14.4:1~~ 11 (§ ~~45.1-161.292:1~~ 45.2-1100 et seq.).

**Drafting note: Technical changes.**

~~§ 45.1-161.294~~ 45.2-1401. Regulations governing conditions and practices at underground mineral mines.

A. The Director shall ~~promulgate rules and regulations~~ adopt, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, regulations necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from ~~promulgating~~ adopting regulations more stringent than regulations ~~promulgated~~ adopted pursuant to the federal mine safety law. Such ~~rules and~~ regulations applicable to underground mineral mines shall establish requirements for the:

1. ~~For protecting~~ Protection of miners from general risks found at underground mineral mines and in mining;

2. ~~For the provision~~ Provision and use of personal protection equipment and devices for the head, feet, hands, and body;

3. ~~For the maintenance~~ Maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;

4. ~~For controlling~~ Control of unstable roof, face, rib, ~~wall~~ floor, and other ground conditions;

5. ~~For the handling~~ Handling and storage of combustible materials, including requirements for emergency plans, ~~fire fighting~~ firefighting and emergency rescue, fire prevention and safety features on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;

6. ~~For the control~~ Control of exposure to airborne contaminants and excessive noise levels;

7. ~~For~~ Provision of adequate air quality and quantity through ventilation and other appropriate measures;
8. ~~For the safe~~ Safe storage, transportation, and use of ~~explosive~~ explosives and blasting devices;
9. ~~For the safe~~ Safe design, operation, maintenance, and inspection of drilling equipment;
10. ~~For the construction~~ Construction, installation, maintenance, use, and inspection of boilers, air compressors, and compressed gas systems;
11. ~~For the safe~~ Safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;
12. ~~For the safe~~ Safe design, operation, maintenance, and inspection of electrical equipment and systems;
13. ~~For the storage~~ Safe storage, transportation, and handling of materials, including corrosive and hazardous substances;
14. ~~For the safe~~ Safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
15. ~~For the safe~~ Safe design and operation of chutes;
16. ~~For the inspection~~ Inspection, maintenance, safe design, and operation of hoisting equipment and cables;
17. ~~For the inspection~~ Inspection, maintenance, and construction of mine shafts;
18. ~~For the actions of~~ Actions to be taken by certified and competent persons; and
19. ~~For the safe~~ Safe design, operation, maintenance, and inspection of, and the conduct of mining activities at, surface areas of underground mineral mines.

B. The Director shall not ~~promulgate~~ adopt any ~~regulations~~ regulation relating to underground mineral mines ~~which are that is~~ inconsistent with ~~requirements~~ any requirement established by the Act, or ~~which that, when if~~ an operator ~~takes~~ were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

**Drafting note: Language is updated for modern usage and clarity and the term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. The first sentence of subsection A is revised to conform it to its counterpart in proposed Chapter 15. In subdivision A 4, the reference to roof, rib, and other conditions is revised to conform it to conventional phrasing in proposed Chapter 7 and "floor" conditions are added. In subdivision A 7, a requirement of adequate air "quantity" is added.**

~~§ 45.1-161.298 45.2-1402. Transportation of miners~~ Adoption of regulations.

~~A. The Director shall promulgate~~ adopt regulations ~~regarding:~~

1. Regarding transportation of miners, including regulations regarding (i) the carrying of tools by miners on ~~man-trips~~ mantrips; (ii) the riding of ~~miners~~ any miner, except the motorman and trip rider, inside ~~the cars~~ a car; and (iii) the boarding and ~~unboarding~~ disembarking of miners to and from ~~man-trips~~ mantrips;

~~B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the matters to be addressed by such regulations:~~

~~1. Each man-trip shall be operated independently of any loaded trip of minerals or other material;~~

~~2. All miners, except the motorman and trip rider, shall ride inside the cars; and~~

~~3. Miners shall remain seated while in moving man-trip cars, shall not board or leave moving man-trip cars, and shall proceed to and from man-trips in an orderly manner.~~

~~§ 45.1-161.299. Bare wires and cables.~~

~~A. The Director shall promulgate regulations requiring~~ 2. Requiring any bare-wires, wire and cables any cable other than a ground-wires wire, grounded power-wires conductor, and or trailing-cables cable to be supported by insulators and away from combustible materials, roof, and ribs;

~~B. Until final regulations promulgated by the Director pursuant to subsection A become effective, wires and cables not encased in armor shall be supported by well installed insulators and shall not touch combustible materials, roof, or ribs; however, this requirement shall not apply to ground wires, grounded power conductors, and trailing cables.~~

~~§ 45.1-161.300. Use of track as electrical power conductor.~~

~~A. The Director shall promulgate regulations regarding~~ 3. Regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power;

~~B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply where track is used as a power conductor:~~

~~1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet.~~

~~2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet.~~

~~3. Track switches on entries shall be well bonded.~~

~~4. Rails shall not be used as power conductors in rooms.~~

~~§ 45.1-161.301. Disconnecting switches.~~

~~A. The Director shall promulgate regulations requiring~~ 4. Requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations;

~~B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, disconnecting switches shall be installed underground (i) in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and (ii) at other places where main power circuits enter the mine.~~

~~§ 45.1-161.302. Respiratory equipment and ear protectors.~~

~~A. The Director shall promulgate regulations requiring~~ 5. Requiring respiratory equipment and hearing protection, including by requiring that (i) miners each miner exposed for short periods

~~to hazards~~ a hazard from inhalation of gas, dust, or fumes ~~to wear approved respiratory equipment~~ and (ii) ~~operators to~~ each operator supply ear protectors hearing protection to miners upon request; and

~~B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, (i) miners exposed for short periods to hazards from inhaling gas, dust, or fumes shall wear approved respiratory equipment and (ii) ear protectors shall be supplied by the operator to all miners upon request.~~

~~§ 45.1-161.303. Fire precautions in transportation of mining equipment.~~

~~A. The Director shall promulgate regulations requiring~~ 6. Requiring that fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

~~B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the transportation of mining equipment underground:~~

~~1. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of oil, grease, and other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.~~

~~2. A record shall be kept of the examinations and shall be made available, upon request, to the Director or his authorized representative.~~

~~3. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.~~

~~4. The frames of off-track mining equipment being moved or transported, in accordance with this subsection, shall be covered on the top and on the trolley wire side with fire-resistant material, where appropriate as determined by the Director.~~

~~5. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.~~

~~6. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.~~

~~7. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.~~

~~8. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the seam of minerals does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:~~

~~a. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;~~

~~b. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;~~

~~c. At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be in direct communication with persons actually engaged in the moving or transporting operation, and capable of communicating with the authorized person on the surface required to be on duty;~~

~~d. Where trolley phones are utilized to satisfy the requirements of paragraph c of this subdivision, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and~~

~~e. No person shall be permitted to be inby the unit of equipment being moved or transported, in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.~~

~~The provisions of subdivisions 1 through 8 shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.~~

**Drafting note: Six sections, existing §§ 45.1-161.298 through 45.1-161.303, are relocated here from the end of the chapter because they relate to the adoption of regulations by the Director. Part of the first sentence of existing § 45.1-161.298 is retained as part of this section, a general section created to logically organize the provisions relating to the adoption of regulations. Each of the five sections that follow is retained as a numbered subdivision of this section. The provisions for certain temporary regulations relating to the transportation of miners, the support of certain bare wires by insulators, the use of track as a power conductor, the wearing of respiratory equipment and the provision of ear protectors, and the transportation of mining equipment underground are proposed for deletion as obsolete. The term "grounded power wire" in subdivision A 2 is changed to "grounded power conductor" for consistency. The outdated term "ear protectors" in subdivision A 5 is**

replaced by the current term "hearing protection." The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

§ ~~45.1-161.297~~ 45.2-1403. Flame safety lamps.

~~Flame~~ No flame safety lamps shall ~~not~~ be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

**Drafting note: Language is updated for modern usage and a technical change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-161.295~~ 45.2-1404. Standards for regulations.

In ~~promulgating rules and~~ adopting regulations pursuant to § ~~45.1-161.294~~ 45.2-1401 or 45.2-1402, the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and ~~such~~ any other information ~~that is~~ available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of ~~the~~ such standards, and ~~the~~ experience gained under ~~this~~ the Act and other mine safety laws; and
5. ~~Such~~ Any other criteria ~~as shall be necessary for the protection of~~ to ensure the safety and health of miners and other persons or property likely to be affected by any underground mineral ~~mines~~ mine or related ~~operations~~ operation.

**Drafting note: A reference to proposed regulatory section § 45.2-1402 is added to the first sentence. Language is updated for modern usage and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

§ ~~45.1-161.296~~ 45.2-1405. Mining in proximity to gas and oil wells.

A. The Director shall ~~promulgate~~ adopt regulations requiring each licensed ~~operators~~ operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in ~~the~~ proximity ~~of~~ to any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry, or extend any workings in any mine ~~closer than~~ within 500 feet ~~to~~ of any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with ~~a copy of parts~~ copies of the maps and plans required under ~~§ 45.1-161.292:37, which show~~ 45.2-1131 showing the mine workings and projected mine workings ~~which that~~ that are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the provisions of § 45.2-1604. Each such notice shall contain a certification made by the sender that ~~he~~ the sender has complied with ~~these~~ such requirements.

C. ~~Subsequent to the~~ After filing of the such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, ~~he~~ the operator shall not remove any material, drive any entry, or extend any workings in any mine ~~closer than~~ within 200 feet ~~to~~ of any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. ~~Such objections~~ Any such objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

**Drafting note: Language is updated for modern usage and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. A requirement in subsection B for copies of "parts of" certain maps is clarified to require only copies of such maps. A cross-reference to the appointment of the Gas and Oil Inspector is added, and the term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

### PART C.

#### SURFACE MINERAL MINES.

**Drafting note: In proposed Subtitle III, proposed Part C (Surface Mineral Mines) is created to logically organize provisions relating to surface mineral mines and contains one chapter: Chapter 15 (Requirements Applicable to Surface Mineral Mines).**

#### CHAPTER 14.6 15.

##### REQUIREMENTS APPLICABLE TO SURFACE MINERAL MINING MINES.

**Drafting note: Existing Chapter 14.6 is retained as proposed Chapter 15 (Requirements Applicable to Surface Mineral Mines). The chapter title is revised for consistency with the contents of the chapter and the title of proposed Chapter 14.**



§ ~~45.1-161.304~~ 45.2-1500. Scope of chapter.

This chapter ~~shall be~~ is applicable to the operation of any surface mineral mine in the Commonwealth, and shall supplement the provisions of Chapter ~~14.4:1-11~~ (~~§ 45.1-161.292:1~~ 45.2-1100 et seq.).

**Drafting note: Technical changes.**

§ ~~45.1-161.305~~ 45.2-1501. Regulations governing conditions and practices at surface mineral mines.

A. The Director shall ~~promulgate rules and regulations~~ adopt, in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, regulations necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from ~~promulgating~~ adopting regulations more stringent than regulations ~~promulgated~~ adopted pursuant to the federal mine safety law. Such ~~rules and~~ regulations applicable to surface mineral mines shall establish requirements for the:

1. ~~For protecting~~ Protection of miners from general risks found at surface mineral mines;
2. ~~For the provision~~ Provision and use of personal protection equipment;
3. ~~For controlling~~ Control of unstable ground conditions;
4. ~~For the handling~~ Handling and storage of combustible materials, including requirements for emergency plans, ~~fire fighting~~ firefighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;
5. ~~For controlling~~ Control of exposure to airborne toxic contaminants;
6. ~~For safe~~ Safe storage, transportation, and use of explosives and blasting devices;
7. ~~For the safe~~ Safe design, operation, maintenance, and inspection of drilling equipment;
8. ~~For the construction~~ Construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;
9. ~~For the safe~~ Safe design, operation, maintenance, and inspection of mobile equipment;
10. ~~For the safe~~ Safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;
11. ~~For the safe~~ Safe design, operation, maintenance, and inspection of electrical equipment and systems;
12. ~~For the safe~~ Safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
13. ~~For the storage~~ Safe storage, transportation, and handling of materials, including corrosive and hazardous substances;
14. ~~For the safe~~ Safe design, operation, maintenance, and inspection of hoisting equipment and cables;
15. ~~For the actions of~~ Actions to be taken by certified and competent persons; and
16. ~~For the design~~ Design, construction, maintenance, and inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

B. The Director shall not ~~promulgate~~ adopt any regulation relating to surface mineral mines ~~which that~~ is inconsistent with ~~requirements~~ any requirement established by the Act, or ~~which that~~, ~~when if~~ an operator ~~takes~~ were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

**Drafting note: Language is updated for modern usage and clarity and the term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

~~§ 45.1-161.306~~ 45.2-1502. Standards for regulations.

In ~~promulgating rules and~~ adopting regulations pursuant to ~~§ 45.1-161.305~~ 45.2-1501, the Director shall consider:

1. Standards utilized and generally recognized by the surface mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and ~~such any~~ other information ~~that is~~ available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and ~~economical~~ economic feasibility of ~~the such~~ standards, and the experience gained under ~~this the~~ the Act and other mine safety laws; and
5. ~~Such Any~~ Any other criteria ~~as shall be necessary for the protection of to ensure the~~ to ensure the safety and health of miners and other persons or property likely to be endangered by any surface mineral ~~mines mine~~ or related operations operation.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and the term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

~~§ 45.1-161.307~~ 45.2-1503. Mining in proximity to gas and oil wells.

A. The Director shall ~~promulgate~~ adopt regulations requiring each licensed ~~operators~~ operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in ~~the proximity of to~~ any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry, or extend any workings in any mine ~~closer than~~ within 500 feet ~~to of~~ any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with ~~a copy of parts~~ copies of the maps and plans required under ~~§ 45.1-161.292:37, which show~~ 45.2-1131 showing the mine workings and projected mine workings ~~which that~~ are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well

operator and the Gas and Oil Inspector appointed pursuant to § 45.2-1604. Each such notice shall contain a certification made by the sender that ~~he the sender~~ has complied with such requirements.

C. ~~Subsequent to the~~ After filing of the such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, ~~he the operator~~ shall not remove any material, drive any entry, or extend any workings in any mine ~~closer than~~ within 200 feet ~~to~~ of any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. ~~Such objections~~ Any such objection shall be filed within ~~ten~~ 10 days following the date such petition is filed.

**Drafting note: Language is updated for modern usage. A requirement in subsection B for copies of "parts of" certain maps is clarified to require only copies of such maps. A cross-reference to the appointment of the Gas and Oil Inspector is added. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process.**

~~§ 45.1-161.308~~ 45.2-1504. Respiratory equipment.

A. ~~The Director shall promulgate~~ adopt regulations requiring ~~miners~~ any miner exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment.

B. ~~Until the final regulations promulgated by the Director pursuant to subsection A become effective, miners exposed for short periods to hazards from inhaling dust or fumes shall wear approved respiratory equipment.~~

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. A reference in subsection B to a temporary respiratory equipment requirement is stricken as obsolete.**

~~§ 45.1-161.309~~ 45.2-1505. Health regulations.

A. The Director ~~shall have the authority to promulgate~~ may adopt regulations requiring that sources of dust at surface mineral mines be wetted down unless controlled by dry collection measures; or other means approved by the Director.

B. The Director ~~shall have the authority to promulgate~~ may adopt regulations providing that ~~miners~~ no miner at a surface mineral ~~mines which are~~ mine that is subject to inspection by the Department pursuant to ~~§ 45.1-161.292:54~~ 45.2-1148 shall ~~not~~ be exposed to noise levels that exceed the federal limit adopted by ~~the Mine Safety and Health Administration~~ MSHA for non-coal miners. ~~The~~ Such regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

**Drafting note: Language is updated for modern usage. The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. The name of the Mine Safety and Health Administration is shortened to correspond to the definition of that term as added to proposed § 45.2-1101 and technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

SUBTITLE IV.  
GAS AND OIL.

**Drafting note: Proposed Subtitle IV is created to logically organize provisions relating to gas and oil and contains proposed Chapter 16 (Virginia Gas and Oil Act).**

~~CHAPTER 22.~~  
~~VIRGINIA OIL AND GAS ACT.~~

~~§§ 45.1-286 through 45.1-361. Repealed.~~

**Drafting note: Repealed by Acts 1990, c. 92.**

~~CHAPTER 22.1 16.~~  
~~THE VIRGINIA GAS AND OIL ACT.~~

**Drafting note: Existing Chapter 22.1 (The Virginia Gas and Oil Act) is retained as proposed Chapter 16, with "The" removed from the chapter name. This chapter is divided into five articles, comprising the four articles that currently exist in Chapter 22.1 and an additional article containing existing §§ 62.1-195.1 and 62.1-195.3. The articles are as follows: Article 1 (General Provisions), Article 2 (Gas and Oil Conservation), Article 3 (Regulation of Gas and Oil Development and Production), Article 4 (Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia; Hydraulic Fracturing), and Article 5 (Replacement of Water by Gas Well Operators).**

Article 1.

General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1.**

~~§ 45.1-361.1~~ 45.2-1600. Definitions.

As used in this chapter, unless the context ~~clearly indicates otherwise~~ requires a different meaning:

"Abandonment of a well" or "cessation of well operations" means the time at which (i) a gas or oil operator has ceased operation of a well and has not properly plugged the well and reclaimed the site as required by this chapter, (ii) ~~the time at which~~ a gas or oil operator has allowed the well to become incapable of production or conversion to another well type, or (iii) ~~the time at which~~ the Director revokes a permit or forfeits a bond covering a gas or oil operation.

"Associated ~~facilities~~ facility" means any facility utilized for gas or oil operations in the Commonwealth, other than a well or a well site.

"Barrel" means ~~forty-two~~ 42 U.S. gallons of liquids, including slurries, at a temperature of ~~sixty~~ 60 degrees Fahrenheit.

"Board" means the Virginia Gas and Oil Board.

"Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata associated ~~therewith~~ with it.

"Coalbed methane gas well" means a well capable of producing coalbed methane gas.

"Coalbed methane gas well operator" means any person who operates or has been designated to operate ~~or does operate~~ a coalbed methane gas well.

"Coal claimant" means a person identified as possessing an interest in production royalties when a drilling unit is force-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the coal estate contained within the drilling unit subject to the pooling order or agreement.

"Coal operator" means any person who operates or has the right to operate ~~or does operate~~ a coal mine.

"Coal owner" means any person who owns, leases, mines and produces, or has the right to mine and produce; a coal seam.

"Coal seam" means any stratum of coal ~~twenty 20~~ inches or more in thickness, ~~unless,~~ "Coal seam" includes a stratum of less than 20 inches in thickness if it (i) is being commercially worked; ~~or can~~ (ii) in the judgment of the Department could foreseeably be commercially worked and will require protection if ~~wells are~~ a well is drilled through it.

"~~Correlative rights~~ right" means the right of each gas or oil owner having an interest in a single pool to have a fair and reasonable opportunity to obtain and produce his just and equitable share of production of the gas or oil in such pool or its equivalent without being required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the gas or oil or its equivalent.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 pounds per square foot and a standard temperature base of ~~sixty~~ 60 degrees Fahrenheit.

"DEQ" means the Department of Environmental Quality.

"Disposal well" means any well drilled or converted for the disposal of drilling fluids, produced waters, or other wastes associated with gas or oil operations.

"Drilling unit" means the acreage on which one gas or oil well may be drilled.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water, or other fluid into the productive strata; (ii) the application of pressure, heat, or other means for the reduction of viscosity of the hydrocarbons; or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, ~~wells~~ or pool.

"Evidence of a proceeding or agreement" means written evidence that ~~(i)~~ the coal claimant has (i) filed and has pending a judicial or arbitration proceeding against the gas claimant to determine the ownership of the coalbed methane gas and the right to the funds held in escrow or suspense or ~~(ii) the coal claimant and~~ reached an agreement with the gas claimant ~~have reached an agreement~~ to apportion the funds between them.

"Exploratory well" means any well drilled to (i) ~~to~~ find and produce gas or oil in an unproven area, (ii) ~~to~~ find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) ~~to~~ extend the limits of a known gas or oil reservoir.

"Field rules" means rules established by order of the ~~Virginia Gas and Oil~~ Board that define a pool, drilling units, production allowables, or other requirements for gas or oil operations within an identifiable area.

"First point of sale" means, for oil, the point at which the oil is (i) sold, exchanged, or transferred for value from one person to another person; or (ii) when used by the original owner of the oil ~~uses the oil, the point at which the oil is,~~ transported off the permitted site and delivered to another facility for use by the original owner; ~~and.~~ "First point of sale" means, for gas, the point at which the gas is (a) sold, exchanged, or transferred for value to any interstate or intrastate pipeline, ~~any~~ local distribution company, ~~any~~ or person for use by such person; or (b) when ~~the gas is~~ used by the owner of the gas for a purpose other than the production or transportation of the gas, ~~the point at which the gas is~~ delivered to a facility for use.

~~"Fund" means the Gas and Oil Plugging and Restoration Fund.~~

"Gas" or "natural gas" means all natural gas, whether hydrocarbon or nonhydrocarbon, or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil pursuant to this section.

"Gas claimant" means a person who is identified as possessing an interest in production royalties when a drilling unit is forced-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the gas estate contained within the drilling unit subject to the pooling order or agreement.

"Gas or oil operations" means any (i) activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of a well to another, combining or physically changing to allow the migration of fluid from one formation to another, or plugging or replugging any well; ~~ground-disturbing~~ (ii) ground-disturbing activity relating to the development, construction, operation ~~and, or~~ abandonment of a gathering pipeline; ~~the~~ (iii) development, operation, maintenance, ~~and or~~ restoration of any site involved with gas or oil operations; or ~~any~~ (iv) work undertaken at a facility used for gas or oil operations. ~~The term~~ "Gas or oil operations" embraces all of the land or property that is used for or ~~which that~~ contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas or oil operator" means any person who operates or has been designated to operate ~~or does operate~~ any gas or oil well or gathering pipeline.

"Gas or oil owner" means any person who owns, leases, has an interest in, or ~~who~~ has the right to explore for, drill, or operate a gas or oil well as principal or as lessee. ~~In the event that~~ If the gas is owned separately from the oil, the definitions contained herein this definition shall apply separately to the gas owner or oil owner.

"Gas title conflicts" means conflicting ownership claims between gas claimants; ~~the term.~~ "Gas title conflicts" does not include conflicting ownership claims between a gas claimants claimant and a coal claimants claimant.

"Gathering pipeline" means ~~(i) a pipeline which that~~ is used or intended for use in the transportation of gas or oil from the well to (i) a transmission pipeline regulated by the United States U.S. Department of Transportation or the State Corporation Commission or (ii) a pipeline which is used or intended for use in the transportation of gas or oil from the well to an off-site offsite storage, marketing, or other facility where the gas or oil is sold.

"Geophysical operator" means a person who has the right to explore for gas or oil using ~~ground disturbing~~ ground-disturbing geophysical exploration.

"Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

~~"Ground disturbing"~~ "Ground-disturbing" means any changing of land ~~which may that could~~ result in soil erosion from water or wind and the movement of sediments into state waters, including, ~~but not limited to,~~ clearing, grading, excavating, drilling, and transporting and filling of land.

~~"Ground disturbing"~~ "Ground-disturbing geophysical exploration" or "geophysical operation" means any activity in search of gas or oil that breaks or disturbs the surface of the earth, including ~~but not limited to~~ road construction or core drilling. The term ~~shall~~ does not include the conduct of (i) a gravity, magnetic, radiometric and, or similar geophysical surveys, and survey or (ii) a vibroseis or other similar seismic surveys survey.

"Injection well" means any well used to inject or otherwise place any substance associated with gas or oil operations into the earth or underground strata for disposal, storage, or enhanced recovery.

"Inspector" means the Virginia Gas and Oil Inspector, appointed by the Director pursuant to ~~§ 45.1-361.4, 45.2-1604~~ or such other public officer, employee, or other authority ~~as may who in emergencies be acting in the stead~~ an emergency acts instead of, or by law ~~be is~~ assigned the duties of, the Virginia Gas and Oil Inspector.

"Log" means the written record progressively describing all strata, water, oil, or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volume of gas, pressures, rate of fill-up, ~~fresh freshwater-bearing and salt water-bearing~~ saltwater-bearing horizons and depths, cavings strata, casing records, and ~~such~~ other information ~~as is~~ usually recorded in the normal procedure of drilling. ~~The term shall also include~~ "Log" includes electrical survey records or electrical survey logs.

"Mine" means an underground or surface excavation or development with or without shafts, slopes, drifts, or tunnels for the extraction of coal, minerals, or nonmetallic materials, commonly designated as mineral resources, and the hoisting or haulage equipment or appliances, if any, for the extraction of the mineral resources. ~~The term embraces~~ "Mine" includes all of the land or property of the mining plant, including both the surface and



subsurface, that is used in or contributes directly or indirectly to the mining, concentration, or handling of the mineral resources, including all roads.

"Mineral" ~~shall have~~ means the same ~~meaning as ascribed to it as that term is defined in § 45.1-180~~ 45.2-1200.

"Mineral operator" means any person who operates or has the right to ~~or does~~ operate a mineral mine.

"Mineral owner" means any person who owns minerals, leases minerals, mines and produces minerals, or ~~who~~ has the right to mine and produce minerals and to appropriate such minerals that he produces ~~therefrom~~ from it, either for himself or for himself and others.

"Nonparticipating operator" means a gas or oil owner of a tract that is included in a drilling unit who elects to share in the operation of the well on a carried basis by agreeing to have his proportionate share of the costs allocable to his interest charged against his share of production from the well.

"Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or waste from gas, oil, or geophysical operations off a permitted site ~~which~~ that results from activity conducted on a permitted site.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, ~~which~~ that are produced at the well in liquid form by ordinary production methods and ~~which~~ are not the result of condensation of gas after it leaves the underground reservoir.

"Orphaned well" means any well abandoned prior to July 1, 1950, or for which no records exist concerning its drilling, plugging, or abandonment.

"Participating operator" means a gas or oil owner who elects to (i) bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a well on a drilling unit and ~~to~~ (ii) receive a share of production from the well equal to the proportion ~~which~~ that the acreage in the drilling unit he owns or holds under lease bears to the total acreage of the drilling unit.

"Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or geophysical operations issued under authority of this chapter.

"Person under a disability" ~~shall have~~ means the same ~~meaning as ascribed to it as that term is defined in § 8.01-2.~~

"Pipeline" means any pipe above or below the ground used or to be used to transport gas or oil.

"Plat" or "map" means a map, drawing, or print showing the location of a well ~~or wells~~, mine, or quarry, or other information required under this chapter.

"Pool" means an underground accumulation of gas or oil in a single and separate natural reservoir. ~~It~~ A pool is characterized by a single natural pressure system so that production of gas or oil from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, or water in the formation, so that it is effectively separated from

any other pool ~~which~~ that may be present in the same geologic structure. A "coalbed methane pool" means an area ~~which~~ that is underlain or appears to be underlain by at least one coalbed capable of producing coalbed methane gas.

"Project area" means the well, ~~and any~~ gathering pipeline, associated ~~facilities~~ facility, ~~roads~~ road, and any other disturbed area, all of which are permitted as part of a gas, oil, or geophysical operation.

"Restoration" means all activity required to return a permitted site to other use after gas, oil, or geophysical operations have ended, as approved in the operations plan for the permitted site.

"Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights, who is eligible to receive payment based on the production of gas or oil.

"State waters" means all water, on the surface and under the ground, that is wholly or partially within or bordering the Commonwealth or within its jurisdiction and ~~which affect~~ that affects the public welfare.

~~"Stimulate"~~ "Stimulation" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including, ~~but not limited to~~, fracturing, shooting, or acidizing, but excluding (i) cleaning out, bailing, or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, ~~and or~~ other agents ~~which~~ that affect the gas or oil being produced, as distinguished from the producing formation.

"Storage well" means any well used for the underground storage of gas.

"Surface owner" means any person who is the owner of record of the surface of the land.

"Waste" or "escape of resources" means (i) physical waste, as that term is generally understood in the gas and oil industry; (ii) the inefficient, excessive, or improper use, or unnecessary dissipation of reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the locating, drilling, equipping, operating, or producing of any gas or oil well in a manner that causes, or tends to cause, a reduction in the quantity of gas or oil ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of gas or oil; (v) the production of gas or oil in excess of transportation or marketing facilities; (vi) the amount reasonably required to be produced in the proper drilling, completing, or testing of the well from which it is produced, except gas produced from an oil well or condensate well pending the time when with reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable; or (vii) underground or ~~above ground~~ aboveground waste in the production or storage of gas, oil, or condensate, however caused. ~~The term "waste"~~ "Waste" does not include gas vented from a methane drainage ~~boreholes~~ borehole or coalbed methane gas ~~wells,~~ well where necessary for safety reasons or for the efficient testing and operation of a coalbed methane gas ~~wells,~~ well, nor does it include the plugging of a coalbed methane gas ~~wells~~ well for the recovery of the coal estate.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil ~~which that~~ is ~~(i)~~ produced or generated during or results from ~~(i)~~ the development, drilling, and completion of ~~wells~~ any well and associated ~~facilities~~ facility or the development and construction of gathering pipelines or ~~(ii)~~ ~~produced or generated during or results from~~ well, pipeline, and associated ~~facilities'~~ facility operations, including, ~~but not limited to,~~ brines and produced fluids other than gas or oil. ~~In addition, this term shall include~~ "Waste from gas, oil, or geophysical operations" includes all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Water well" means any well drilled, bored, or dug into the earth for the sole purpose of extracting ~~therefrom~~ from it potable, fresh, or usable water for household, domestic, industrial, agricultural, or public use.

"Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into underground strata for the extraction, injection, or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection, or placement. ~~The term shall~~ "Well" does not include any shaft or hole sunk, drilled, bored, or dug into the earth for the sole purpose of pumping or extracting ~~therefrom~~ from it potable, fresh, or usable water for household, domestic, industrial, agricultural, or public use and ~~shall~~ does not include any water-boreholes borehole, methane drainage ~~boreholes~~ borehole where the methane is vented or flared rather than produced and saved, subsurface ~~boreholes~~ borehole drilled from the mine face of an underground coal mine, any other ~~boreholes~~ borehole necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of ~~this~~ the Commonwealth, or any coal or non-fuel mineral core hole or borehole drilled for the purpose of exploration.

**Drafting note: The phrase "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa and definitions are moved to alphabetical order as needed. Redundant text is removed and changes are made for clarity, including changes that rephrase definitions and divide one sentence into two in the definitions of "coal seam," "first point of sale," and "gas title conflicts." Some existing clause designations are moved and new clause designations are inserted. The definition of "DEQ" is added and the definition of "fund" is deleted because the chapter contains two funds, neither of which is referenced without a citation. Language is updated for modern usage and clarity.**

~~§ 45.1-361.2~~ 45.2-1601. Regulation of coal surface mining not affected by chapter.

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of Chapter ~~19~~ 10 (~~§ 45.1-226~~ 45.2-1000 et seq.), including requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on ~~areas~~ any area for which a coal surface mining permit is in

effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on ~~areas~~ an area that ~~have~~ has been reclaimed by the surface mine operator or the Director shall be treated as postmining uses. The Director shall give special consideration to the development and ~~promulgation~~ adoption of variances from the postmining use requirements of Chapter ~~19~~ 10 for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of Chapter ~~19~~ 10.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.3~~ 45.2-1602. Construction; purposes.

The provisions of this chapter shall be liberally construed so as to effectuate the following purposes:

1. To foster, encourage, and promote the safe and efficient exploration for and development, production, utilization, and conservation of the Commonwealth's gas and oil resources;

2. To provide a method of gas and oil conservation for maximizing exploration, development, production, and utilization of gas and oil resources;

3. To recognize and protect the rights of ~~persons~~ any person owning ~~interests~~ an interest in gas or oil resources contained within a pool;

4. To ensure the safe recovery of coal and other minerals;

5. To maximize the production and recovery of coal without substantially affecting the right of a gas or oil owner proposing to drill a gas or oil well to explore for and produce gas or oil;

6. To protect the citizens and the environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil; and

7. To recognize that the use of the surface for gas or oil development shall be only the ~~use that which~~ is reasonably necessary to obtain the gas or oil.

**Drafting note: Language is updated for modern usage, "purposes" is added to the catchline to more accurately reflect the content of the section, and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.13~~ 45.2-1603. Virginia Gas and Oil Board; membership; compensation.

A. The Virginia Gas and Oil Board is ~~hereby~~ established as a policy board in the executive branch of state government. The purpose of the Board shall be composed of seven members and shall have the powers and duties as specified under is to carry out the provisions of this chapter.

B. ~~The Governor~~ Board shall appoint, subject to confirmation by the General Assembly, ~~the chairman and six additional~~ have a total membership of seven members that shall consist of

six nonlegislative citizen members and one ex officio member. Nonlegislative citizen members of the Board shall be appointed to be appointed by the Governor, subject to confirmation by the General Assembly, as follows: two for an initial term of two years, two for an initial term of four years, and three for an initial term of six years. Thereafter, the members shall be appointed for terms of six years. At all times, the Board shall consist of the following qualified members: the Director or his designee; one but not more than one individual who is a representative of the gas and oil industry; and not the coal industry, one but not more than one individual who is a representative of the coal industry; and not the gas and oil industry, and four other individuals who are not representatives of the gas, oil, or coal industry. The Director or his designee shall serve ex officio with voting privileges. A chairman shall be designated by the Governor from among the membership of the Board.

C. All vacancies occurring on the Board shall be filled by the Governor, subject to confirmation by the General Assembly, for the unexpired term in the same manner as the original appointment within sixty 60 days of the occurrence of the vacancy. As the terms The ex officio member of the Board shall serve terms coincident with such member's term of office, respectively, of the members expire, the Governor shall appoint, subject to confirmation by the General Assembly, to fill the vacancies so occasioned, qualified persons whose terms shall be for. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of six years from the day on which that the term of their immediate predecessor expired. The All members may be reappointed. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth, and the Governor shall seek to appoint persons who reside in localities with significant oil or gas production or storage.

C. D. Each member of the Board shall receive compensation and expenses for the performance of his duties as provided in accordance with the provisions of § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

**Drafting note: This section is relocated from existing Article 2. Language is updated to reflect current language preferred in the Code for commissions, boards, and councils. Technical changes are made.**

§ 45.1-361.4 45.2-1604. Duties and responsibilities of the Director.

A. The Director ~~shall have~~ has the jurisdiction and authority necessary to enforce the provisions of this chapter. The Director ~~shall have~~ has the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities ~~as may be prescribed in regulations promulgated~~ adopted by the Department or the Board.

B. The Director shall appoint the Virginia Gas and Oil Inspector.

**Drafting note: The term "regulations promulgated" is changed to "regulations adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Language is updated for modern usage.**

~~§ 45.1-361.5~~ 45.2-1605. Exclusivity of regulation and enforcement.

No ~~county, city, town~~ locality or other political subdivision of the Commonwealth shall impose any condition, or require any other local license, permit, fee, or bond that varies from or is in addition to the requirements of this chapter to perform any gas, oil, or geophysical ~~operations which varies from or is in addition to the requirements of this chapter~~ operation. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction ~~and or~~ requirements of any other state ~~agencies~~ agency, local land-use ~~ordinances~~ ordinance, ~~regulations~~ regulation of general purpose, or ~~§§ § 58.1-3712, 58.1-3713, 58.1-3713.3, 58.1-3713.4, 58.1-3741, 58.1-3742, and or 58.1-3743.~~

**Drafting note: Language is updated for modern usage and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.6~~ 45.2-1606. Confidentiality.

The Director shall hold confidential all logs, surveys, and reports relating to the drilling, completion, and testing of a well ~~which~~ that are filed by a gas or oil ~~operators~~ operator under this chapter for a period of ~~ninety~~ 90 days after the completion of the well or ~~eighteen~~ 18 months after the total depth of the well has been reached, whichever occurs first. Upon receipt of a gas, oil, or geophysical operator's written request, the Director shall hold confidential ~~this~~ such information concerning an exploratory well or corehole for a period of two years after completion of the well or four years from the date such well or hole reaches total depth, whichever occurs first. The Director, for good cause shown by the gas, oil, or geophysical operator, may annually extend the period of time for which information regarding exploratory drilling is held confidential. However, the Director shall upon request provide a copy of any survey or log for strata through the lowest coal seam to the coal owner.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.7~~ 45.2-1607. Expenditure of funds.

All funds, except civil ~~charges~~ penalties collected pursuant to ~~§ 45.1-361.8~~ 45.2-1608, collected by or appropriated to the Department pursuant to the provisions of this chapter shall be expended only for the purpose of carrying out the provisions of this chapter.

**Drafting note: The term "civil charges" is updated to the preferred term "civil penalties."**

~~§ 45.1-361.8~~ 45.2-1608. Violations; penalties.

A. Any person who violates or refuses, fails, or neglects to comply with any regulation or order of the Board, Director, or Inspector, any condition of a permit, or any provision of this chapter ~~shall be~~ is guilty of a Class 1 misdemeanor.

B. In addition, any person who violates any ~~provision of this chapter~~ regulation or order of the Board, Director, or Inspector, any condition of a permit, or any ~~regulation or order of the Board, Director, or Inspector~~ provision of this chapter shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than \$10,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. The court shall direct that all civil penalties assessed under this section be paid into the treasury of the county or city ~~wherein lies~~ where the gas, oil, or geophysical operation determined by the court to be in violation is located.

C. The Board, with the consent of the gas, oil, or geophysical operator, may provide, in an order issued by the Board against such operator, for the payment of ~~civil charges~~ penalties for past violations in specific sums not to exceed the limit specified in subsection B ~~of this section~~. Such ~~civil charges~~ penalties shall be instead of any appropriate civil penalty ~~which that~~ could be imposed under this section and shall not be subject to the ~~provision~~ provisions of § 2.2-514. ~~Civil charges~~ penalties collected under this section shall be paid into the treasury of the county or city ~~wherein lies~~ where the gas, oil, or geophysical operation subject to the order issued by the Board is located.

**Drafting note: The term "civil charges" is updated to the preferred term "civil penalties." Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.9~~ 45.2-1609. Appeals; venue; standing.

A. Any order or decision of the Board may be appealed to the appropriate circuit court. Whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo. The court ~~shall have~~ has the power to enter interlocutory orders as ~~may be~~ necessary to protect the rights of all interested parties pending a final decision.

B. Unless the parties otherwise agree, the venue for court review shall be the county or city ~~wherein lies~~ where the gas, oil, or geophysical operation ~~which that~~ is the subject of such order or decision is located.

C. The Director and all parties required to be given notice of hearings of the Board pursuant to the provisions of ~~§ 45.1-361.19~~ 45.2-1618 shall have standing to appeal any order or decision of the Board ~~which that~~ directly affects them. The permittee or permit applicant, the Director, and those parties with standing to object, pursuant to the provisions of ~~§ 45.1-361.30,~~ 45.2-1632 shall have standing to appeal any order or decision of the Board ~~which that~~ directly affects them; ~~provided, however, with the exception of~~. However, except for an aggrieved permit applicant or the Director, no person shall have standing to appeal a decision of the Board concerning a permit application unless such person has previously filed an objection with the

Director pursuant to the provisions of § ~~45.1-361.35~~ 45.2-1637. The filing of any petition for appeal concerning the issuance of a new permit ~~which that~~ was objected to pursuant to the provisions of § ~~45.1-361.11, § 45.1-361.12~~ 45.2-1611 or 45.2-1612 or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a ~~State Corporation Commission certificated~~ gas storage field certificated by the State Corporation Commission shall automatically stay the permit until such stay is dissolved or the appeal is decided by the circuit court. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to an oil, gas, or coalbed methane ~~wells~~ well completed more than ~~one hundred~~ 100 feet above the cap rock above the storage stratum.

**Drafting note: Language is updated for clarity and modern usage. Technical changes are made.**

~~§ 45.1-361.10 45.2-1610. Duplicate leases~~ Copy of lease to lessor.

Any person, who, as either as principal or agent, ~~who~~ executes a lease of land or right therein for drilling for gas or oil, or for the development or production of gas or oil, shall ~~do so in duplicate. One~~ furnish a copy of the lease, duly executed by the lessee, ~~shall be furnished~~ to the lessor.

**Drafting note: The requirement that every lease be executed in duplicate is stricken as obsolete. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.11 45.2-1611.~~ Objections by coal owner.

A. In deciding on objections by a coal owner to a proposed permit modification or drilling unit modification, only the following questions shall be considered:

1. Whether the work can be done safely with respect to persons engaged in coal mining at or near the well site; and
2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's right to explore for, market, and produce ~~oil and gas~~ or oil.

B. In deciding on objections by a coal owner to the establishment of a drilling unit, the issuance of a permit for a new well, or the stimulation of a coalbed methane gas well, the following safety aspects shall first be considered, and no order or permit shall be issued where the evidence indicates that the proposed ~~activities~~ activity will be unsafe:

1. Whether the drilling unit or drilling location is above or in close proximity to any mine opening or shaft, entry, travelway, airway, haulageway, drainageway, or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine, or in any coal mine already surveyed and platted but not yet being operated;
2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;



3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas well can be stimulated safely, taking into consideration the dangers from creeps, squeezes, or other disturbances due to the extraction of coal; and

4. The extent to which the proposed drilling unit or drilling location or stimulation of the coalbed methane gas well unreasonably interferes with the safe recovery of coal, ~~oil and gas, or oil.~~

C. The following questions with respect to the drilling unit or drilling location of a new well or stimulation of a new coalbed methane gas well shall also be considered:

1. The extent to which the proposed drilling unit or drilling location or coalbed methane gas well stimulation will unreasonably interfere with present or future coal mining operations;

2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out area, an area below the coal outcrop, ~~or to~~ some other area;

3. The feasibility of a drilling moratorium for not more than two years in order to permit the completion of coal mining operations;

4. The ~~method~~ methods proposed for the recovery of coal and gas;

5. The practicality of locating the unit or the well on a uniform pattern with other units or wells;

6. The surface topography and use; and

7. Whether the decision will substantially affect the right of the gas operator to explore for and produce the gas.

D. The factors in subsection C ~~of this section~~ are not intended to and shall not be construed to authorize the Director, or the Board under ~~§ 45.1-361.36~~ 45.2-1638, to supersede, impair, abridge, or affect any contractual rights or obligations ~~now or hereafter~~ existing between the respective owners of coal and gas or any interest therein.

**Drafting note: In accordance with title-wide conventions, the conjunction "and" is replaced with "or" in subdivision B 4 because the meaning of "or" encompasses both "or" and "and." Technical changes are made, and language is updated for clarity.**

~~§ 45.1-361.12~~ 45.2-1612. Distance limitations of certain wells.

A. If the well operator and the objecting coal owners who are present or represented at ~~the a~~ hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

B. The ~~minimum distance limitations~~ limitation established by this section shall not apply if (i) the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth; and (ii) the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations.

**Drafting note: Language is updated for clarity and the word "minimum" is removed from the description of the maximum distance limitation. Technical changes are made.**

Article 2.

Gas and Oil Conservation.

**Drafting note: Existing Article 2, relating to gas and oil conservation, is retained as proposed Article 2.**

~~§ 45.1-361.14~~ 45.2-1613. Meetings of the Board; notice; general powers and duties.

A. The Board shall schedule a monthly meeting at a time and place designated by the chairman. ~~Should~~ If no petition for action ~~be~~ is filed with the Board prior to ~~such~~ a meeting, the Board may cancel the meeting ~~may be cancelled~~. Notification or cancellation of each meeting shall be given in writing to the ~~other~~ members by the chairman at least five days in advance of the meeting. Four members shall constitute a quorum for the transaction of any business ~~which shall come~~ that comes before the Board. All determinations of the Board shall be by majority vote of the quorum present.

B. The Board ~~shall have~~ has the power necessary to execute and carry out all of its duties specified in this chapter. The Board is authorized to investigate and inspect ~~such~~ records and facilities ~~as are~~ necessary and proper to perform its duties under this chapter. The Board may employ ~~such~~ personnel and consultants ~~as may be~~ necessary to perform its duties under this chapter.

**Drafting note: Language is updated for clarity.**

~~§ 45.1-361.15~~ 45.2-1614. Additional duties and responsibilities of the Board.

A. In executing its duties under this chapter, the Board shall:

1. Foster, encourage, and promote the safe and efficient exploration for and development, production, and conservation of ~~the~~ gas and oil resources located in the Commonwealth;

2. Administer a method of gas and oil conservation for the purpose of maximizing exploration, development, production, and utilization of gas and oil resources;

3. Administer procedures for the recognition and protection of the rights of gas or oil owners with interests in gas or oil resources contained within a pool;

4. Promote the maximum production and recovery of coal without substantially affecting the right of a gas owner proposing a gas well to explore for and produce gas; and

5. Hear and decide appeals of the Director's decisions and orders issued under Article 3 ~~of this chapter~~ (§ 45.2-1629 et seq.).

B. Without limiting its general authority, the Board ~~shall have~~ has the specific authority to issue ~~rules~~, regulations or orders pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) in order to:

1. Prevent waste through the design, spacing, or unitization of wells, pools, or fields.

2. Protect correlative rights.
3. Enter spacing and pooling orders.
4. Establish drilling units.
5. Establish maximum allowable production rates for the prevention of waste and ~~for~~ the protection of correlative rights.
6. Provide for the maximum recovery of coal.
7. Classify pools and wells as gas, oil, gas and oil, or coalbed methane gas.
8. Collect data, make investigations and inspections, examine property, leases, papers, books, and records, and require or provide for the keeping of records and the making of reports.
9. Set application fees.
10. Govern practices and procedures before the Board.
11. Require additional data from parties to any hearing.
12. Take ~~such~~ actions ~~as are~~ reasonably necessary to carry out the provisions of this chapter.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.16~~ 45.2-1615. Applicability and construction.

A. The provisions of this article ~~shall~~ apply to all lands in the Commonwealth, whether publicly or privately owned. However, no well commenced prior to July 1, 1990, shall be required to be plugged or abandoned solely for purposes of complying with the conservation provisions ~~contained in~~ of this article.

B. No provision ~~contained in~~ of this article shall be construed to grant to the Board the authority or power to fix prices of gas or oil.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-361.17~~ 45.2-1616. Statewide spacing of wells.

A. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. ~~Wells~~ No well drilled in search of oil shall ~~not~~ be located closer than 1,250 feet to any well completed in the same pool; however, this spacing requirement is subject to ~~§ 45.1-361.12~~ 45.2-1612;

2. ~~Wells~~ No well drilled in search of gas shall ~~not~~ be located closer than 2,500 feet to any other well completed in the same pool, or closer than 2,500 feet to any storage well within the boundary of a gas storage field certificated by the State Corporation Commission prior to January 1, 1997, if the well to be drilled is to be completed within the same horizon as the certificated gas storage field; and

3. ~~A~~ No well shall ~~not~~ be drilled closer to the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory

drilling unit, than one-half of the applicable minimum well spacing ~~distances~~ distance prescribed in this section.

B. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. ~~Wells~~ No well drilled in search of coalbed methane gas shall ~~not~~ be located closer than 1,000 feet to any other coalbed methane gas well, or in the case of a coalbed methane gas ~~wells~~ well located in the gob, ~~such wells shall not be located~~ closer than 500 feet to any other coalbed methane gas ~~wells~~ well located in the gob.

2. ~~A~~ No coalbed methane gas well shall ~~not~~ be drilled closer than 500 feet, or in the case of ~~such a~~ a well located in the gob, ~~not~~ closer than 250 feet, from the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit.

3. The spacing limitations set forth in this subsection are subject to the provisions of §§ ~~45.1-361.11~~ 45.2-1611 and ~~45.1-361.12~~ 45.2-1612.

**Drafting note: Language is updated for modern usage and clarity and technical changes are made. The prohibitory language providing well spacing minimums is recast in affirmative form consistent with current legislative drafting practice.**

~~§ 45.1-361.18~~ 45.2-1617. Voluntary pooling of interests in drilling units; validity of unit agreements.

A. ~~When~~ If two or more separately owned tracts are embraced within a drilling unit, or ~~when~~ if there are separately owned interests in all or a part of any such drilling unit, the gas or oil owners owning such interests may pool their interests for the development and operation of the drilling unit by voluntary agreement. Such ~~agreements~~ agreement may be based on the exercise of pooling rights or rights to establish drilling units ~~which~~ that are granted in any gas or oil lease.

B. No voluntary pooling agreement between or among gas or oil owners shall be held to violate the statutory or common law of the Commonwealth ~~which~~ that prohibits monopolies or acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

**Drafting note: A change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-361.19~~ 45.2-1618. Notice of hearing; standing; form of hearing.

A. Any person who applies for a hearing in front of the Board pursuant to the provisions of ~~§ 45.1-361.20~~ 45.2-1619, ~~45.1-361.21~~ 45.2-1620, or ~~45.1-361.22~~ 45.2-1622 shall simultaneously with the filing of such application, provide notice by commercial delivery service, return receipt requested, or certified mail, return receipt requested, to each gas or oil owner, coal owner, or mineral owner having an interest underlying the tract ~~which~~ that is the subject of the hearing, and to the operator of any gas storage field certificated by the State

Corporation Commission as a public utility facility whose certificated area includes the tract ~~which that~~ is the subject of the hearing. Whenever a hearing applicant is unable to provide such written notice because the identity or location of a person to whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board of such inability.

B. At least 10 days prior to a hearing, the Board shall publish its agenda in ~~newspapers~~ a newspaper of general circulation ~~that are widely circulated in the localities~~ each locality where the lands that are the subject of the hearing are located. The agenda shall include the name of each applicant, the ~~localities~~ locality where the lands that are the subject of the hearing are located, the purpose of the hearing, and the date, time, and location ~~thereof~~ of the hearing.

C. The Board shall conduct all hearings on ~~applications~~ any application made to it pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The applicant and any person to whom notice is required to be given pursuant to ~~the provisions of subsection A of this section~~ shall have standing to be heard at the hearing. The Board shall render its decision on such ~~applications~~ application within ~~thirty~~ 30 days of the hearing's closing date and shall provide notification of its decision to all parties to the hearing pursuant to the provisions of the Administrative Process Act.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and the redundant phrase "that are widely circulated" is deleted.**

~~§ 45.1-361.20~~ 45.2-1619. Field rules and drilling units for wells; hearings and orders.

A. In order to prevent the waste of gas or oil; or the drilling of unnecessary wells; or to protect correlative rights, the Board on its own motion or upon application of the gas or oil owner ~~shall have the power to~~ may establish or modify drilling units. Drilling units, to the extent reasonably possible, shall be of uniform shape and size for an entire pool. Any gas, oil, or royalty owner may apply to the Board for the establishment of field rules and the creation of drilling units for the field. Unless such motion is made or an application is received at least ~~thirty~~ 30 days prior to the next regularly scheduled monthly meeting of the Board, it shall not be heard by the Board at such meeting and shall be heard at the next meeting of the Board thereafter.

B. At any hearing of the Board regarding the establishment or modification of drilling units, the Board shall make the following determinations:

1. Whether the proposed drilling unit is an unreasonable or arbitrary exercise of a gas or oil owner's right to explore for or produce gas or oil;
2. Whether the proposal would unreasonably interfere with the present or future mining of coal or other minerals;
3. The acreage to be included in the order;
4. The acreage to be embraced within each drilling unit and ~~the~~ its shape ~~thereof~~;
5. The area within which wells may be drilled on each unit; and

6. The allowable production of each well.

C. In establishing or modifying a drilling unit for coalbed methane gas wells, and in order to accommodate the unique characteristics of coalbed methane development, the Board shall require that drilling units conform to the mine development plan, if any, ~~and if~~. If requested by the coal operator, well spacing shall correspond with mine operations, including the drilling of multiple coalbed methane gas wells on each drilling unit.

D. If an order to establish or modify a drilling unit will allow a well to be drilled into or through a coal seam, any coal owner within the area to be covered by the drilling unit may object to the establishment of the drilling unit. Upon a coal owner's objection, and without superseding, impairing, abridging, or affecting any contractual rights or obligations existing between coal and gas owners, the Board shall make its determination in accordance with the provisions of ~~§§ 45.1-361.11~~ 45.2-1611 and ~~45.1-361.12~~ 45.2-1612.

E. The Board may continue a hearing to its next meeting to allow for further investigation and the gathering and taking of additional data and evidence. If at the time of a hearing there is not sufficient evidence for the Board to determine field boundaries, drilling unit size or shape, or allowable production, the Board may enter a temporary order establishing provisional drilling units, field boundaries, and allowable production for the orderly development of the pool pending receipt of the information necessary to determine the ultimate pool boundaries, spacing of wells for the pool, and allowable production. Upon additional findings of fact, the boundaries of a pool, drilling units for the pool, and allowable production may be modified by the Board.

F. Unless otherwise provided for by the Board, after an application for a hearing to establish or modify drilling units or pool boundaries has been filed, no additional ~~wells~~ well shall be permitted in the pool until the Board's order establishing or modifying the pool or units has been entered.

G. After the Board issues a field or pool spacing order ~~which that~~ creates drilling units or a pattern of drilling units for a pool, ~~should if~~ a gas or oil owner ~~apply~~ applies for a permit or otherwise ~~indicate~~ indicates his desire to drill a well outside of such drilling units or pattern of drilling units and thereby potentially extend the pool, the Board may, on its own motion or the motion of any interested person, require that the well be located and drilled in compliance with the provisions of the order affecting the pool.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrase "shall have the power to" in subsection A is replaced with "may." Language is updated for modern usage and clarity.**

~~§ 45.1-361.21~~ 45.2-1620. Pooling of interests in drilling units.

A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests in ~~the~~ a drilling unit for the development and operation thereof when:

1. Two or more separately owned tracts are embraced in a drilling unit;
2. There are separately owned interests in all or part of any such drilling unit and those owners having interests have not agreed to pool their interests; or
3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § ~~45.1-361.17~~ 45.2-1616.

However, no pooling order shall be entered until the notice and hearing requirements of this article have been satisfied.

B. Subject to any contrary provision contained in a gas or oil lease ~~respecting~~ regarding the property, gas or oil operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit. The portion of production allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that tract bears to the total acreage of the unit.

C. ~~All~~ Every pooling ~~orders~~ order entered by the Board pursuant to the provisions of this section shall:

1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision ~~2 b of subsection F 2 b~~ of § ~~45.1-361.29~~ 45.2-1631, subject to the permit provisions contained in Article 3 (§ ~~45.1-361.27~~ 45.2-1629 et seq.) ~~of this chapter~~;

2. Include the time and date when such order expires;

3. Designate the gas or oil owner who is authorized to drill and operate the well; ~~provided, however, that except~~ Except in the case of a coalbed methane gas-wells well, ~~the such designated operators must have~~ operator shall possess the right to conduct operations or have possess the written consent of owners with the right to conduct operations on at least ~~25%~~ 25 percent of the acreage included in the unit;

4. Prescribe the conditions under which a gas or oil-owners owner may become a participating-operators operator or exercise ~~their rights~~ a right of election under subdivision 7 ~~of this subsection~~;

5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between participating operators so that each participating operator pays the same percentage of such costs as his acreage bears to the total unit acreage;

6. Require that any nonleasing gas or oil ~~owners~~ owner be provided with reasonable access to unit records submitted to the Director or Inspector;

7. Establish a procedure for a gas or oil owner who received notice of the hearing ~~and who~~ but does not decide to become a participating operator ~~may to~~ elect either to (i) sell or lease his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his share equal the following:

a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or

b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.). Upon discovery of the identity and location of any unknown owner of an interest that is subject to escrow under the provisions of this subsection and is not subject to conflicting claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the next available hearing. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement.

E. Any person who does not make an election under the pooling order shall be deemed to have leased his gas or oil interest to the gas or oil well operator as the pooling order ~~may provide~~ provides.

F. ~~Should~~ If a gas or oil owner ~~be~~ is a person under a disability, the applicant for a pooling order may petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of § 8.01-261 for purposes of making the election provided for by this section.

G. Any royalty or overriding royalty reserved in any lease ~~which that~~ is deducted from a nonparticipating operator's share of production shall not be subject to charges for operating costs but shall be separately calculated and paid to the royalty owner.

H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs ~~which that~~ may be shared in pooled gas or oil operations.

**Drafting note: Language is added to the fourth sentence of subsection D to clarify that it is an interest rather than an owner that is subject to ownership claims. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-361.21; § 45.2-1621.~~ Coalbed methane gas; ownership.

A ~~No~~ No conveyance, reservation, or exception of coal shall ~~not~~ be deemed to include coalbed methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations. The provisions of this section shall not affect any settlement of any dispute, or any



judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered into prior to the enactment of this provision April 13, 2010.

**Drafting note: The prohibitory language in the first sentence is recast in affirmative form consistent with current legislative drafting practice. The date of enactment of the provision in Acts 2010, cc. 730, 762 is provided, and language is updated for clarity.**

~~§ 45.1-361.22~~ 45.2-1622. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

~~When~~ A. If there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane ~~gas drilling~~ gas-drilling unit for the development and operation thereof.

B. In addition to the provisions of ~~§ 45.1-361.21~~ 45.2-1620, the following provisions shall apply to the order provided in subsection A:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of ~~§ 45.1-361.19~~ 45.2-1618 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract ~~which~~ that is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of ~~§ 45.1-361.21~~ 45.2-1620 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses attributable to a participating or nonparticipating operator as provided for under ~~§ 45.1-361.21~~ 45.2-1620 and the order of the Board ~~attributable to a participating or nonparticipating operator~~.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them; is issued, (ii) a determination is reached by an arbitrator pursuant to ~~§ 45.1-361.22:1~~; 45.2-1623, or (iii) an agreement is reached among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision, determination, or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting claimants shall be determined based on (a) the percentage of ownership interest of the

conflicting claimants as shown in the operator's supplemental filing, made part of the pooling order that established the escrow account; (b) the operator's records of deposits attributable to those tracts for which funds are being requested; and (c) the records of the escrow account for the coalbed methane ~~gas drilling~~ gas drilling unit. The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas well operator as provided in the pooling order ~~may provide~~.

**Drafting note: Technical changes are made and language is updated for clarity.**

~~§ 45.1-361.22:1~~ 45.2-1623. Conflicting claims of ownership; arbitration.

A. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration; and notify the circuit court in the jurisdiction ~~wherein~~ in which the majority of the subject tract is located; (i) upon written request from all claimants to the ownership of coalbed methane gas related to the subject tract under ~~§ 45.1-361.22~~ 45.2-1622; (ii) upon receipt of an affidavit executed by all such claimants affirming that there is no other known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract; (iii) after a hearing noticed pursuant to subsection B of ~~§ 45.1-361.19~~ 45.2-1618; and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an attorney from the list maintained by the Department pursuant to subsection C or, at the discretion of the court, ~~such other~~ another attorney meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not derived more than 10 percent of his income during any of the preceding three years from any (a) claimants asserting ownership or rights in the subject tract or ~~any~~ (b) affiliated entities or immediate family members of such claimants. If the attorney cannot provide such certification, he shall notify the circuit court and he will be disqualified from serving as arbitrator for that particular dispute.

B. The Department shall send notice to all claimants if it determines that there are insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such funds are available.

C. To be qualified as an arbitrator, a candidate shall ~~(i) shall~~ be an attorney licensed in the Commonwealth; ~~(ii) shall~~ have at least 10 years of experience in real estate law, including

substantial expertise in mineral title examination; and (iii) ~~shall~~ disclose to the Board whether he has been engaged within the preceding three years by any person in ~~matters~~ a matter subject to the jurisdiction of the Board or the Department under this chapter. The Department shall solicit applications from attorneys meeting the qualifications set forth ~~above~~ in this subsection and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. ~~At least once annually, the~~ The Department shall update its list at least once annually. To maintain qualification, each attorney whose name appears on the list shall update annually his disclosures as set forth in clause (iii).

D. The arbitrator shall determine a time and place for the arbitration hearing and cause written notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any party to the arbitration has the right to representation before the arbitrator pursuant to § 8.01-581.05. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; administer oaths; and, upon application by a party to the arbitration, permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party to appear at the hearing.

E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and entitlement to proceeds held in escrow within six months from the order of the Board requiring the matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to the Board and to each party to whom notice is required to be given under subsection D.

F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the respective claimants or any other costs of the claimants, shall be paid from the accrued interest on general escrow account funds.

G. An arbitrator's determination, rendered pursuant to subsection E, shall be binding upon the parties, and, upon request of any party to the arbitration, such determination may be entered as the judgment of the circuit court responsible for appointing the arbitrator under subsection A.

H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.22:2~~ 45.2-1624. Release of funds held in escrow or suspense because of conflicting claims to coalbed methane gas.

A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the coalbed methane gas well operator shall, on or before January 1, 2016, apply to the Board for the release of the funds in escrow and give written notice of such application to ~~all every~~ every conflicting ~~claimants~~ claimant identified in the pooling orders, or to the ~~successors~~ successor of such ~~claimants~~ claimant where the ~~successors are~~ successor is known to the coalbed methane gas well operator or ~~have~~ has identified ~~themselves~~ himself to the coalbed methane gas well operator or the Board. Such notice shall be in accordance with the applicable provisions of § ~~45.1-361.19~~ 45.2-1618 and, if any unknown ~~persons~~ person or unlocatable conflicting ~~claimants~~ claimant ~~are~~ is subject to escrow, such notice shall also be published in a newspaper of general circulation in the county or counties where the drilling unit is located once each week for four successive weeks. The application shall include a detailed accounting in accordance with subdivision 5 of § ~~45.1-361.22~~ 45.2-1622. The Board shall order payment of the principal and accrued interest, less escrow account fees, held in escrow, along with all future royalties attributable to the drilling unit, to each gas claimant identified in the pooling order unless, within 45 days of the coalbed methane gas well operator's notice of its application, the coal claimant provides the Board and the coalbed methane gas well operator with evidence of a proceeding or agreement. The Board, pursuant to its authority granted by § ~~45.1-361.15~~ 45.2-1614, may extend the time for filing the application and delay the payment of funds for a gas title ~~conflicts~~ conflict, the existence of an unknown gas ~~claimants~~ claimant, the existence of an unlocatable gas ~~claimants~~ claimant, an unresolved gas heirship ~~issues~~ issue, or any other ~~reasons~~ reason beyond the reasonable control of the coalbed methane gas well operator and shall not order payment ~~where~~ if the gas claimant fails to provide the Board with information needed under applicable law or regulation to distribute the funds.

B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its pooling order, shall direct the coalbed methane gas well operator to pay royalties to the gas claimant unless the coal claimant provides the coalbed methane gas well operator and the Board with evidence of a proceeding or agreement not later than the time and place of the pooling hearing. The coalbed methane gas well operator shall provide written notice of the hearing to ~~the every~~ every gas ~~claimants~~ claimant and coal ~~claimants~~ claimant in accordance with § ~~45.1-361.19~~ 45.2-1618. However, the Board, pursuant to its authority granted by § ~~45.1-361.15~~ 45.2-1614, shall not order the coalbed methane gas well operator to make payment to a gas claimant ~~where~~ if there ~~are~~ exists any gas title ~~conflicts~~ conflict, unknown gas ~~claimants~~ claimant, unlocatable gas ~~claimants~~ claimant, unresolved gas heirship ~~issues~~ issue, or other ~~reasons~~ reason beyond the reasonable control of the coalbed methane gas well operator or ~~where~~ if the gas claimant fails to provide the coalbed methane gas well operator with the information required under applicable law or regulation to pay royalties. ~~In such cases~~ If the Board so declines to order payment to be made to a gas claimant, the coalbed methane gas well operator shall provide each

affected gas claimant and the Board with written notice of the ~~same~~ reason payment is not required to be made in accordance with the applicable provisions of ~~§ 45.1-361.19~~ 45.2-1618. ~~Where~~ If payment is not required to be made due to the gas claimant's failure to provide needed information under applicable law or regulation, the notice shall identify the information that is needed to enable the payment to be made.

C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane gas well operator shall pay royalties, including past royalties held, to each gas claimant unless, within 45 days of the coalbed methane gas well operator's provision of written notice to the coal claimant that the operator will be paying royalties to the gas claimants, the coal claimant provides the coalbed methane gas well operator and each gas claimant with evidence of a proceeding or agreement. For ~~units~~ any unit voluntarily pooled before July 1, 2015, the coalbed methane gas well operator shall provide such written notice to ~~the each gas claimants claimant~~ and coal ~~claimants claimant~~ on or before January 1, 2016. For ~~units~~ any unit voluntarily pooled on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice to ~~the each gas claimants claimant~~ and coal ~~claimants claimant~~ not later than 45 days after production commences. However, the coalbed methane gas well operator shall not be required to make payment to a gas claimant ~~where if there are~~ exists any gas title conflicts conflict, unknown gas ~~claimants claimant~~, unlocatable gas ~~claimants claimant~~, unresolved gas heirship ~~issues issue~~, or other ~~reasons reason~~ beyond the reasonable control of the coalbed methane gas well operator or ~~where if~~ the gas claimant fails to provide the coalbed methane gas well operator with information to process or pay royalties. ~~In such cases~~ If the Board so declines to order payment to be made to a gas claimant, the coalbed methane gas well operator shall provide each affected gas claimant with written notice of the ~~same~~ reason payment is not required to be made in accordance with the applicable provisions of § 45.2-1618. ~~Where~~ If payment is not required to be made due to a gas claimant's failure to provide needed information, the notice shall identify the information that is needed to enable the payment to be made.

D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant with diligence and shall not be voluntarily dismissed or nonsuited without the consent of the gas claimant. No default judgment shall be entered against a gas claimant in such proceeding. Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas claimant ~~shall be entitled to~~ may recover from ~~that the nonprevailing~~ coal claimant reasonable costs and attorney fees if such ~~person~~ gas claimant substantially prevails on the merits of the case and the coal claimant's position is not substantially justified.

E. A coalbed methane gas well operator paying funds to a gas claimant in accordance with this section shall have no liability to a coal claimant for the payments made by the coalbed methane gas well operator to a gas claimant.

F. This section shall not operate to extinguish any other right or cause of action or ~~defenses~~ defense thereto ~~that may exist~~, including, ~~but not limited to~~, claims any claim for an

accounting or a claim under § 8.01-31. Nothing in this section shall create, confer, or impose a fiduciary duty.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity, and the procedural provisions of subsections B and C are clarified and made parallel. In subsection F, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."**

~~§ 45.1-361.23~~ 45.2-1625. Appeals of the Director's decisions; notices; hearings and orders.

A. With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § ~~45.1-361.35~~ 45.2-1637.

B. When a person applies for a hearing to appeal a decision of the Director to the Board, the Board shall, at least ~~twenty~~ 20 days prior to the hearing, give notice by certified mail, return receipt requested, to the person making the appeal and, if different, to the gas or oil operator subject to the appeal.

C. Upon submittal of the petition for appeal of a decision of the Director to the Board, the Director shall forward to the Board (i) the permit application or order and associated documents; (ii) all required notices; and (iii) the written objections, proposals, and claims recorded during the informal ~~fact-finding~~ fact-finding hearing.

D. In any appeal involving a permit ~~of~~ for a new well ~~which~~ that was objected to (i) pursuant to the provisions of § ~~45.1-361.11~~, § ~~45.1-361.12~~, 45.2-1611 or 45.2-1612 or (ii) by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a ~~State Corporation Commission-certificated~~ gas storage field certificated by the State Corporation Commission, the filing of a petition for appeal shall stay any permit until the case is decided by the Board or the stay is dissolved by a court of record. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to any oil, gas, or coalbed methane ~~wells~~ well completed more than ~~one hundred~~ 100 feet above the cap rock above the storage stratum. In ~~all~~ any other ~~appeals~~ appeal, the Director may order the permit or other decision stayed for good cause shown until the case is decided by the Board or the stay is dissolved by a court of record. An appeal based on an alleged risk of danger to any person not engaged in the gas or oil ~~and gas~~ operations shall be prima facie proof of good cause for a stay.

E. The Board shall conduct all hearings under this section in accordance with the formal litigated issues hearing provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act (~~§ 2.2-4020 et seq.~~). However, ~~all persons~~ any person to whom notice is required to be given pursuant to subsection B ~~of this section~~ shall have standing to be heard at the hearing. The Board shall render its decision on such appeals within ~~thirty~~ 30 days of the hearing's closing

date and shall provide notification of its decision to all parties pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting note: The word "oil," apparently omitted in error from subsection B, is inserted. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In subsection D, the term "oil and gas operations" is adjusted to conform to the defined term "gas or oil operations." Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.24~~ 45.2-1626. Enforcement.

The Director shall enforce the provisions of this article ~~shall be enforced by the Director pursuant to the provisions of Article 3 (§ 45.1-361.27 45.2-1629 et seq.) of this chapter.~~ In addition, ~~should if~~ any person ~~violate~~ violates or ~~threaten~~ threatens to violate any provision of this article, regulation ~~promulgated~~ adopted thereunder, or order of the Board, the Board may maintain suit to restrain any such violation or threatened violation.

**Drafting note: The term "regulation promulgated" is changed to "regulation adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.25~~ 45.2-1627. Standing when Director or Board fails to act.

~~Should~~ If the Director or Board ~~fail~~ fails to take enforcement action within ~~ten~~ 10 days of the Board's receipt of a petition alleging that the petitioner is or will be adversely affected by a violation or threatened violation of any provision of this article, regulation adopted thereunder, or ~~an~~ order of the Board, the petitioner shall have standing to file a complaint in the appropriate circuit court. The Board, in addition to the ~~persons who are~~ person violating or threatening to violate ~~any~~ the provision of this article, regulation adopted thereunder, or order of the Board, shall be made a party to any such action.

**Drafting note: A change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-361.26~~ 45.2-1628. Recording of orders.

The Inspector shall cause a true copy of any order entered by the Board ~~which~~ that establishes a drilling unit or pools any interests to be recorded in the office of the clerk of the circuit court of each ~~jurisdiction~~ locality wherein any portion of the relevant drilling unit is located. Such ~~orders~~ order shall be recorded in the record book in which gas or oil leases are normally recorded. The sole charge for recordation shall be a tax equal to ~~ten dollars~~ \$10 plus ~~one dollar~~ \$1 per page of the order. ~~The recordation from~~ From the time noted ~~thereon~~ on the recordation by the clerk, the recordation shall be notice of the order to all persons.

**Drafting note: A change is made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Technical changes are made and language is updated for modern usage.**

Article 3.

Regulation of Gas and Oil Development and Production.

**Drafting note: Existing Article 3, relating to regulation of gas and oil development and production, is retained as proposed Article 3.**

§ ~~45.1-361.27~~ 45.2-1629. Duties, responsibilities, and authority of the Director.

A. The Director shall ~~promulgate~~ adopt and enforce ~~rules~~, regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Such ~~rules~~, regulations and orders shall be designed to:

1. Prevent pollution of state waters and require compliance with the ~~Water Quality Standards~~ water quality standards adopted by the State Water Control Board;
2. Protect against ~~off-site~~ onsite disturbances from gas, oil, or geophysical operations;
3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;
4. Prevent the escape of the Commonwealth's gas and oil resources;
5. Provide for safety in coal and mineral mining and coalbed methane well and related facility operations;
6. Control wastes from gas, oil, or geophysical operations;
7. Provide for the accurate measurement of gas and oil production and delivery to the first point of sale; and
8. Protect the public safety and general welfare.

B. In ~~promulgating rules and~~ adopting regulations, and when issuing orders for the enforcement of the provisions of this article, the Director shall consider the following factors:

1. The protection of the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil;
2. The means of ensuring the safe recovery of coal and other minerals without substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore for and produce coal, minerals, gas, or oil; and
3. The protection of safety and health on permitted sites for coalbed methane wells and related facilities.

C. In ~~promulgating rules,~~ adopting regulations and orders, the Director ~~shall be authorized to~~ may set and enforce standards governing the following: gas or oil ground-disturbing geophysical exploration; the development, drilling, casing, equipping, operating, and plugging of gas or oil production, storage, enhanced recovery, or disposal wells; the development, operation, and restoration of site disturbances for wells, gathering pipelines, and associated facilities; and gathering pipeline safety.

D. Whenever the Director determines that an emergency exists, he shall issue an emergency order without advance notice or hearing. Such ~~orders~~ order shall have the same validity as ~~orders~~ an order issued with advance notice and hearing, but shall remain in force no longer than ~~thirty~~ 30 days from ~~their~~ its effective date. After issuing an emergency order, the Director shall promptly notify the public of the order by publication and hold a public hearing



for the purposes of modifying, repealing, or making permanent the emergency order. ~~Emergency orders~~ An emergency order shall prevail as against ~~a general regulations~~ regulation or ~~orders~~ order when in conflict ~~therewith~~ with it. Emergency orders shall apply to gas, oil, or geophysical operations and to particular fields, geographical areas, subject areas, ~~subject-matter matters~~, or situations.

E. The Director ~~shall also have the authority to~~ may:

1. Issue, condition, and revoke permits;
2. Issue notices of violation and orders upon ~~violations~~ the violation of any provision of this chapter or regulation adopted thereunder;
3. Issue closure orders in cases of imminent danger to persons or damage to the environment or upon a history of violations;
4. Require or forfeit bonds or other financial securities;
5. Prescribe the nature of and form for the presentation of any information ~~and or~~ documentation required by any provision of this article or regulation adopted thereunder;
6. Maintain suit in the county or city ~~or county~~ where a violation has occurred or is threatened; or wherever a person who has violated or threatens to violate any provision of this chapter ~~may be~~ is found; in order to restrain the actual or threatened violation;
7. At reasonable times and under reasonable circumstances, enter upon any property and take ~~such~~ action as ~~is~~ necessary to administer and enforce the provisions of this chapter; and
8. Inspect and review all properties and records thereof as ~~are~~ necessary to administer and enforce the provisions of this chapter.

F. The Director has no jurisdiction to hear objections with respect to any matter subject to the jurisdiction of the Board as set out in Article 2 (§ 45.2-1613 et seq.). Such objections shall be referred to the Board in a manner prescribed by the Director.

**Drafting note: The term "promulgate," used in reference to regulations, is changed to "adopt" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. In accordance with title-wide conventions, the phrases "be authorized to" in subsection C and "have the authority to" in subsection E are replaced with "may." Other technical changes are made and language is updated for modern usage. Subsection G of existing § 45.1-361.35 is moved to this section as proposed subsection F.**

~~§ 45.1-361.28~~ 45.2-1630. Powers, duties, and responsibilities of the Inspector.

A. The Inspector shall administer the laws and regulations and shall have access to all records and properties necessary for this purpose. He shall perform all duties delegated by the Director pursuant to ~~§ 45.1-161.5~~ 45.2-105 and maintain permanent records of the following:

1. Each application for a gas, oil, or geophysical operation and each permitted gas, oil, or geophysical operation;
2. Meetings, actions, and orders of the Board;
3. ~~Petitions~~ Each petition for mining coal within 200 feet of or through a well;

4. ~~Requests~~ Each request for special plugging by a coal owner or coal operator; and
5. All other records prepared pursuant to this chapter.

B. The Inspector shall serve as the principal executive of the staff of the Board.

C. The Inspector may take charge of well or corehole, operations or pipeline emergency operations whenever a well or corehole blowout, release of hydrogen sulfide or other ~~gases~~ gas, or other serious accident occurs.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity.**

~~§ 45.1-361.29~~ 45.2-1631. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment.

A. No person shall commence any ~~ground-disturbing~~ ground-disturbing activity for a well, gathering pipeline, geophysical exploration, or associated activity, ~~facilities~~ facility, or ~~structures~~ structure without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans, and other information as required by regulation or the Director.

B. For ~~permits~~ each permit issued on or after July 1, 1996, ~~or thereafter,~~ a new permits permit issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking an initially productive ~~zones and zone~~, plugging a well, or construction and operation of a gathering pipeline ~~construction and operation~~. ~~Applications~~ An application for a new permits permit to conduct geophysical operations shall be accompanied by an application fee of \$130. ~~Applications~~ An application for ~~all other~~ a new permits permit for any other activity shall be accompanied by an application fee of ~~\$260~~ \$600.

C. For ~~permits~~ a permit issued prior to July 1, 1996, prior to commencing any reworking, deepening, or plugging of ~~the~~ a well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. ~~All applications~~ Each application for a permit modification shall be accompanied by a permit modification fee of ~~\$130~~ \$300. For ~~permits~~ a permit issued on or after July 1, 1996, ~~or thereafter,~~ prior to commencing any new zone ~~completions~~ completion, a permittee shall first obtain a permit modification from the Director.

D. ~~All permits~~ Every permit and all operations provided for under this section shall conform to the ~~rules,~~ regulations and orders of the Director and the Board. ~~When~~ If permit terms or conditions required or provided for under ~~Article 3 (§ 45.1-361.27 et seq.)~~ of this ~~chapter~~ article are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (~~§ 45.1-361.13~~ 45.2-1603 et seq.) of this ~~chapter~~, the terms or conditions of the permit shall control. In ~~this~~ such event, the operator shall return to the Board for reconsideration of ~~a~~ the conservation order in light of the conflicting permit. Every permittee

shall be responsible for all operations, ~~activity~~ activities, or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit ~~shall be~~ is required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam ~~which that~~ is located within (i) 750 horizontal feet of the proposed well location ~~(i) which that~~ the applicant proposes to stimulate or (ii) ~~which is within~~ 100 vertical feet above or below a ~~coal bearing~~ coal-bearing stratum ~~which that~~ the applicant proposes to stimulate.

b. The consent required by this ~~section~~ subsection may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § ~~45.1-361.19~~ 45.2-1618, provided by a pooling order entered pursuant to § ~~45.1-361.21~~ 45.2-1620 or ~~45.1-361.22~~ and provided 45.2-1622 if such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator, contained in such order. The consent required by this ~~section~~ subsection shall be deemed to be granted for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the ~~co-tenants~~ cotenants holding a majority interest in the tract and none of the coal ~~co-tenants~~ cotenants has leased the tract for coal development. The requirement of signed consent contained in this ~~section~~ subsection shall in no way be considered to impair, abridge, or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, ~~and or any extensions~~ extension or ~~renewals~~ renewal thereto, and the existence of such lease or contractual arrangement and any ~~extensions~~ extension or ~~renewals~~ renewal thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit that is required by this chapter for ~~activities~~ an activity to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § ~~62.1-195.1~~ 45.2-1646 shall be granted until the environmental impact assessment required by § ~~62.1-195.1~~ 45.2-1646 has been conducted and the assessment has been reviewed by the Department.

H. The applicant for a permit for a gathering pipeline, oil or gas well, or ~~coal bed~~ coalbed methane well shall identify in the permit application any cemetery, as identified on a ~~U.S.G.S.~~

United States Geological Survey topographic map or located by routine field review, within 100 feet of the permitted activity.

I. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial service that takes place on the surface area of such cemetery. However, if the well operator or a mine operator determines that such suspension of ~~such~~ operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Application fees are updated to reflect the current fees as established in the state budget adopted during the 2010 Session of the General Assembly and in each subsequent biennial budget, with the fee for an application for a new permit for certain geophysical activities in subsection B updated from \$260 to \$600 and the fee for an application for a permit modification in subsection C updated from \$130 to \$300. Clause designations in subdivision F 2 a are revised to correct an apparent organizational error. The first sentence of subdivision F 2 b is rewritten to avoid using conflicting meanings of the word "provided," and language is updated for clarity and modern usage.**

~~§ 45.1-361.30~~ 45.2-1632. Notice of permit applications and permit modification applications required; content.

A. Within one day of the day on which the application for a permit for a gas or oil operation is filed, the applicant shall provide notice of the application to the following persons:

1. ~~All~~ Every surface-~~owners~~ owner, coal-~~owners~~ owner, and mineral-~~owners~~ owner on the tract to be drilled;

2. ~~Coal operators~~ Every coal operator who ~~have~~ has registered an operation-~~plans~~ plan with the Department for activities located on the tract to be drilled;

3. ~~All~~ Every surface-~~owners~~ owner on ~~tracts~~ a tract where the surface is to be disturbed;

4. ~~All~~ Every gas, oil, or royalty-~~owners~~ owner (i) within ~~one-half~~ one half of the distance specified in ~~§ 45.1-361.17~~ 45.2-1616 for that type of well; or ~~within one-half~~ one half of the distance to the nearest well completed in the same pool, whichever is less, or (ii) within the boundaries of a drilling unit established pursuant to the provisions of this chapter;

5. ~~All~~ Every coal-~~operators~~ operator who ~~have~~ has applied for or obtained a mining or prospecting permit with respect to ~~tracts~~ a tract located within 500 feet of the proposed well location or, in the case of a proposed coalbed methane gas well location, within 750 feet thereof;

6. ~~All~~ Every coal-~~owners~~ owner or mineral-~~owners~~ owner on ~~tracts~~ a tract located within 500 feet of the proposed well location or, in the case of a proposed coalbed methane gas well location, within 750 feet thereof; and

7. ~~All operators~~ Every operator of a gas storage field certified by the State Corporation Commission as a public utility facility whose certificated area includes the well location; or whose certificated boundary is within 1,250 feet of the proposed well location.

B. Within one day of the day on which the application for a permit modification for a gas or oil operation is filed, the applicant requesting such permit modification shall provide notice of the application to all persons listed in subsection A ~~of this section~~ who may be directly affected by the proposed activity.

C. Within one day of the day on which the application for a permit for geophysical operations is submitted, the applicant shall provide notice to those persons listed in subdivisions A 1, 2, and 3 ~~of subsection A of this section~~.

D. ~~All notices~~ Each notice required to be given pursuant to ~~subsections~~ subsection A, B, and or C of this section shall contain a statement of the time within which objections may be made and the name and address of the person to whom objections shall be forwarded. Only ~~those persons~~ a person entitled to notice under ~~subsections~~ subsection A, B, and or C of this section shall have standing to object to the issuance of the proposed permit or permit modification for a gas, oil, or geophysical operation as the use may be. Upon receipt of notice, any person may waive in writing the time and right to object.

E. Within seven days of the day on which the application for a permit is filed, the applicant shall provide notice to (i) the local governing body or chief executive officer of the locality where the well is proposed to be located and (ii) the general public, through publication of a notice in at least one newspaper of general circulation ~~that is widely circulated~~ in the locality where the well is proposed to be located.

F. An applicant shall make a reasonable effort to provide the notices required under subsections A, B, and C. If an applicant is unable to identify or locate any person to whom notice is required, then the notice provided in clause (ii) of subsection E shall be considered sufficient notice to such persons and the date of notification shall be the date of publication.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Clause designations are added to subdivision A 4 for clarity. Language is updated for modern usage and the redundant phrase "that is widely circulated" is deleted. Technical changes are made.**

~~§ 45.1-361.31~~ 45.2-1633. Bonding and financial security required.

A. To ensure compliance with all laws and regulations pertaining to permitted activities and the furnishing of reports and other information required by the Board or Director, ~~at each permit applicant~~ applicant shall give bond with surety acceptable to the Director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of the bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site; but in no case shall the amount of the bond be less than \$10,000 per well plus \$2,000 per acre of disturbed land, calculated to the nearest tenth of an acre. ~~Bonds~~ Each

bond shall remain in force until released by the Director. The Director may require additional bond or financial security for any well proposed to be drilled in Tidewater Virginia.

B. Upon receipt of an application for multiple permits for gas or oil operations and at the request of the permit applicant, the Director may, in lieu of requiring a separate bond for each permit, require a blanket bond. The amount of the blanket bond shall be as follows:

1. For one to 10 wells, \$25,000.
2. For 11 to 50 wells, \$50,000.
3. For 51 to 200 wells, \$100,000.
4. For more than 200 wells, \$200,000.

For purposes of calculating blanket bond amounts, from one-tenth of an acre to five acres of disturbed land for a separately permitted gathering pipeline shall be equivalent to one well. The Director shall ~~promulgate~~ adopt regulations for the release of acreage used to calculate blanket bond amounts for separately permitted gathering pipelines in cases where sites have been stabilized.

C. Any gas or oil operator who elects to post a blanket bond shall pay into the Gas and Oil Plugging and Restoration Fund those fees and assessments required under the provisions of ~~§ 45.1-361.32~~ 45.2-1634.

**Drafting note: The term "promulgate regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The word "multiple" is added to the first sentence of subsection B for clarity.**

~~§ 45.1-361.32~~ 45.2-1634. Gas and Oil Plugging and Restoration Fund.

A. ~~The~~ There is hereby created in the state treasury a special nonreverting fund to be known as the Gas and Oil Plugging and Restoration Fund is hereby established as a non-lapsing revolving fund to be administered by the Department pursuant to the provisions of, referred to in this section. The Fund shall consist of all as "the Fund." All payments made into the Fund by gas or oil operators, all collections of debt for expenditures made from the Fund, and all interest payments made into the Fund pursuant to the provisions of this section 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 the Fund. The Fund shall be established on the books of the Comptroller and any funds moneys remaining in such the Fund, including interest thereon, at the end of the biennium each fiscal year shall not revert to the general fund but shall remain in the Fund. 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 or his designee.

B. ~~Pursuant to § 45.1-361.31, each gas or oil operator who has posted a blanket bond shall pay into the Fund a fee of fifty dollars per permit held, by July 31, 1990. Each permittee operating under a blanket bond pursuant to § 45.2-1633 shall annually pay to the Fund an~~

amount equal to ~~fifty dollars~~ \$50 multiplied by the number of permits he then holds, such payment to be submitted with the annual report required under ~~§ 45.1-361.38~~ 45.2-1640, until the payments and interest accruing to the Fund totals \$100,000. Whenever the Director determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts, the Director shall assess a fee of \$50 per permit per year on each permittee with a blanket bond until the Fund's balance once again reaches \$100,000.

C. ~~Disbursements from Moneys in the Fund shall be used only to supplement solely for the purpose of supplementing bond proceeds in order to pay for the full cost of plugging and restoration in the event of a blanket bond forfeiture.~~

D. The amount by which the cost of plugging and restoration exceeds the amount of the gas or oil operator's forfeited bond shall constitute a debt of the operator to the Commonwealth. The Director is authorized to collect such debts together with the costs of collection through appropriate legal action. All moneys collected pursuant to this subsection, less the costs of collection, shall be deposited in the Fund.

E. ~~Once the initial balance of the Fund exceeds \$100,000, and thereafter whenever the Director determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts, the Director shall assess a fee of fifty dollars per permit per year on all permittees with blanket bonds until the Fund's balance once again reaches \$100,000.~~

F. No permit shall be issued to a gas or oil operator until he has fully reimbursed the Commonwealth for any debt incurred pursuant to the provisions of subsection D ~~of this section.~~

F. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall be returned to ~~all each~~ gas or oil operators operator with ~~a blanket bonds~~ bond in proportion to the number of permits under the ~~blanket bonds~~ bond of each operator.

**Drafting note: The nonreverting fund language for the Gas and Oil Plugging and Restoration Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. Organizational changes are made: The final sentence of subsection A, regarding discontinuance of the Fund, is moved to the end of the section and designated as subsection F; the first sentence of subsection B is stricken as obsolete; and subsection E is stricken, with relevant language moved to the end of subsection B. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.33~~ 45.2-1635. Expiration of permits.

~~All permits~~ Each permit issued pursuant to this chapter shall expire 24 months from ~~their~~ its date of issuance unless the permitted activity has commenced within that time period. An operator may renew ~~the~~ an existing permit for an additional 24 months by submitting a written request containing the coal operator's approval and remitting a \$325 renewal fee no later than the expiration date.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.34~~ 45.2-1636. Abandonment or cessation of well or corehole operation; plugging required.

Upon the abandonment or cessation of the operation of any well or corehole, the gas, oil, or geophysical operator shall immediately fill and plug the well or corehole in the manner required by regulations in force at the time of abandonment or the operation's cessation.

**Drafting note: No change.**

~~§ 45.1-361.35~~ 45.2-1637. Objections to permits; hearing.

A. Objections to a new permit or permit modification ~~permits~~ may be filed with the Director by ~~those~~ any person having standing as set out in ~~§ 45.1-361.30~~ 45.2-1632. Such objections shall be filed within ~~fifteen~~ 15 days of the objecting party's receipt of the notice required by ~~§ 45.1-361.30~~ 45.2-1632. ~~Persons~~ Any person objecting to a permit ~~must~~ shall state the reasons for ~~their~~ his objections.

B. The only objections to permits or permit modifications that may be raised by a surface owners owner are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;

2. Measures in addition to the requirement for a well's water-protection string are necessary to protect ~~fresh water bearing~~ freshwater-bearing strata;

3. The permitted work will constitute a hazard to the safety of any person;

4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, ~~provided that~~ so long as a reasonable alternative site is available within the unit; and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

5. If the surface owner is an interstate park commission, the location of the well or pipeline will unreasonably infringe on the surface owner's use of the surface, ~~provided that~~ so long as a reasonable alternative site is available within the unit; and ~~that~~ granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

C. The only objections to permits or permit modifications that may be raised by a royalty owners owner are ~~whether that~~ the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest; ~~or~~

2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and

3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.



D. Objections to permits or permit modifications may be raised by a coal owners owner or operators operator pursuant to the provisions of §§ ~~45.1-361.11~~ 45.2-1611 and ~~45.1-361.12~~ 45.2-1612.

E. The only objections to permits or permit modifications that may be raised by a mineral owners owner are those that could be raised by a coal owner under § ~~45.1-361.11~~ provided 45.2-1611, so long as the mineral owner makes the objection and affirmatively proves that it does in fact apply with equal force to the mineral in question.

F. The only objections to permits or permit modifications that may be raised by a gas storage field operators operator are those in which the gas storage operator affirmatively proves that the proposed well work will adversely affect the operation of his ~~State Corporation Commission-certificated~~ gas storage field certificated by the State Corporation Commission; however, nothing in this subsection shall be construed to preclude the owner of nonstorage strata from ~~the drilling of wells~~ a well for the purpose of producing oil or gas from any stratum above or below the storage stratum.

G. ~~The Director shall have no jurisdiction to hear objections with respect to any matter subject to the jurisdiction of the Board as set out in Article 2 (§ 45.1-361.13 et seq.) of this chapter. Such objections shall be referred to the Board in a manner prescribed by the Director.~~

~~H.~~ The Director shall fix a time and place for an informal fact-finding hearing concerning ~~such objections~~ an objection filed pursuant to this section. The hearing shall ~~not~~ be scheduled for not less than ~~twenty~~ 20 nor more than ~~thirty~~ 30 days after the objection is filed. The Director shall prepare a notice of the hearing, stating all objections and by whom each is made, and send a copy of such notice by certified mail, return receipt requested, at least ~~ten~~ 10 days prior to the hearing date; to the permit applicant and to every person with standing to object as prescribed by § ~~45.1-361.30~~ 45.2-1632.

~~I.~~ H. At the hearing, ~~should~~ if the parties fail to come to an agreement, the Director shall proceed to decide the objection pursuant to ~~those~~ the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) relating to informal fact-finding procedures.

**Drafting note: Language is updated for modern usage. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Subsection G, which addresses the jurisdiction of the Director, is moved to a more appropriate location in § 45.2-1629.**

~~§ 45.1-361.36~~ 45.2-1638. Appeals of Director's decisions to the Board.

A. Any person with standing under the provisions of § ~~45.1-361.30~~ 45.2-1632 who is aggrieved by a decision of the Director may appeal to the Board, subject to the limitations imposed by subsection B ~~of this section~~, by petition to the Board filed within ~~ten~~ 10 days following the appealed decision.

B. No petition for appeal may raise any matter other than ~~matters~~ a matter that was raised by the Director or ~~which~~ that the petitioner put in issue either by application or by

~~objections, proposals~~ an objection, proposal, or claims claim made and specified in writing at the informal fact-finding hearing held under § ~~45.1-361.35~~ 45.2-1637 leading to the appealed decision.

**Drafting note: Language is updated for modern usage. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

§ ~~45.1-361.37~~ 45.2-1639. Persons required to register; designated agents.

A. Any person who owns a well, drills a well, completes well work, operates any well or gathering pipeline, conducts ~~ground-disturbing~~ ground-disturbing geophysical explorations, or ~~who~~ transports gas or oil up to and including the first point of sale shall register with the Director and shall provide his name and address and the name, address, and official title of the person in charge of his operations in the Commonwealth.

B. Any person registering under subsection A ~~of this section~~ shall designate the name and address of an agent who shall be the attorney-in-fact of the registrant for the purposes ~~hereinafter~~ set forth in this section. The designated agent shall be a resident of the Commonwealth. Notices, orders, other communications, and all processes issued pursuant to this chapter may be served upon or otherwise delivered to the designated agent as and for the operator. Any designation of an agent shall remain in force until the Director is notified in writing of a designation termination and the designation of a new agent.

**Drafting note: Language is updated for clarity and technical changes are made.**

§ ~~45.1-361.38~~ 45.2-1640. Report of permitted activities and production required; contents.

A. Each holder of a permit for a gas or oil well or gathering ~~pipelines~~ pipeline shall file monthly and annual reports of his activities as prescribed by the Director. ~~These~~ Such reports shall be for the purpose of obtaining information regarding the production and sale of gas and oil resources, as well as information concerning the ownership and control of permitted activities. Filing of ~~these~~ such reports by a permittee shall be a condition of such permit. Every annual report filed by a permittee shall contain a certification that such permittee has paid all severance taxes levied under the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3741.

B. At the same time that a permittee files the monthly and annual reports as required by subsection A, the permittee shall send copies of the reports by mail to the commissioner of the revenue of the political subdivision where the permitted ~~wells are~~ well is located.

**Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~45.1-361.39~~ 45.2-1641. Developing a gas or oil well as a water well.

~~Should~~ If any well drilled for gas or oil does not produce commercial or paying quantities of either resource, the well may be developed as a water well upon the request of the

surface owner of the property on which the well is located. Any such development of ~~such~~ a water well shall occur only after notice is given to the Director and his approval has been received. Such development of a water well shall be performed in accordance with applicable state and local requirements. Unless the gas or oil operator and surface owner otherwise agree, the surface owner shall pay the gas or oil operator a reasonable sum for all casing and tubing set and left in the well ~~which~~ that would have otherwise been removed upon plugging of the well.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-361.40~~ 45.2-1642. Orphaned Well Fund; orphaned wells.

~~A. The~~ There is hereby created in the state treasury a special nonreverting fund to be known as the Orphaned Well Fund, referred to in this section as "the Fund," is hereby established in the state treasury as a special non-lapsing revolving fund to be administered by the Department pursuant to the provisions of this section. The Fund shall consist of such Fund." All moneys as are appropriated to it by the General Assembly and such any surcharges as are collected pursuant to subsection D 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. The Orphaned Well Fund shall be established on the books of the Comptroller and any funds. 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. In the event of a discontinuance of the Fund, any amounts remaining in it shall be placed in the Gas and Oil Plugging Restoration Fund. Moneys from the Fund shall be used ~~only~~ solely for purposes of restoration and plugging of orphaned wells. 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 or his designee.

B. The Director shall conduct a survey to determine the condition and location of orphaned wells in the Commonwealth. He shall establish priorities for the plugging and restoration of the identified orphaned wells. The plugging and restoration of ~~orphan~~ orphaned well sites that pose an imminent danger to public safety shall have the highest priority.

C. In performing his duties under this section, the Director shall make every reasonable effort to identify and obtain the permission of a surface owner prior to entering onto the surface owner's land. In all cases, the Director shall as soon as practicable cause to be published in a newspaper of general circulation in the county or city wherein an orphaned well is located a notice of the proposed plugging and restoration work to be conducted on the property.

D. Each operator who applies for a new permit for any activity other than geophysical operations shall pay a \$200 surcharge per permit into the Fund. Such surcharge shall continue until the Director determines that all orphaned wells in the Commonwealth are properly plugged and their sites are properly stabilized.

E. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall be placed in the Gas and Oil Plugging Restoration Fund created pursuant to § 45.2-1634.

**Drafting note: The nonreverting fund language for the Orphaned Well Fund is updated to reflect current language requested by the Department of the Treasury for nonreverting funds in the Code. A sentence in subsection A, regarding discontinuance of the Fund, is moved to end of the section and designated as subsection E. Technical changes are made. A cross-reference to § 45.2-1634, which creates the Gas and Oil Plugging and Restoration Fund, is added. Language is updated for modern usage and consistency.**

§ ~~45.1-361.41~~ 45.2-1643. Interference by injection wells with ~~ground water~~ groundwater supply.

A. For purposes of this section:

"Beneficial use" means the same as that term is defined in § 62.1-255.

"Groundwater" means the same as that term is defined in § 62.1-255.

B. Any person who owns or operates an injection well in a manner that proximately causes the contamination or diminution of ~~ground water~~ groundwater used for a beneficial use by any person who resides within the lesser of (i) the area of review required by the ~~United States~~ U.S. Environmental Protection Agency for the permitting of ~~that such~~ injection well; or (ii) a ~~one-half mile~~ one-half-mile radius of the well shall provide the person with a replacement water supply. A replacement water supply shall provide the person ~~or persons~~ with water of equivalent quality and quantity as was provided by ~~ground water~~ groundwater prior to the contamination or diminution of the water supply resulting from the operation of the injection well. A replacement water supply shall include the provision of necessary storage and service facilities. ~~"Ground water" shall have the same meaning ascribed to it in § 62.1-255. "Beneficial use" shall have the same meaning ascribed to it in § 62.1-10.~~

~~B-C.~~ This section shall apply to any injection well, ~~whether~~ operating under a permit from the Director of the Department of Mines, Minerals and Energy issued ~~prior to, on or after~~ July 1, 1992.

**Drafting note: Definitions applicable to the section are moved to a new first subsection and the citation for the definition of "beneficial use" is corrected. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The reference to a permit issued prior to, on, or after July 1, 1992, is removed as meaningless. Language is updated for modern usage.**

§ ~~45.1-361.42~~ 45.2-1644. Safety in coalbed methane gas, oil, and geophysical operations.

The Director shall inspect permitted coalbed methane well and related facility operations to ensure the safety of persons on permitted sites. ~~When the~~ If an inspection reveals any hazardous condition that creates an imminent danger, the Director shall issue a closure order pursuant to § ~~45.1-361.27~~ 45.2-1629 requiring the area to be cleared or the equipment removed from use, except for (i) work necessary to continue to vent methane from an active underground mine ~~if it such work~~ if such work can be done safely and (ii) any work necessary to correct or eliminate the imminent danger. The Director shall lift the closure order when he finds that the

imminent danger has been corrected or eliminated. ~~When the~~ If an inspection reveals any other condition that creates a risk to the safety or health of any person on the permitted site, the Director shall notify the Department of Labor and Industry for actions under Title 40.1, as applicable.

**Drafting note: Language is updated for modern usage and clarity.**

Article 4.

Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia; Hydraulic Fracturing.

**Drafting note: Existing §§ 62.1-195.1 and 62.1-195.3, relating to drilling in the Chesapeake Bay and Tidewater Virginia and hydraulic fracturing in a groundwater management area, are relocated to proposed Article 4. Chapter-wide provisions in existing Chapter 22.1 are made applicable by their terms to existing §§ 62.1-195.1 and 62.1-195.3.**

~~§ 62.1-195.1~~ 45.2-1645. Chesapeake Bay; drilling for ~~oil or~~ gas or oil prohibited.

~~A. Notwithstanding any other law, a no person shall not drill for oil or gas or oil in the waters of the Chesapeake Bay or any of its tributaries. The provisions of this subsection shall be enforced consistent with the requirements of this chapter.~~

**Drafting note: Existing § 62.1-195.1 is divided into two proposed sections to separate two distinct topics. The first sentence of the existing section, prohibiting drilling in the Chesapeake Bay, is retained in this proposed section. The terms in the phrase "oil or gas" are reversed for consistency with the rest of the chapter. The prohibitory language in the first sentence is recast in affirmative form consistent with current legislative drafting practice. The second sentence of the proposed section contains the enforcement language from existing subsection G that is applicable to the proposed section.**

§ 45.2-1646. Tidewater Virginia; drilling for gas or oil prohibited in certain areas.

A. In Tidewater Virginia, as defined in § 62.1-44.15:68, a no person shall not drill for oil or gas in, whichever is the greater distance or oil (i) within 500 feet of the shoreline of the waters of the Chesapeake Bay or any of its tributaries, as measured landward of the shoreline, or (ii) if it is farther than 500 feet from such shoreline, in any

~~1. Those Chesapeake Bay Preservation Areas Area, as defined in § 62.1-44.15:68, which that a local government designates as "Resource a Resource Protection Areas" Area and incorporates into its local comprehensive plan. "Resource Resource Protection Areas" Areas shall be defined according to the criteria developed by the State Water Control Board pursuant to § 62.1-44.15:72~~

~~;~~

~~2. Five hundred feet from the shoreline of the waters of the Chesapeake Bay or any of its tributaries.~~

~~B. In the event that~~ If any person desires to drill for ~~oil or~~ gas or oil in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A, he shall submit an environmental impact assessment to the Department of ~~Mines, Minerals and Energy~~

as part of his application for a permit to drill ~~an environmental impact assessment. The.~~ Such environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of ~~oil or gas~~ or oil into the environment during drilling, production, and transportation ~~on~~ for:
  - a. Finfish, shellfish, and other marine or freshwater organisms;
  - b. Birds and other wildlife that use the air and water resources;
  - c. Air and water quality; and
  - d. Land and water resources;
2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and
3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department ~~of Mines, Minerals and Energy~~ shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. ~~The Department of Environmental Quality~~ DEQ shall:

1. Publish in the Virginia Register of Regulations a notice that is sufficient to identify the environmental impact assessment and ~~providing~~ provides an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than 30 days from the date of publication;
2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to ~~the Department of Environmental Quality~~ DEQ; and
3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department ~~of Mines, Minerals and Energy~~, within 90 days after notification and receipt of the environmental impact assessment from the Department.

D. The Department ~~of Mines, Minerals and Energy~~ may shall not grant a permit under ~~§ 45.1-361.29~~ 45.2-1631 until it has considered the findings and recommendations of ~~the Department of Environmental Quality~~ DEQ.

E. ~~The Department of Environmental Quality~~ DEQ shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A only if:

1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;

2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both ~~of which have been~~ already filed with and approved by the State Water Control Board. For purposes of this section, ~~the such~~ oil discharge contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The State Water Control Board's regulations governing the amount of any financial responsibility required shall take into account the type of operation, the location of the well, the risk of discharge or accidental release, the potential damage or injury to state waters or sensitive natural resource features or the impairment of their beneficial use that may result from discharge or release, the potential cost of containment and cleanup, and the nature and degree of injury or interference with general health, welfare, and property that may result from discharge or accidental release;

3. All land-disturbing activities resulting from the construction and operation of the permanent facilities necessary to implement the contingency plan and the area within the berm will be located outside ~~of those areas~~ any area described in subsection A;

4. The drilling site is stabilized with boards ~~or~~, gravel, or other materials ~~which~~ that will result in minimal amounts of runoff;

5. Persons certified in blowout prevention are present at all times during drilling;

6. Conductor pipe is set as necessary from the surface;

7. Casing is set and ~~pressure grouted~~ pressure-grouted from the surface to a point at least ~~2500~~ 2,500 feet below the surface or 300 feet below the deepest known ~~ground water~~ groundwater, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;

8. Freshwater-based drilling mud is used during drilling;

9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids, or other contaminated fluids;

10. Multiple blow-out preventers are employed; and

11. The person complies with all requirements of Chapter ~~22.1 16~~ (~~§ 45.1-361.1~~ 45.2-1600 et seq.) ~~of Title 45.1~~ and regulations ~~promulgated~~ adopted thereunder.

G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be enforced consistent with the requirements of Chapter ~~22.1 16~~ (~~§ 45.1-361.1~~ 45.2-1600 et seq.) ~~of Title 45.1~~.

H. ~~In the event that~~ If exploration activities in Tidewater Virginia result in a finding by the Director ~~of the Department of Mines, Minerals and Energy~~ that production of commercially recoverable quantities of oil is likely and imminent, the Director ~~of the Department of Mines, Minerals and Energy~~ shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards, transportation issues, state-of-the-art oil production well technology, economic impacts, regulatory initiatives, operational standards, and other matters related to the production of oil in the region. No

~~permits permit for an oil production wells well~~ shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes; (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives; and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within 18 months of the notification of the Secretaries of the findings of the Director of the Department of Mines, Minerals and Energy.

**Drafting note: Existing § 62.1-195.1 is divided into two proposed sections to separate two distinct topics. The bulk of the existing section, from the second sentence to the end of the section, restricts drilling in Tidewater Virginia and is retained as this proposed section. The terms in the phrase "oil or gas" are reversed for consistency with the rest of the chapter. Proposed subsection A is reorganized for clarity and the prohibitory language in that subsection is recast in affirmative form consistent with current drafting practice. Other technical changes are made for clarity, including changes to make the use of "shall" and "may" consistent and changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 62.1-195.3~~ 45.2-1647. Hydraulic fracturing; groundwater management area.

No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation prior to January 1, 2020, pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.). For purposes of this section, "hydraulic fracturing" means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of ~~oil or~~ natural gas or oil.

**Drafting note: The terms in the phrase "oil or natural gas" are reversed for consistency with the rest of the chapter.**

#### Article ~~4~~ 5.

##### Replacement of Water by Gas Well Operators.

**Drafting note: Existing Article 4, relating to replacement of water by gas well operators, is retained as proposed Article 5.**

~~§ 45.1-361.43~~ 45.2-1648. Operator's right to sample water ~~and quality~~.

An operator ~~shall have the right to~~ may enter upon surface land at reasonable times and in a reasonable manner to obtain samples of water from any ~~water wells well~~ that ~~are~~ is (i) located within 1,320 feet of a proposed or existing gas well and (ii) actually being utilized by the surface owner or occupant for domestic use. If the surface owner or occupant refuses to allow the operator to sample or causes the operator to be prevented from sampling any such water well, the operator shall promptly notify the Department of such refusal or prevention. The Department shall maintain a record of such notifications. In the event of such a refusal or



prevention, the surface owner shall not be entitled to the remedies set forth in ~~§ 45.1-361.44~~  
45.2-1649.

**Drafting note: The reference to "quality" is removed from the catchline because it is not mentioned in the section. Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 45.1-361.44~~ 45.2-1649. Replacement of water supply.

If any water supply of a surface owner who obtains all or part of his supply of water for domestic use from a water well has been materially affected by contamination or partial or complete interruption proximately resulting from a gas well operation within 1,320 feet of the water well, the operator of such gas well shall promptly provide a replacement water supply ~~which~~ that shall be capable of meeting the uses such water supply met prior to the contamination or partial or complete interruption.

**Drafting note: Language is updated for modern usage.**

~~CHAPTER 23.~~

~~SURFACE MINING OF COAL FOR OPERATIONS DISTURBING TWO SURFACE  
ACRES OR LESS.~~

~~§§ 45.1-362 through 45.1-380.~~

**Drafting note: Repealed by Acts 1988, c. 295.**



SUBTITLE V.

OTHER SOURCES OF ENERGY; ENERGY POLICY.

**Drafting note:** Proposed Subtitle V is created to logically organize provisions relating to wind energy, solar energy, geothermal energy, nuclear energy, and other sources of energy not related to coal, minerals, or gas and oil. Proposed Subtitle V contains five chapters: Chapter 17 (Other Sources of Energy Generally), Chapter 18 (Wind Energy), Chapter 19 (Solar Energy), Chapter 20 (Geothermal Energy), and Chapter 21 (Nuclear Energy).

CHAPTER 17.

OTHER SOURCES OF ENERGY GENERALLY; ENERGY POLICY.

**Drafting note:** Proposed Chapter 17 is composed of a new Article 1 with chapter-wide definitions and a portion of existing Chapter 26 (§ 45.1-390 et seq.) of Title 45.1; Chapter 6.1 (§ 11-34.1 et seq.) of Title 11 as Article 2; and Chapters 1 (§ 67-100 et seq.), 2 (§ 67-200 et seq.), 6 (§ 67-600 et seq.), and 16 (§ 67-1600 et seq.) of Title 67 as Articles 3 through 6, respectively. The proposed articles are as follows: Article 1 (General Provisions), Article 2 (Energy and Operational Efficiency Performance-Based Contracting Act), Article 3 (Energy Policy of the Commonwealth), Article 4 (Virginia Energy Plan), Article 5 (Virginia Coastal Energy Research Consortium), and Article 6 (Southwest Virginia Energy Research and Development Authority).

Article 1.

General Provisions.

**Drafting note:** Proposed Article 1 is created to logically organize general provisions applicable to proposed Chapter 17.

~~§ 67-200~~ 45.2-1700. Definitions.

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

"Consortium" means the Virginia Coastal Energy Research Consortium established pursuant to Article 5 (§ 45.2-1714 et seq.).

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

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

"Plan" means the Virginia Energy Plan prepared pursuant to ~~this chapter, including any updates thereto~~ Article 4 (§ 45.2-1700 et seq.).

**Drafting note:** Existing § 67-200 is relocated from Title 67 to consolidate definitions in proposed Chapter 17. The definition of "Consortium" is added and the definition of "Department" is stricken as unnecessary because it is defined for the title in proposed § 45.2-100. In the definition of "Plan," a citation is added and the unnecessary phrase "including any updates thereto" is stricken.

~~CHAPTER 26.~~  
~~ENERGY DIVISION, ETC.~~

**Drafting note: The first section of existing Chapter 26 is relocated to this proposed article, while the remaining two sections of existing Chapter 26 are relocated to proposed Chapter 19.**

~~§ 45.1-390~~ 45.2-1701. Division of Energy established; ~~findings and policy;~~ powers and duties.

A. ~~The General Assembly finds that because energy related issues continually confront the Commonwealth, and many separate agencies are involved in providing energy programs and services, there exists a need for a state organization responsible for coordinating Virginia's energy programs and ensuring Virginia's commitment to the development of renewable and indigenous energy sources, as well as the efficient use of traditional energy resources. In accordance with this need, the Division of Energy is created~~ established in the Department of ~~Mines, Minerals and Energy~~. The Director ~~shall have~~ has the immediate authority to coordinate the development and implementation of energy policy in Virginia the Commonwealth.

B. The Division shall coordinate the energy-related activities of the various state agencies and advise the Governor on energy issues that arise at the local, state, and national levels. All state agencies and institutions shall cooperate fully with the Division to assist in the proper execution of the duties assigned by this section.

C. In addition, the Division is authorized to make and enter into all contracts and agreements necessary or incidental to the performance of its duties or the execution of its powers, including the implementation of energy information and conservation plans and programs.

D. The Division shall:

1. Consult with ~~any or all~~ state agencies and institutions concerning energy-related activities or policies as needed for the proper execution of the duties assigned to the Division by this section;

2. ~~Maintain~~ Serve as the Commonwealth's liaison with appropriate agencies of the federal government ~~on concerning~~ the activities of the federal government related to energy production, consumption, and transportation and energy resource management in general;

3. Provide services to encourage efforts by and among ~~Virginia~~ businesses in the Commonwealth, industries, utilities, academic institutions, state and local governments, and private institutions to develop energy resources and energy conservation programs ~~and energy resources~~;

4. In consultation with the State Corporation Commission, the Department of Environmental Quality, and the Virginia Center for Coal and Energy Research, prepare the Virginia Energy Plan pursuant to ~~§ 67-201~~ 45.2-1710;

5. Observe the energy-related activities of state agencies and advise ~~these~~ such agencies in order to encourage conformity with established energy policy; and

6. Serve, pursuant to § 58.1-3660, as the state certifying authority for solar energy projects and for the production of coal, oil, and gas, including gas, natural gas, and coalbed methane gas.

**Drafting note: Technical changes are made, including the addition of subsection designations. The first sentence of proposed subsection A containing a statement of legislative findings and policy is stricken in accordance with the Code Commission's policy that such statements do not have general and permanent application and thus are not to be included in the Code. The phrase "Virginia businesses" is replaced with "businesses in the Commonwealth" and language is updated for modern usage.**

~~§ 45.1-390.1. Repealed.~~

**Drafting note: Repealed by Acts 1993, c. 274.**

~~§ 45.1-392. Repealed.~~

**Drafting note: Repealed by Acts 2011, cc. 815 and 864, cl. 2, effective July 1, 2013.**

~~§§ 45.1-393, 45.1-394. Repealed.~~

**Drafting note: Repealed by Acts 2011, cc. 815 and 864, cl. 3, effective July 1, 2017.**

#### CHAPTER 6.1.

#### ~~ENERGY AND OPERATIONAL EFFICIENCY PERFORMANCE-BASED CONTRACTING ACT.~~

##### Article 2.

##### Energy and Operational Efficiency Performance-Based Contracting Act.

**Drafting note: Existing Chapter 6.1 of Title 11, comprising the Energy and Operational Efficiency Performance-Based Contracting Act, is relocated as proposed Article 2 of Chapter 17.**

~~§ 11-34.1. Legislative intent.~~

~~The General Assembly finds that investment in energy conservation measures and facility technology infrastructure upgrades and modernization in facilities owned by state and local government can reduce the amount of energy consumed, reduce long term operational costs and produce immediate and long term savings. It is the policy of the Commonwealth to encourage public bodies to invest in energy conservation measures and facility technology infrastructure upgrades that reduce energy consumption, produce a cost savings, and improve the quality of indoor air in facilities, and when economically feasible, operate, maintain, or renovate facilities in such a manner so as to minimize energy consumption and reduce operational costs associated with facility technology infrastructure. Furthermore, state aid and other amounts appropriated for distribution to public bodies shall not be reduced as a result of energy and operational savings realized from a guaranteed savings contract or a lease purchase agreement for the purchase and installation of energy conservation and facility technology infrastructure upgrades and modernization.~~

**Drafting note: The statement of legislative intent for existing Chapter 6.1 of Title 11 is stricken in accordance with the Code Commission's policy that statements of findings and policy do not have general and permanent application and thus are not to be included in the Code.**

~~§ 11-34.2~~ 45.2-1702. Definitions.

As used in this ~~chapter~~ article:

"Contracting entity" means any public body as defined in § 2.2-4301.

"Energy conservation measures ~~and facility technology infrastructure~~" means the use of methods, and techniques, the application of knowledge, or the installation of devices, including an alteration or betterment to of an existing facility, that ~~reduce~~ reduces energy consumption or operating costs; and includes, ~~but is not limited to~~:

1. Insulation of the facility structure and systems within the facility.

2. ~~Storm~~ Installation of storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing, or heat-reflective, glazed and coated window and door systems, or additional glazing; reductions in glass area, ~~and;~~ or the completion of other window and door system modifications that reduce energy consumption.

3. ~~Automatic~~ Installation of automatic energy control systems, including related software. ~~Required, or required~~ network communication wiring, computer devices, wiring, and support services. ~~Additionally, designing, or the design and implementing~~ implementation of major building technology infrastructure with operational improvements.

4. ~~Heating~~ Modification or replacement of heating, ventilating, or air-conditioning ~~system modifications or replacements~~ systems.

5. Replacement or ~~modifications~~ modification of lighting fixtures to increase the energy efficiency of the lighting system ~~which~~. Such replacement or modification shall, at a minimum, ~~shall~~ conform to the applicable provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

6. ~~Energy~~ Installation of energy recovery systems.

7. ~~Cogeneration~~ Installation of cogeneration systems that produce, in addition to electricity, steam or ~~forms another form~~ of energy, such as heat, ~~as well as electricity,~~ for use primarily within a facility or complex of facilities.

8. ~~Energy~~ Installation of energy conservation measures that provide long-term operating cost reductions and significantly reduce the BTUs consumed.

9. ~~Building~~ Installation of building technology infrastructure measures that provide long-term operating cost reductions and reduce related operational costs.

10. ~~Renewable~~ Installation of an energy-systems system, such as solar, biomass, ~~and~~ or wind.

11. ~~Devices~~ Installation of devices that reduce water consumption or sewer charges.

"Energy cost savings" means a measured reduction in fuel, energy, or operation and maintenance costs created from the implementation of one or more energy conservation

measures when compared with an established baseline for previous fuel, energy, or operation and maintenance costs. When calculating "energy cost savings" attributable to the services performed or equipment installed pursuant to a performance-based efficiency contract, maintenance savings shall be included.

"Energy performance-based contract" means a contract for the evaluation, recommendation, and implementation of energy conservation measures and facility technology infrastructure upgrades and modernization that includes, at a minimum:

1. The design and installation of equipment to implement one or more of such measures; and, if applicable, the operation and maintenance of such measures.

2. The amount of any actual annual savings. ~~This~~ Such amount ~~must~~ shall meet or exceed the total annual contract payments made by the contracting entity for such contract.

3. ~~Financing~~ The financing charges to be incurred by the contracting entity for such contract.

"Maintenance savings" means the operating expenses eliminated and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the performance contractor.

"Performance guarantee bond" means ~~for each year of the energy program, the energy performance contractor shall provide a~~ the performance bond provided by the energy performance contractor for each year of the energy program in an amount equal to, but no greater than, the guaranteed measured and verifiable annual savings set forth in the program.

**Drafting note: The defined term "energy conservation measures and facility technology infrastructure," also rendered inconsistently within existing Chapter 6.1 of Title 11 as "energy conservation measures and facility technology infrastructure measures," is shortened to "energy conservation measures" for clarity and consistency. In the second definition, "but is not limited to" is removed following the term "includes" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Technical changes are made and language is updated for modern usage.**

~~§ 11-34.3~~ 45.2-1703. ~~Energy Performance-Based Contract Procedures~~ performance-based contract procedures; required contract provisions.

A. Any contracting entity may enter into an energy performance-based contract with an energy performance contractor to significantly reduce (i) energy costs to a level established by the public body or (ii) operating costs of a facility through one or more energy conservation or operational efficiency measures. For the purposes of this ~~chapter~~ article, energy conservation or operational efficiency measures shall not include roof replacement projects.

B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2. The evaluation of the request for ~~proposal~~ proposals shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, ~~post installation~~ post-installation project monitoring, and

reporting. Notwithstanding any other provision of law, any contracting entity may purchase energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to this ~~chapter~~ article even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

C. Before entering into a contract for energy conservation measures ~~and facility technology infrastructure upgrades and modernization measures~~, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures ~~and facility technology infrastructure upgrades and modernization measures~~ in the an amount the contracting entity finds reasonable and necessary to protect its interests.

D. Prior to the design and installation of ~~the any~~ energy conservation measure measures, the contracting entity shall obtain from the energy performance contractor a report disclosing all costs associated with ~~the such~~ energy conservation measure measures and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting entity may enter into an energy performance-based contract if it finds (i) the amount the entity would spend on the energy conservation measures ~~and facility and technology infrastructure upgrades and modernization measures~~ recommended in the report will not exceed the amount to be saved in energy and operation costs more than 20 years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed and (ii) the energy performance contractor provides a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The contract may provide for payments over a period ~~of time~~ not to exceed 20 years.

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually for up to 20 years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such ~~contracts~~ contract shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy conservation ~~and facility and technology infrastructure upgrades and modernization~~ measures that cannot be totally funded by the energy and operational savings.

F. An energy performance-based contract shall include the following provisions:

1. A guarantee by the energy performance contractor that annual energy and operational cost savings will meet or exceed the amortized cost of energy conservation measures. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy savings or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy and operational savings measures. The qualified provider shall reimburse the contracting entity for any shortfall of guaranteed energy savings projected in the contract.



2. A requirement that the energy performance contractor to whom the contract is awarded provide a 100 percent performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as outlined in the contract document.

3. A requirement that the energy performance contractor provide to the contracting entity an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall that may occur.

G. The Department of Mines, Minerals and Energy (the Department) shall make a reasonable effort, as long as workload permits, to:

1. Provide general advice, upon request, to local governments ~~that wish to consider~~ considering pursuit of an energy performance-based contract pursuant to this ~~section~~ article;

2. Annually compile a list of performance-based contracts entered into by local governments of which the Department ~~may become~~ becomes aware.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 11-34.4~~ 45.2-1704. Application of ~~chapter~~ article.

The provisions of this ~~chapter~~ article shall not apply to any new construction ~~projects~~ project undertaken by a public bodies ~~body~~.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

## ~~CHAPTER 1.~~

### ~~ENERGY POLICY OF THE COMMONWEALTH.~~

#### Article 3.

#### Energy Policy of the Commonwealth.

**Drafting note: Existing Chapter 1 of Title 67, relating to the energy policy of the Commonwealth, is relocated as proposed Article 3 of Chapter 17.**

~~§ 67-100~~ 45.2-1705. Legislative findings.

The General Assembly hereby finds that:

1. Energy is essential to the health, safety, and welfare of the people of ~~this~~ the Commonwealth and to the Commonwealth's economy;

2. The ~~state~~ government of the Commonwealth should facilitate the availability and delivery of reliable and adequate supplies of energy to industrial, commercial, and residential users at reasonable costs ~~such~~ so that these ~~such~~ users and the Commonwealth's economy are able to be productive;

3. The Commonwealth would benefit from articulating clear objectives pertaining to energy issues, adopting an energy policy that advances ~~these~~ such objectives, and establishing a procedure for measuring the implementation of ~~these policies~~ such policy;

4. Climate change is an urgent and pressing challenge for ~~Virginia~~ the Commonwealth. Swift decarbonization and a transition to clean energy are required to meet the urgency of the challenge; and

5. The Commonwealth will benefit from being a leader in deploying a low-carbon energy economy.

**Drafting note: Technical changes are made and language is updated for modern usage.**

§ ~~67-104~~ 45.2-1706. Energy objectives.

A. The Commonwealth recognizes that each of the following objectives pertaining to energy issues will advance the health, welfare, and safety of the residents of the Commonwealth:

1. Ensuring an adequate energy supply and a ~~Virginia-based~~ Commonwealth-based energy production capacity;

2. Minimizing the Commonwealth's long-term exposure to volatility and increases in world energy prices through greater energy independence;

3. Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the Commonwealth's economy;

4. Managing the rate of consumption of existing energy resources in relation to economic growth;

5. Establishing sufficient supply and delivery infrastructure to enable widespread deployment of distributed energy resources and to maintain reliable energy availability in the event of a disruption occurring ~~to~~ in a portion of the Commonwealth's energy matrix;

6. Maximizing energy efficiency programs, ~~which~~ that are the lowest-cost energy option to reduce greenhouse gas emissions; in order to produce electricity cost savings and ~~to~~ create jobs and economic opportunity from the energy efficiency service sector;

7. Facilitating conservation;

8. Optimizing intrastate and interstate use of energy supply and delivery to maximize energy availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth's economy ~~as stated in~~ pursuant to subdivision 2 of § ~~67-100~~ 45.2-1705;

9. Increasing ~~Virginia's~~ the Commonwealth's reliance on sources of energy that, compared to traditional energy resources, are less polluting of the Commonwealth's air and waters;

10. Establishing greenhouse gas emissions reduction goals across ~~Virginia's~~ the Commonwealth's economy sufficient to reach net-zero emissions by 2045, including in the electric power, transportation, industrial, agricultural, building, and infrastructure sectors;

11. Requiring that pathways to net-zero greenhouse gas emissions be determined based on technical, policy, and economic analysis to maximize their effectiveness, optimize ~~Virginia's~~ the Commonwealth's economic development, and create quality jobs while minimizing adverse impacts on public health, affected communities, and the environment;

12. Developing energy resources necessary to produce 30 percent of ~~Virginia's~~ the Commonwealth's electricity from renewable energy sources by 2030 and 100 percent of ~~Virginia's~~ the Commonwealth's electricity from carbon-free sources by 2040;

13. Enabling widespread integration of distributed energy resources into the grid, including storage and carbon-free generation, such as rooftop solar installations as defined in § 56-576;

14. Removing impediments to the use of carbon-free energy resources located within and outside the Commonwealth, including distributed renewable energy generation resources, nuclear power plants, and generation resources that employ carbon capture and sequestration;

15. Mitigating the negative impacts of climate change and the energy transition on disadvantaged communities and prioritizing investment in ~~these~~ such communities;

16. Developing the carbon-free energy resources required to fully decarbonize the electric power supply of the Commonwealth, including deployment of 30 percent ~~renewables~~ renewable energy sources by 2030 and realizing 100 percent carbon-free electric power by 2040;

17. Increasing ~~Virginia's~~ the Commonwealth's reliance on and production of sustainably produced biofuels made from traditional agricultural crops and other feedstocks, such as winter cover crops, warm season grasses, fast-growing trees, algae, or other suitable feedstocks grown in the Commonwealth that will create jobs and income, produce clean-burning fuels that will help to improve air quality, and provide the new markets for ~~Virginia's~~ the Commonwealth's silvicultural and agricultural products needed to preserve farm employment, conserve farmland and forestland, and increase implementation of silvicultural and agricultural best management practices to protect water quality; and

18. Ensuring that decision making is transparent and includes opportunities for full participation by the public.

B. Except as provided in subsection D of § 56-585.1, nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.).

**Drafting note: The term "renewables" in subdivision A 16 is replaced with "renewable energy sources," the term used in subdivision A 1 of the following section. Technical changes are made, including the addition of subsection designations, and language is updated for modern usage.**

~~§ 67-102~~ 45.2-1707. Commonwealth Energy Policy.

A. To achieve the objectives enumerated in ~~§ 67-101~~ 45.2-1706, it ~~shall be~~ is the policy of the Commonwealth to:

1. Support research and development of, and promote the use of, renewable energy sources;
  2. Ensure that the combination of energy supplies and energy-saving systems ~~are~~ is sufficient to support the demands of economic growth;
  3. Promote cost-effective conservation of energy and fuel supplies;
  4. Ensure the adequate supply of natural gas necessary to ensure the reliability of the electricity supply and the needs of businesses during the transition to renewable energy.;
  5. Promote the generation of electricity through technologies that do not contribute to greenhouse gases and global warming;
  6. Promote the use of motor vehicles that utilize alternate fuels and are highly energy efficient;
  7. Support efforts to reduce the demand for imported petroleum by developing alternative technologies, including ~~but not limited to~~ the production of synthetic and hydrogen-based fuels, and the infrastructure required for the widespread implementation of such technologies;
  8. Ensure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities;
  9. Establish greenhouse gas emissions reduction standards across all sectors of ~~Virginia's~~ the Commonwealth's economy that target net-zero carbon emissions ~~carbon~~ by 2045;
  10. Enact mandatory clean energy standards and overall strategies for reaching net-zero carbon in the electric power sector by 2040;
  11. Equitably incorporate requirements for technical, policy, and economic analyses and assessments that recognize the unique attributes of different energy resources and delivery systems to identify pathways to net-zero carbon that maximize ~~Virginia's~~ the Commonwealth's energy reliability and resilience, economic development, and jobs;
  12. Minimize the negative impacts of climate change and the energy transition on economically disadvantaged or minority communities and prioritize investment in ~~these~~ such areas; and
  13. Support the distributed generation of renewable electricity by:
    - a. Encouraging private sector investments in distributed renewable energy;
    - b. Increasing the security of the electricity grid by supporting distributed renewable energy projects with the potential to supply electric energy to critical facilities during a widespread power outage; and
    - c. Augmenting the exercise of private property rights by landowners desiring to generate their own energy from renewable energy sources on their lands.
- B. The elements of the policy set forth in subsection A shall be referred to collectively in this title as the Commonwealth Energy Policy.

C. All agencies and political subdivisions of the Commonwealth, in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate, shall act in a manner consistent therewith.

D. The Commonwealth Energy Policy is intended to provide guidance to the agencies and political subdivisions of the Commonwealth in taking discretionary action with regard to energy issues, and shall not be construed to amend, repeal, or override any contrary provision of applicable law. ~~The~~ No failure or refusal of any person to recognize the elements of the Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy Policy, or to take any other action whatsoever, shall ~~not~~ create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.

**Drafting note: In subdivision A 7, the phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." In subdivision A 9, the unconventional phrase "net-zero emissions carbon" is changed to "net-zero carbon emissions" for clarity. Language is updated for modern usage. The prohibitory language at the end of subsection D is recast in affirmative form consistent with current drafting practice.**

~~§-67-103~~ 45.2-1708. Role of local governments in achieving objectives of the Commonwealth Energy Policy.

A. In the development of any local ordinance addressing the siting of renewable energy facilities that generate electricity from wind or solar resources, ~~the~~ such ordinance shall:

1. Be consistent with the provisions of the Commonwealth Energy Policy pursuant to subsection C of ~~§-67-102~~ 45.2-1707;

2. Provide reasonable criteria to be addressed in the siting of any renewable energy facility that generates electricity from wind ~~and~~ or solar resources. ~~The~~ Such criteria shall provide for the protection of the locality in a manner consistent with the goals of the Commonwealth to promote the generation of energy from wind and solar resources; and

3. Include provisions establishing reasonable requirements upon the siting of any such renewable energy facility, including provisions limiting noise, requiring buffer areas and setbacks, and addressing generation facility decommissioning.

B. Any measures required by ~~the~~ an ordinance adopted pursuant to subsection A shall be consistent with the locality's existing ordinances.

**Drafting note: Technical changes are made, including the addition of subsection designations, and language is updated for clarity.**

~~§-67-104~~ 45.2-1709. Nuclear energy; considered a clean energy source.

For the purposes of the Commonwealth Energy Policy as set out in ~~§-67-102~~ 45.2-1707, in any clean energy initiative or carbon-free energy initiative undertaken, overseen, regulated, or permitted by the Department, nuclear energy shall be considered to be a clean energy source.

**Drafting note: Technical change.**

~~CHAPTER 2.~~  
~~VIRGINIA ENERGY PLAN.~~

Article 4.

Virginia Energy Plan.

**Drafting note: Existing Chapter 2 of Title 67, relating to the Virginia Energy Plan, is relocated as proposed Article 4 of Chapter 17. Existing § 67-200 is relocated as the definitions section at the beginning of the chapter.**

~~§ 67-201~~ 45.2-1710. Development of the Virginia Energy Plan.

A. The Division, in consultation with the State Corporation Commission, the Department of Environmental Quality, the Clean Energy Advisory Board, the solar, wind, and energy efficiency sectors, and a stakeholder group that ~~shall include~~ includes representatives of consumer, environmental, manufacturing, forestry, and agricultural organizations and natural gas and electric utilities, shall prepare a comprehensive Virginia Energy Plan (the Plan) that identifies actions over a 10-year period consistent with the goal of the Commonwealth Energy Policy set forth in ~~§ 67-102~~ 45.2-1707 to achieve, no later than 2045, a net-zero carbon energy economy for all sectors, including the electricity, transportation, building, agricultural, and industrial sectors. The Plan shall propose actions, consistent with the objectives enumerated in ~~§ 67-101~~ 45.2-1706, that will implement the Commonwealth Energy Policy set forth in ~~§ 67-102~~ 45.2-1707.

B. In addition, the Plan shall include:

1. Projections of energy consumption in the Commonwealth, including the use of fuel sources and costs of electricity, natural gas, gasoline, coal, renewable resources, and other forms of non-greenhouse-gas-generating energy resources, such as nuclear power, used in the Commonwealth;

2. An analysis of the adequacy of electricity generation, transmission, and distribution resources in the Commonwealth for the natural gas and electric industries, and how distributed energy resources and regional generation, transmission, and distribution resources affect the Commonwealth;

3. An analysis of siting requirements for electric generation resources and natural gas and electric transmission and distribution resources, including an assessment of state and local impediments to expanded use of distributed resources and recommendations to reduce or eliminate ~~these~~ such impediments;

4. An analysis of fuel diversity for electricity generation, recognizing the importance of flexibility in meeting future capacity needs;

5. An analysis of the efficient use of energy resources and conservation initiatives;

6. An analysis of how ~~these~~ such Virginia-specific issues relate to regional initiatives to ~~assure~~ ensure the adequacy of fuel production, generation, transmission, and distribution assets;

7. An analysis of the siting of energy resource development, refining~~or~~, and transmission facilities to identify any disproportionate adverse impact of such activities on economically disadvantaged or minority communities;

8. With regard to any regulations proposed or ~~promulgated~~ adopted by the U.S. Environmental Protection Agency to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § ~~7411 (d)~~ 7411(d), an analysis of (i) the costs to and benefits for energy producers and electric utility customers; (ii) the effect on energy markets and reliability; and (iii) the commercial availability of technology required to comply with such regulations;

9. An inventory of greenhouse gas emissions compiled using a method determined by the Department of Environmental Quality for the four years prior to the issuance of the Plan; and

10. Recommendations, based on the analyses completed under subdivisions 1 through 9, for legislative, regulatory, and other public and private actions to implement the elements of the Commonwealth Energy Policy.

C. In preparing the Plan, the Division and other agencies involved in the planning process shall utilize state geographic information systems, to the extent deemed practicable, to assess how recommendations in the Plan may affect pristine natural areas and other significant onshore natural resources. Effective October 1, 2024, interim updates on the Plan shall also contain projections for greenhouse gas emissions that would result from implementation of the Plan's recommendations.

D. In preparing the Plan, the Division and other agencies involved in the planning process shall develop a system for ~~describing~~ assigning numerical scores to ~~parcels~~ any parcel of real property based on the extent to which ~~the parcels are~~ such parcel is suitable for the siting of a wind energy facility or solar energy facility. For a wind energy ~~facilities~~ facility, the scoring system shall address the wind velocity, sustained velocity, and turbulence, ~~proximity to electric power transmission systems, potential impacts to natural and historic resources and to economically disadvantaged or minority communities, and compatibility with the local land use plan.~~ For either a wind energy facility or a solar energy ~~facilities~~ facility, the scoring system shall address the parcel's proximity to electric power transmission lines or systems, potential impacts of such a facility to natural and historic resources and to economically disadvantaged or minority communities, and compatibility with the local land use plan. The system developed pursuant to this section shall allow the suitability of the parcel for the siting of a wind energy ~~facility~~ or solar energy facility to be compared to the suitability of other parcels so scored, and shall be based on a scale that allows the suitability of the parcel for the siting of ~~a such an energy~~ a facility to be measured against the hypothetical score of an ideal location for such a facility.

E. ~~After July 1, 2007, upon~~ Upon receipt by the Division of a recommendation from the Department of General Services, a local governing body, or the parcel's owner stating that a parcel of real property is a potentially suitable location for a wind energy facility or solar energy

facility, the Division shall analyze the suitability of the parcel for the location of such a facility. In conducting its analysis, the Division shall ascribe a numerical score to the parcel using the scoring system developed pursuant to subsection D.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The term "regulations proposed or promulgated" is changed to "regulations proposed or adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. Duplicative language is removed from subsection D. An apparent error is corrected by removing the surplus "a" from the last sentence in subsection D. The obsolete 2007 date is stricken from subsection E and language is updated for modern usage.**

~~§ 67-202~~ 45.2-1711. Schedule for the Plan.

A. The Division shall complete the Plan ~~by July 1, 2007~~.

B. Prior to the completion of the Plan and ~~updates~~ each update thereof, the Division shall present drafts to, and consult with, the Virginia Coal and Energy Commission established pursuant to Chapter 25 (§ 30-188 et seq.) of Title 30 and the Commission on Electric Utility Regulation established pursuant to Chapter 31 (§ 30-201 et seq.) of Title 30.

C. The Plan shall be updated by the Division and submitted as provided in ~~§ 67-203 45.2-1713~~ by July 1, 2010, October 1, 2014, and every fourth October 1 thereafter. In addition, the Division shall provide interim updates on the Plan by October 1 of the third year of each Governor's administration. Updated reports shall reassess goals for energy conservation based on progress to date in meeting the goals in the previous ~~plan~~ Plan and lessons learned from attempts to meet such goals.

D. Beginning with the Plan update in 2014, the Division shall include a section ~~to set~~ setting forth energy policy positions relevant to any potential regulations proposed or promulgated by the State Air Pollution Control Board to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d). In ~~this~~ such section of the Plan, the Division shall address policy options for establishing separate standards of performance pursuant to § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d), for carbon dioxide emissions from existing fossil fuel-fired electric generating units to promote the Plan's overall goal of fuel diversity as follows:

1. The Plan shall address policy options for establishing the standards of performance for existing coal-fired electric generating units, including ~~but not limited to~~ the following factors:

a. The most suitable system of emission reduction that (i) takes into consideration (a) the cost and benefit of achieving such reduction, (b) any non-air quality health and environmental impacts, and (c) the energy requirements of the Commonwealth and (ii) has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;



b. Reductions in emissions of carbon dioxide that can be achieved through measures reasonably undertaken at each coal-fired electric generating unit; and

c. Increased efficiencies and other measures that can be implemented at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without converting from coal to other fuels, co-firing other fuels with coal, or limiting the utilization of the unit.

2. The Plan shall also address policy options for establishing the standards of performance for existing gas-fired electric generating units, including ~~but not limited to~~ the following factors:

a. The application of the criteria specified in subdivisions 1 a and b to natural gas-fired electric generating units; instead of to coal-fired electric generating units; and

b. Increased efficiencies and other measures that can be reasonably implemented at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the utilization of the unit.

3. The Plan shall examine policy options for state regulatory action to adopt less stringent standards or longer compliance schedules than those provided for in applicable federal rules or guidelines based on analysis of the following:

a. Consumer impacts, including any disproportionate impacts of energy price increases on lower-income populations;

b. Unreasonable cost of reducing emissions resulting from plant age, location, or basic process design;

c. Physical difficulties with or impossibility of implementing emission reduction measures;

d. The absolute cost of applying the performance standard to the unit;

e. The expected remaining useful life of the unit;

f. The economic impacts of closing the unit, including expected job losses, if the unit is unable to comply with the performance standard; and

g. Any other factors specific to the unit that make application of a less stringent standard or longer compliance schedule more reasonable.

4. The Plan shall identify options, to the maximum extent permissible, for any federally required regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units, and regulatory mechanisms that provide flexibility in complying with such standards, including the averaging of emissions, emissions trading, or other alternative implementation measures that are determined to further the interests of the Commonwealth and its citizens.

**Drafting note: References to Code sections establishing the Virginia Coal and Energy Commission and the Commission on Electric Utility Regulation are added. Obsolete date references are stricken in subsections A and C. In subdivision D 2, "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Other technical changes are made, including changes pursuant to § 1-227, which states that throughout**

**the Code any word used in the singular includes the plural and vice versa. Language is updated for clarity.**

~~§ 67-202.1~~ 45.2-1712. Annual reporting by investor-owned public utilities.

Each investor-owned public utility providing electric service in the Commonwealth shall prepare an annual report disclosing its efforts to conserve energy, including ~~but not limited to~~ (i) its implementation of customer demand-side management programs and (ii) efforts by the utility to improve efficiency and conserve energy in its internal operations pursuant to § 56-235.1. The utility shall submit each annual report to the Division of Energy of the Department of Mines, Minerals and Energy by November 1 of each year, and the Division shall compile the reports of the utilities and submit the compilation to the Governor and the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

**Drafting note: The phrase "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." The reference to the Division of Energy is shortened pursuant to the definitions section for the chapter.**

~~§ 67-203~~ 45.2-1713. Submission of the Plan.

Upon completion, the Division shall submit the Plan, including periodic updates thereto, to the Governor, the Commissioners of the State Corporation Commission, and the General Assembly. The Plan shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The Plan's executive summary shall be posted on the General Assembly's website.

**Drafting note: Technical change.**

#### ~~CHAPTER 6.~~

#### ~~VIRGINIA COASTAL ENERGY RESEARCH CONSORTIUM.~~

#### Article 5.

#### Virginia Coastal Energy Research Consortium.

**Drafting note: Existing Chapter 6 of Title 67, relating to the Virginia Coastal Energy Research Consortium, is relocated as proposed Article 5 of Chapter 17.**

~~§ 67-600~~ 45.2-1714. Virginia Coastal Energy Research Consortium established; board of directors.

A. The Virginia Coastal Energy Research Consortium, ~~hereinafter referred to as the Consortium,~~ is hereby ~~created~~ established to include Old Dominion University, the Virginia Institute of Marine Science of The College of William and Mary in Virginia, the Advanced Research Institute of Virginia Polytechnic Institute and State University, James Madison University, Norfolk State University, Virginia Commonwealth University, Hampton University, George Mason University, and the University of Virginia and is to be located at Old Dominion University.

~~§ 67-602. Control and supervision.~~

B. The Consortium shall be governed by a board of directors (the Board), which shall consist of 16 voting members as follows: ~~(i) the Director of the Department of Mines, Minerals and Energy or his designee;~~ ~~(ii) the Commissioner of the Virginia Marine Resources Commission or his designee;~~ ~~(iii) the President of the Virginia Manufacturers Association or his appointed member of the maritime manufacturing industry;~~ ~~(iv) the President of the Virginia Maritime Association or his appointed member of the maritime industry;~~ ~~(v) the Director of the Advanced Research Institute of Virginia Polytechnic Institute and State University or his designee;~~ ~~(vi) the President of Old Dominion University or his designee;~~ ~~(vii) the Director of the Virginia Institute of Marine Science of The College of William and Mary in Virginia or his designee;~~ ~~(viii) the President of Norfolk State University or his designee;~~ ~~(ix) the President of James Madison University or his designee;~~ ~~(x) the President of Virginia Commonwealth University or his designee;~~ ~~(xi) the President of the University of Virginia or his designee;~~ ~~(xii) the President of Hampton University or his designee;~~ ~~(xiii) the President of George Mason University or his designee;~~ ~~(xiv) the chairman of the Hampton Roads Technology Council or his appointed member of the technology community;~~ ~~(xv) the Director of the Hampton Roads Clean Cities Coalition or his appointed member of the renewable energy industry;~~ and ~~(xvi) the Director of the Department of Environmental Quality or his designee as the lead agency for the Virginia Coastal Zone Management Program.~~

In addition, a representative of the National Aeronautics and Space Administration's Langley Research Center, to be selected by the ~~director~~ Director of the Research Center, shall serve as a nonvoting ex officio member of the ~~Consortium's board of directors~~ Board.

**Drafting note: Existing §§ 67-600 and 67-602 are combined and designated as subsections A and B. The definition of "Consortium" is added to the chapter-wide definitions section so the shortened version is used in this section. Other technical changes are made.**

~~§ 67-601~~ 45.2-1715. Functions, powers, and duties of the Consortium.

The Consortium shall serve as an interdisciplinary study, research, and information resource for the Commonwealth on coastal energy issues. As used in this ~~chapter article~~, "coastal energy" includes wave or tidal action, currents, offshore winds, thermal differences, and methane hydrates. The Consortium shall (i) consult with the General Assembly, federal, state, and local agencies, nonprofit organizations, private industry, and other potential users of coastal energy research; (ii) establish and administer agreements with other baccalaureate institutions of higher education in the Commonwealth to carry out research projects relating to the feasibility of increasing the Commonwealth's reliance on all domestic forms of coastal energy; (iii) disseminate new information and research results; (iv) apply for grants made available pursuant to federal legislation, including ~~but not limited to~~ the federal Methane Hydrate Research and Development Act of 2000, P.L. 106-193, and from other sources; and (v) facilitate the application and transfer of new coastal energy technologies.

**Drafting note: Technical changes are made and the phrase "but not limited to" following "including" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to."**

~~§ 67-603~~ 45.2-1716. Appointment of a director; powers and duties.

A. ~~The board of the Consortium Board~~ shall appoint an executive director to serve as the principal administrative officer of the Consortium. The executive director shall report to the ~~board of the Consortium Board~~ and be under its supervision.

~~§ 67-604~~. ~~Powers and duties of the director~~.

B. The executive director shall exercise all powers imposed upon him by law, carry out the specific duties imposed ~~on~~ upon him by the ~~board of the Consortium Board~~, and develop appropriate policies and procedures for (i) identifying priority coastal energy research projects; (ii) cooperating with the General Assembly, federal, state, and local governmental agencies, nonprofit organizations, and private industry in formulating its research projects; (iii) selecting research projects to be funded; and (iv) disseminating information and transferring technology related to coastal energy within the Commonwealth. The executive director shall employ such personnel and secure such services as may be required to carry out the purposes of the Consortium, expend appropriated funds, and accept moneys from federal or private sources for cost-sharing on coastal energy projects.

**Drafting note: Existing §§ 67-603 and 67-604 are combined and designated as subsections A and B.**

#### ~~CHAPTER 16.~~

#### ~~SOUTHWEST VIRGINIA ENERGY RESEARCH AND DEVELOPMENT AUTHORITY.~~

#### Article 6.

#### Southwest Virginia Energy Research and Development Authority.

**Drafting note: Existing Chapter 16 of Title 67, relating to the Southwest Virginia Energy Research and Development Authority, is relocated as proposed Article 6 of Chapter 17.**

~~§ 67-1600~~ 45.2-1717. (Expires July 1, 2029) Definitions.

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

"Authority" means the Southwest Virginia Energy Research and Development Authority ~~created~~ established pursuant to this ~~chapter~~ article.

"Developer" means any private developer of an energy development project ~~in~~ Southwest Virginia.

"Energy development project" means an electric generation facility located within Southwest Virginia and includes interests in land, improvements, and ancillary facilities.

"Southwest Virginia" means the region of the Commonwealth designated as Southwest Virginia in § 22.1-350.

**Drafting note: Technical changes.**

~~§ 67-1601~~ 45.2-1718. (Expires July 1, 2029) Southwest Virginia Energy Research and Development Authority ~~created~~ established; purpose.

The Southwest Virginia Energy Research and Development Authority is ~~created~~ established as a ~~body corporate and a~~ political subdivision of the Commonwealth ~~and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter~~. The Authority is ~~established for the purposes of promoting the Authority are to promote~~ opportunities for energy development in Southwest Virginia, ~~to~~ create jobs and economic activity in Southwest Virginia consistent with the Virginia Energy Plan prepared pursuant to ~~Chapter 2 Article 4~~ (~~§ 67-200~~ 45.2-1710 et seq.), and ~~to~~ position Southwest Virginia and the Commonwealth as a leader in energy workforce and energy technology research and development. The Authority may also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority shall have only those powers enumerated in this ~~chapter~~ article.

**Drafting note: The corporate language for the Southwest Virginia Energy Research and Development Authority is updated to reflect current language for political subdivisions in the Code. A redundant reference to the powers of the Authority in the first sentence is removed. Technical changes are made.**

~~§ 67-1602~~ 45.2-1719. (Expires July 1, 2029) Membership; terms; vacancies; expenses.

A. The Authority shall ~~be composed~~ have a total membership of 11 nonlegislative citizen members appointed as follows: ~~Four~~ four members ~~shall to~~ be appointed by the Governor, four members ~~shall to~~ be appointed by the Speaker of the House of Delegates, and three members ~~shall to~~ be appointed by the Senate Committee on Rules. All members of the Authority shall ~~reside in~~ be citizens of the Commonwealth.

B. Except as otherwise provided ~~herein in this article~~, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. 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.

C. The Authority shall appoint from its membership a chairman and a vice-chairman, ~~both each~~ of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.

D. Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties

as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from ~~such funds as may~~ be appropriated to the Authority by the General Assembly.

E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

F. Except as otherwise provided in this ~~chapter~~ article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: The corporate language for the Southwest Virginia Energy Research and Development Authority is updated to reflect current language for political subdivisions in the Code. Technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 67-1603~~ 45.2-1720. (Expires July 1, 2029) Powers and duties of the Authority.

In addition to ~~such the~~ other powers and duties established under this ~~chapter~~ article, the Authority ~~shall have~~ has the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at ~~such any place or places~~ within the Commonwealth ~~as it may designate~~ designates;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is ~~created~~ established;
5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and ~~such any~~ other employees and agents ~~as may be~~ necessary and fix their compensation to be payable from funds made available to the Authority;
7. Invest its funds as permitted by applicable law;
8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from any municipality, county, or other political subdivision thereof ~~and, or from~~ any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;
9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties

for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;

10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted or reasonably implied in this article;

11. Leverage the strength in energy workforce and energy technology research and development of ~~Virginia's~~ the Commonwealth's public and private institutions of higher education;

12. Support the development of pump storage hydropower in Southwest Virginia and energy storage generally;

13. Promote the development of renewable energy generation facilities on brownfield sites, including abandoned mine sites;

14. Promote energy workforce development;

15. Assist energy technology research and development by, among other actions, promoting the development of a Southwest Virginia Energy Park; and

16. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to energy development in Southwest Virginia.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 67-1604~~ 45.2-1721. (Expires July 1, 2029) Annual report.

On or before October 15 of each year, beginning in 2020, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations~~Committee~~, the Senate Committee on Finance~~Committee~~, and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor~~Committees~~.

**Drafting note: Technical changes are made, including updating House and Senate committee names changed in the 2020 Session.**

~~§ 67-1605~~ 45.2-1722. (Expires July 1, 2029) Confidentiality of information.

A. The Authority shall hold in confidence the personal and financial information supplied to it; or maintained by it; concerning the siting and development of energy projects.

B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as well as specific information relating to the amount ~~and~~ of, or the identity of ~~recipients~~ the recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1606~~ 45.2-1723. (Expires July 1, 2029) Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this ~~chapter~~ article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this ~~chapter~~ article, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this ~~chapter~~ article.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 67-1607~~ 45.2-1724. (Expires July 1, 2029) Sunset.

The provisions of this ~~chapter~~ article shall expire on July 1, 2029.

**Drafting note: Technical change.**

## CHAPTER 18.

### WIND ENERGY.

**Drafting note: Existing Chapters 3 (§ 67-300) and 12 (§ 67.1200 et seq.) of Title 67, relating to wind energy, are relocated and combined with a related section in Title 45.1 to create proposed Chapter 18, Wind Energy. The proposed articles are as follows: Article 1 (General Provisions) and Article 2 (Virginia Offshore Wind Development Authority).**

#### Article 1.

##### General Provisions.

**Drafting note: Proposed Article 1 is created to logically organize general provisions applicable to proposed Chapter 18.**

§ 45.2-1800. Definitions.

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

"Authority" means the Virginia Offshore Wind Development Authority established pursuant to Article 2 (§ 45.2-1800 et. seq.).

"Division" means the Division of Offshore Wind in the Department as established pursuant to § 45.2-1802.

"Hampton Roads region" means the same as that term is defined in § 22.1-356.

**Drafting note: This section is created to consolidate definitions for proposed Chapter 18, Wind Energy. A cross-reference to the definition of the term "Hampton Roads region" is added.**



CHAPTER 3.

~~OFFSHORE WIND ENERGY RESOURCES.~~

**Drafting note: Existing Chapter 3 of Title 67, relating to offshore wind energy resources, is relocated as part of proposed Article 1 of Chapter 18.**

~~§ 67-300~~ 45.2-1801. Offshore wind energy resources; policy.

It is the policy of the Commonwealth to support federal efforts to examine the feasibility of offshore wind energy being utilized in an environmentally responsible fashion.

**Drafting note: No change.**

~~§ 67-301. Repealed.~~

**Drafting note: Repealed by Acts 2020, cc. 451 and 452, cl. 2.**

~~§ 45.1-161.5:1~~ 45.2-1802. Division of Offshore Wind; established.

A. The Director shall establish the Division of Offshore Wind (~~Division~~) in the Department and shall appoint persons to direct, support, and execute the powers and duties of the Division.

B. The powers and duties of the Division ~~shall~~ include:

1. Identifying specific measures that will facilitate the establishment of the Hampton Roads region as a wind industry hub for offshore wind generation projects in state and federal waters off the United States coast;

2. Coordinating state agencies' activities related to offshore wind, including development of programs that prepare ~~Virginia's~~ the Commonwealth's workforce to work in the offshore wind industry, create employment opportunities for Virginians within such industry, create opportunities for ~~Virginia-based~~ Commonwealth-based businesses to participate in the offshore wind industry supply chain, and attract out-of-state offshore wind-related businesses to locate within the Commonwealth;

3. Developing and implementing a stakeholder engagement strategy that identifies key groups, sets forth outreach objectives, and outlines a timeline for outreach and engagement;

4. Identifying regulatory and other barriers to the deployment of offshore wind and attraction of offshore wind supply chain businesses; and

5. Providing staff support for the ~~Virginia Offshore Wind Development~~ Authority and facilitating fulfillment of the Authority's purpose and duties set forth in ~~Chapter 12 (§ 67-1200 et seq.) of Title 67~~ Article 2 (§ 45.2-1803 et seq.).

C. On or before October 15 of each year, the Division shall submit an annual summary of its activities, the ways in which those ~~activities~~ activities have furthered the functions and programs of the Division, and the benefits of the efforts of the Division to the Commonwealth and its economy to the Governor and the ~~Chair~~ Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor. The Division

may include its submission with the report of the ~~Virginia Offshore Wind Development Authority~~ required by ~~§ 67-1209~~ 45.2-1808.

**Drafting note: Technical changes are made and an apparent spelling error is corrected in subsection C.**

~~CHAPTER 12.~~

~~VIRGINIA OFFSHORE WIND DEVELOPMENT AUTHORITY.~~

Article 2.

Virginia Offshore Wind Development Authority.

**Drafting note: Existing Chapter 12 of Title 67, relating to the Virginia Offshore Wind Development Authority, is relocated as proposed Article 2 of Chapter 18.**

~~§ 67-1200~~ 45.2-1803. Definitions.

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

"Authority" ~~means the Virginia Offshore Wind Development Authority created pursuant to this chapter.~~

"Developer" means any private developer of an offshore wind energy ~~projects~~ project.

"Offshore wind energy project" means a wind-powered electric energy facility, including tower, turbine, and associated equipment, located off the coast of the Commonwealth beyond the Commonwealth's three-mile jurisdictional limit, and includes interests in land, improvements, and ancillary facilities.

"Transmission study" means a study to determine the potential interconnection options to accommodate multiple offshore wind energy projects in the Hampton Roads region.

**Drafting note: The definition of the Virginia Offshore Wind Development Authority is relocated to the chapter-wide definitions section. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1201~~ 45.2-1804. Virginia Offshore Wind Development Authority ~~created established;~~ purpose.

A. The Virginia Offshore Wind Development Authority is ~~created~~ established as a ~~body corporate and a~~ political subdivision of the Commonwealth ~~and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter.~~

B. The Authority is established for the purposes of facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the offshore wind energy industry, offshore wind energy projects, and associated supply chain vendors by (i) collecting relevant metocean and environmental data, ~~by;~~ (ii) identifying existing state and regulatory or administrative barriers to the development of the offshore wind energy industry, ~~by;~~ (iii) working in cooperation with relevant local, state, and federal agencies to upgrade port and other logistical facilities and sites to accommodate the manufacturing and assembly of offshore wind energy project components and vessels; ~~and by~~ (iv) ensuring that

the development of such projects is compatible with other ocean uses and avian and marine resources, including both the possible interference with and positive effects on naval facilities and operations, NASA-Wallops Flight Facility operations, shipping lanes, recreational and commercial fisheries, and avian and marine species and habitats.

C. The Authority shall, in cooperation with the relevant state and federal agencies as necessary, recommend ways to encourage and expedite the development of the offshore wind energy industry. The Authority shall also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate.

D. The Authority shall have only those powers enumerated in this ~~chapter~~ article.

**Drafting note: The corporate language for the Virginia Offshore Wind Development Authority is updated to reflect current language for political subdivisions in the Code. Subsection designations are added and a redundant reference to the Authority's powers in the first sentence is removed. Technical changes are made.**

~~§ 67-1202~~ 45.2-1805. Membership; terms; vacancies; expenses.

A. The Authority shall be composed of nine nonlegislative citizen members appointed by the Governor, one of whom shall be a representative of the Virginia Commercial Space Flight Authority as established in § 2.2-2202. In addition, one ex officio member without voting privileges shall be selected by the Governor after consideration of the persons nominated by the U.S. Secretary of the Navy. With the exception of the representative of the Virginia Commercial Space Flight Authority, all members of the Authority shall ~~reside in~~ be citizens of the Commonwealth.

B. Except as otherwise provided ~~herein~~ in this article, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. 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.

~~C. The initial appointments of members shall be as follows: three members shall be appointed for terms of four years; three members shall be appointed for terms of three years; and three members shall be appointed for terms of two years. Thereafter all appointments shall be for terms of four years.~~

~~D.~~ The Authority shall appoint from its membership a chairman and a vice-chairman, ~~both each~~ each of whom shall serve in such ~~capacities~~ capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at ~~all meetings~~ each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.

~~E.-D.~~ Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds as may be appropriated to the Authority by the General Assembly.

~~F.-E.~~ Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

~~G.-F.~~ Except as otherwise provided in this ~~chapter~~ article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: The corporate language for the Virginia Offshore Wind Development Authority is updated to reflect current language for political subdivisions in the Code. Language in existing subsection C related to the staggering of initial terms is stricken as obsolete and succeeding subsections are redesignated. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1206. Transmission of power from offshore wind energy projects.~~

~~A. The incumbent, investor-owned utility for the onshore service territory adjacent to any offshore wind generation project shall, at the request of the Department of Mines, Minerals and Energy, initiate a transmission study. Such utility shall initiate the transmission study no more than 30 days following the request of the Department of Mines, Minerals and Energy, and shall report to the Department of Mines, Minerals and Energy within 180 days of the request. The Department of Mines, Minerals and Energy shall report the results of the study to the Authority. The Department of Mines, Minerals and Energy shall request the study no later than July 31, 2010.~~

~~B. Upon receipt of the study, but no later than May 31, 2011, the Authority shall recommend such actions as it deems appropriate to facilitate transmission of power from offshore wind energy projects.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-1207~~ 45.2-1806. Powers and duties of the Authority.

In addition to ~~such~~ the other powers and duties established under this ~~chapter~~ article, the Authority ~~shall have~~ has the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may designate~~ designates;

4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is ~~created~~ established;

5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and ~~such~~ any other employees and agents ~~as may be~~ necessary, and fix their compensation to be payable from funds made available to the Authority;

7. Invest its funds as permitted by applicable law;

8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from any municipality, county, or other political subdivision thereof ~~and, or from~~ any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;

9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;

10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted or reasonably implied in this article;

11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the offshore wind energy industry, including facilitating any permitting processes; and

12. Enter into interstate partnerships to develop the offshore wind energy industry and offshore wind energy projects.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§-67-1208~~ 45.2-1807. Director; staff; counsel to the Authority.

A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this ~~chapter~~ article and subject to the policies, control, and direction of the Authority. The Director shall maintain, and ~~be~~ is custodian of, all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with

the Authority may rely on such certificates. The Director also shall perform such other duties as prescribed by the Authority in carrying out the purposes of this ~~chapter~~ article.

B. The Division of Offshore Wind within the Department of Mines, Minerals and Energy shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

**Drafting note: Technical changes are made. A reference to the Division of Offshore Wind is shortened pursuant to the chapter-wide definitions in proposed § 45.2-1800 and two unnecessary uses of the full name of the Department of Mines, Minerals and Energy are removed pursuant to the title-wide definitions in proposed § 45.2-100.**

~~§ 67-1209~~ 45.2-1808. Annual report.

On or before October 15 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the ~~Chairs~~ Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor. Such report may include the submission of the Division of Offshore Wind within the Department of Mines, Minerals and Energy required by ~~§ 45.1-161.5:1~~ 45.2-1802.

**Drafting note: A reference to the Division of Offshore Wind is shortened pursuant to the chapter-wide definitions in § 45.2-1800 and an unnecessary use of the full name of the Department of Mines, Minerals and Energy is removed pursuant to the title-wide definitions in § 45.2-100.**

~~§ 67-1210~~ 45.2-1809. Confidentiality of information.

A. The Authority shall hold in confidence the personal and financial information supplied to it, or maintained by it, concerning the siting and development of offshore wind energy projects.

B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as well as specific information relating to the amount ~~and of, or the~~ identity of ~~recipients~~ the recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1211~~ 45.2-1810. Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this ~~chapter~~ article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this ~~chapter~~ article, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this ~~chapter~~ article.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 67-1203~~ 45.2-1811. Data collection Operation.

~~A.~~ The Authority shall, through moneys derived from sources other than state funds, to the extent such moneys are available, operate in cooperation with the National Oceanic and Atmospheric Administration to upgrade wind resource and other metocean assessment equipment at Chesapeake Light Tower and other structures.

§ 45.2-1812. Public-private partnerships.

~~B.~~ A. The Authority may establish public-private partnerships with ~~a developer~~ developers pursuant to the Public-Private ~~Educational~~ Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for purposes set forth in this section.

B. The Authority may establish a public-private partnership for the installation and operation of wind resource and other metocean equipment, including light detection and ranging equipment, meteorological measurement towers, and data collection platforms. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the ~~developers~~ developer shall share the costs of the upgrade;
2. The developer, in coordination with the Authority and relevant state and federal agencies, shall operate any meteorological measurement towers and data collection platforms; and
3. The developer shall make all collected data available to the Authority.

C. The Authority may establish ~~public-private partnerships with a developer pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~ a public-private partnership for the collection of avian and marine environmental data. Any partnership established pursuant to this subsection shall stipulate that:

1. The Authority and the developer shall share the costs of data collection;
2. The developer, in coordination with the Authority and relevant state and federal agencies, shall manage the environmental data collection process; and
3. The developer shall make all collected data available to the Authority.

D. The Authority may make any data collected pursuant to ~~this section~~ subsection B or C available to the public.

~~§ 67-1204. Port facilities upgrades.~~

E. The Authority may establish ~~public-private partnerships with entities pursuant to the Public-Private Educational Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)~~ a public-private partnership for the upgrade of port facilities and other logistical equipment and sites to accommodate the manufacturing and assembly of offshore wind energy project

components and vessels that will support the construction and operations of offshore wind energy projects. Any partnership established pursuant to this subsection shall stipulate that the Authority and the entities shall share the costs of the upgrade.

**Drafting note: Existing § 67-1203 is divided into two sections, the first of which is composed only of existing subsection A, relating to operation, and the section catchline is changed accordingly. The final three subsections of existing § 67-1203 are combined with the succeeding section, § 67-1204, and the subsections are redesignated. Redundant Code references are removed.**

~~§ 67-1205~~ 45.2-1813. Federal loan guarantees.

A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the federal Energy Policy Act of 2005, 42 U.S.C. § 16511 et seq., P.L. 109-58; the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5; or other similar federal legislation; to facilitate the development of offshore wind energy projects.

B. Upon obtaining a federal loan guarantee for an offshore wind energy ~~projects~~ project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or ~~portions~~ any portion thereof to a qualified third ~~parties,~~ party on ~~such~~ terms and conditions ~~as the Authority finds are~~ appropriate. ~~Actions~~ Any action of the Authority relating to the allocation and assignment of such loan ~~guarantees~~ guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

**Drafting note: The section, which deals with a specific power of the Authority, is moved to the end of the chapter so that it follows the sections addressing basic corporate powers. An erroneous citation for the federal Energy Policy Act of 2005 is replaced and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

## CHAPTER 19.

### SOLAR ENERGY.

**Drafting note: Proposed Chapter 19 is composed of existing § 45.1-391 as Article 1, existing Chapter 15 (§ 67-1500 et seq.) of Title 67 as Article 2, and existing Chapter 27 (§ 45.1-395) of Title 45.1 as Article 3. The proposed articles are as follows: Article 1 (Virginia Solar Energy Center), Article 2 (Virginia Solar Energy Development and Energy Storage Authority), and Article 3 (Clean Energy Advisory Board).**

#### Article 1.

##### Virginia Solar Energy Center.

**Drafting note: Proposed Article 1 is created to logically organize existing § 45.1-391, relating to the Virginia Solar Energy Center.**



~~§ 45.1-391~~ 45.2-1900. Virginia Solar Energy Center; purposes.

A. The Virginia Solar Energy Center (the Center) ~~is continued established~~ as a part of the Department. The purposes of the Center are to (i) ~~to~~ serve the people of the Commonwealth as a clearinghouse to gather, maintain, and disseminate general and technical information on solar energy and its utilization; (ii) ~~to~~ coordinate programs for solar energy data-gathering in ~~Virginia~~ the Commonwealth; (iii) ~~to~~ coordinate efforts and programs on solar energy with other state agencies and institutions, other states, and federal agencies; (iv) ~~to~~ promote cooperation among and between Virginia business, industry, and agriculture and the public related to the use of solar energy; (v) ~~to~~ develop public education programs on solar energy for use in schools and by the public; and (vi) ~~to~~ provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth.

B. ~~The intent of the General Assembly is to provide an organization for the purposes set out in this section to~~ Center may receive nonstate funds for such the purposes provided in this section.

**Drafting note: Technical changes are made, including the addition of subsection designations, and language is updated for modern usage. The beginning of proposed subsection B is stricken in accordance with the Code Commission's policy that intent statements do not have general and permanent application and thus are not to be included in the Code.**

## ~~CHAPTER 15.~~

### ~~VIRGINIA SOLAR ENERGY DEVELOPMENT AND ENERGY STORAGE~~

#### ~~AUTHORITY.~~

##### Article 2.

##### Virginia Solar Energy Development and Energy Storage Authority.

**Drafting note: Existing Chapter 15 of Title 67, relating to the Virginia Solar Energy Development and Energy Storage Authority, is relocated as proposed Article 2 of Chapter 19.**

~~§ 67-1500~~ 45.2-1901. (Expires July 1, 2025) Definitions.

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

"Authority" means the Virginia Solar Energy Development and Energy Storage Authority ~~created~~ established pursuant to this ~~chapter~~ article.

"Developer" means any private developer of a solar energy project or an energy storage project.

"Energy storage project" means an energy storage facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

"Solar energy project" means an electric generation facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

**Drafting note: Technical changes.**

~~§ 67-1501~~ 45.2-1902. (Expires July 1, 2025) Virginia Solar Energy Development and Energy Storage Authority ~~created~~ established; purpose.

The Virginia Solar Energy Development Authority is continued as the Virginia Solar Energy Development and Energy Storage Authority. The Authority constitutes a ~~body corporate and~~ a political subdivision of the Commonwealth ~~and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter~~. The Authority is established for the purposes of (i) facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the solar energy and energy storage industries and solar energy and energy storage projects by developing programs that increase the availability of financing for solar energy projects and energy storage projects; (ii) facilitating the increase of solar energy generation systems and energy storage projects on public and private sector facilities in the Commonwealth; (iii) promoting the growth of the Virginia Commonwealth's solar and energy storage industries; (iv) providing a hub for collaboration between entities, both public and private, to partner on solar energy projects and energy storage projects; and (v) positioning the Commonwealth as a leader in research, development, commercialization, manufacturing, and deployment of energy storage technology. The Authority may also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority ~~shall have~~ has only those powers enumerated in this ~~chapter~~ article.

**Drafting note: The corporate language for the Virginia Solar Energy Development and Energy Storage Authority is updated to reflect current language for political subdivisions in the Code. A redundant reference to the powers of the Authority in the first sentence is removed. Technical changes are made.**

~~§ 67-1502~~ 45.2-1903. (Expires July 1, 2025) Membership; terms; vacancies; expenses.

A. The Authority ~~shall be composed~~ have a total membership of 15 nonlegislative citizen members appointed as follows: ~~Eight~~ eight members ~~shall to~~ be appointed by the Governor; four members ~~shall to~~ be appointed by the Speaker of the House of Delegates; and three members ~~shall to~~ be appointed by the Senate Committee on Rules. All members of the Authority ~~shall reside in~~ be citizens of the Commonwealth. Members may include representatives of solar businesses, solar customers, renewable energy financiers, state and local government solar customers, institutions of higher education who have expertise in energy technology, and solar research academics.

B. Except as otherwise provided ~~herein~~ in this article, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. 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.

~~C. The initial appointments of members by the Governor made pursuant to Chapters 90 and 398 of the Acts of Assembly of 2015 shall be as follows: two members shall be appointed for terms of four years, two members shall be appointed for terms of three years, and two members shall be appointed for terms of two years. The initial appointments of members by the Speaker of the House of Delegates made pursuant to Chapters 90 and 398 of the Acts of Assembly of 2015 shall be as follows: one member shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one member shall be appointed for a term of two years. The initial appointments of members by the Senate Committee on Rules made pursuant to Chapters 90 and 398 of the Acts of Assembly of 2015 shall be as follows: one member shall be appointed for a term of four years, and one member shall be appointed for a term of three years. Thereafter all appointments shall be for terms of four years.~~

~~D. The Authority shall appoint from its membership a chairman and a vice-chairman, both each of whom shall serve in such capacities capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at all meetings each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.~~

~~E. D. Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds as may be appropriated to the Authority by the General Assembly.~~

~~F. E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.~~

~~G. F. Except as otherwise provided in this chapter article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).~~

**Drafting note: The corporate language for the Virginia Solar Energy Development and Energy Storage Authority is updated to reflect current language for political subdivisions in the Code. Language in existing subsection C related to the staggering of initial terms of members is stricken as obsolete and succeeding subsections are redesignated. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1503~~ 45.2-1904. (Expires July 1, 2025) Partnerships.

A. The Authority may establish public-private partnerships with entities pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) to

increase the number of solar energy generation systems on or located adjacent to public and private facilities in the Commonwealth. Any partnership established pursuant to this section shall stipulate that the Authority and the developers shall share the costs of the installation and operation of solar energy facilities and equipment.

B. The Authority may provide a central hub for appropriate entities, both public and private, to enter into partnerships that result in solar energy generation projects being developed in the Commonwealth. The Authority may act as a good faith broker in ~~these~~ such matters to facilitate appropriate partnerships, including public-private partnerships.

**Drafting note: Technical change.**

~~§-67-1504~~ 45.2-1905. (Expires July 1, 2025) Federal loan guarantees.

A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the federal Energy Policy Act of 2005, ~~42 U.S.C. § 16511 et seq., P.L. 109-58; the federal~~ American Recovery and Reinvestment Act of 2009, P.L. 111-5; or other similar federal legislation; to facilitate the development of solar energy projects.

B. Upon obtaining a federal loan-guarantees guarantee for a solar energy-projects project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or ~~portions~~ any portion thereof to a qualified third-parties, party on ~~such~~ terms and conditions ~~as the Authority finds are appropriate.~~ Actions Any action of the Authority relating to the allocation and assignment of such loan-~~guarantees~~ guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. ~~Decisions~~ Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

**Drafting note: An erroneous citation for the federal Energy Policy Act of 2005 is replaced and technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§-67-1505~~ 45.2-1906. (Expires July 1, 2025) Powers and duties of the Authority.

In addition to ~~such~~ other powers and duties established under this ~~chapter~~ article, the Authority ~~shall have~~ has the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at ~~such~~ any place ~~or places~~ within the Commonwealth ~~as it may designate~~ designates;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is ~~created~~ established;
5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and ~~such any~~ other employees and agents ~~as may be~~ necessary and fix their compensation to be payable from funds made available to the Authority;

7. Invest its funds as permitted by applicable law;

8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, ~~and~~ from any municipality, county, or other political subdivision thereof ~~and, or from~~ any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;

9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;

10. Do any lawful act necessary or appropriate to carry out the powers ~~herein~~ granted or reasonably implied in this article;

11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the solar energy and energy storage industries, including facilitating any permitting processes;

12. Enter into interstate partnerships to develop the solar energy industry, solar energy projects, and energy storage projects;

13. Collaborate with entities, including institutions of higher education, to increase the training and development of the workforce needed by the solar and energy storage industries in the Commonwealth, including industry-recognized credentials and certifications;

14. Conduct any other activities as may seem appropriate to increase solar energy generation in the Commonwealth and the associated jobs and economic development and competitiveness benefits, including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any manner provided by law for the purpose of planning and providing for the financing or assisting in the financing of the construction or purchase of such solar energy projects authorized pursuant to § 56-585.1;

15. Promote collaborative efforts among ~~Virginia's~~ the Commonwealth's public and private institutions of higher education in research, development, and commercialization efforts related to energy storage;

16. Monitor relevant developments in energy storage technology and deployment nationally and globally and disseminate relevant information and research results; and

17. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to the development and commercialization of energy storage.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

§ ~~67-1506~~ 45.2-1907. (Expires July 1, 2025) Director; staff; counsel to the Authority.

A. The Director ~~of the Department of Mines, Minerals and Energy~~ shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this ~~chapter~~ article and subject to the policies, control, and direction of the Authority. The Director may obtain non-state-funded support to carry out any duties assigned to the Director. Funding for ~~this~~ such support may be provided by any source, public or private, for the purposes for which the Authority is ~~created~~ established. The Director shall maintain, ~~and be~~ is custodian of, all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and ~~all persons~~ any person dealing with the Authority may rely on such certificates. The Director also shall perform ~~such~~ other duties ~~as~~ prescribed by the Authority in carrying out the purposes of this ~~chapter~~ article.

B. The Department ~~of Mines, Minerals and Energy~~ shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

**Drafting note: Technical changes are made. Unnecessary uses of the full name of the Department of Mines, Minerals and Energy are removed pursuant to the title-wide definitions in proposed § 45.2-100.**

§ ~~67-1507~~ 45.2-1908. (Expires July 1, 2025) Annual report.

On or before October 15 of each year, ~~beginning in 2016~~, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations ~~Committee~~, the Senate Committee on Finance ~~Committee~~, and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor ~~Committees~~.

**Drafting note: The obsolete 2016 date is stricken and language is updated for modern usage, including updating House and Senate committee names changed in the 2020 Session.**

§ ~~67-1508~~ 45.2-1909. (Expires July 1, 2025) Confidentiality of information.

A. The Authority shall hold in confidence the personal and financial information supplied to it, or maintained by it, concerning the siting and development of solar energy projects and energy storage projects.

B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on ~~persons~~ any person or ~~entities~~ entity applying for or receiving ~~allocations~~ an allocation of any federal loan ~~guarantees~~ guarantee, as

well as specific information relating to the amount ~~and~~ of, or the identity of ~~recipients~~ the recipient of, such ~~distributions~~ distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.**

~~§ 67-1509~~ 45.2-1910. (Expires July 1, 2025) Declaration of public purpose; exemption from taxation.

A. The exercise of the powers granted by this ~~chapter~~ article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this ~~chapter~~ article.

**Drafting note: Language is updated for modern usage.**

§ 45.2-1911. Sunset.

The provisions of this article shall expire on July 1, 2025.

**Drafting note: The second enactment of Acts 2015, cc. 90 and 398, which provides a sunset date for proposed Article 3, is proposed for codification.**

#### ~~CHAPTER 27.~~

#### ~~CLEAN ENERGY ADVISORY BOARD.~~

#### Article 3.

#### Clean Energy Advisory Board.

**Drafting note: Existing Chapter 27, relating to the Clean Energy Advisory Board, is relocated to proposed Article 3.**

§ 45.2-1912. Definitions.

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

"Board" means the Clean Energy Advisory Board created pursuant to § 45.2-1913.

"Fund" means the Low-to-Moderate Income Solar Loan and Rebate Fund created pursuant to § 45.2-1916.

"Program" means the Low-to-Moderate Income Solar Loan and Rebate Pilot Program created pursuant to § 45.2-1917.

**Drafting note: Article-wide definitions section added.**

~~§ 45.1-395~~ 45.2-1913. Clean Energy Advisory Board; purpose.

The Clean Energy Advisory Board ~~(the Board)~~ is established as an advisory board in the executive branch of state government. The purpose of the Board is to establish a pilot

program for disbursing loans or rebates for the installation of solar energy infrastructure in low-income and moderate-income households.

**Drafting note: Technical change.**

§ ~~45.1-396~~ 45.2-1914. Membership; terms; quorum; meetings.

A. The Board shall have a total membership of 17 members that shall consist of 16 nonlegislative citizen members and one ex officio member. Members may reside within or without the Commonwealth. Nonlegislative citizen members shall be appointed as follows:

1. Six nonlegislative citizen members to be appointed by the Speaker of the House of Delegates upon consideration of the recommendations of the Board of Directors of the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (the MDV-SEIA Board) and the Governor's Advisory Council on Environmental Justice (the Council), one of whom shall be a designee of the Virginia Housing Development Authority, created pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36; one of whom shall be a rooftop solar energy professional or employer or representative of rooftop solar energy professionals; one of whom shall be a current or former member of the Council; one of whom shall be a member or representative of the Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC); one of whom shall be an expert with experience developing low-income or moderate-income incentive and loan programs for distributed renewable energy resources; and one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice dedicated to rural development, rural electrification, and energy policy;

2. Three nonlegislative citizen members to be appointed by the Senate Committee on Rules upon consideration of the recommendations of the MDV-SEIA Board, one of whom shall be a solar energy professional or employer or representative of solar energy professionals, one of whom shall work for or with ~~a Virginia-based~~ an investor-owned electric utility company based in the Commonwealth, and one of whom shall be a member or representative of VMDAEC; and

3. Seven nonlegislative citizen members to be appointed by the Governor upon consideration of the recommendations of the MDV-SEIA Board and the Council and subject to confirmation by the General Assembly, one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice in renewable energy law and transactions, one of whom shall be an attorney who is licensed to practice in the Commonwealth and specializes in tax law and energy transactions, one of whom shall be an attorney with the Division of Consumer Counsel created pursuant to the provisions of § 2.2-517, one of whom shall be an employee of a community development financial institution who specializes in impact investing, one of whom shall be a member of a Virginia environmental organization, and two of whom shall be designees of the Department of Housing and Community Development, created pursuant to the provisions of Chapter 8 (§ 36-131 et seq.) of Title 36.



B. The Director or his designee shall serve ex officio with voting privileges and shall assist in convening the meetings of the Board.

C. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. The ex officio member of the Board shall serve a term coincident with his term of office. Nonlegislative citizen members shall be appointed for a term of three years. 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. All members may be reappointed.

D. The Board shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.

**Drafting note: Technical changes.**

~~§ 45.1-397~~ 45.2-1915. Powers and duties of the Board; report.

The Board ~~shall have~~ has the following powers and duties to:

1. ~~To advise~~ Advise the Director on the management of the ~~Low-to-Moderate Income Solar Loan and Rebate Fund (the Fund)~~ pursuant to the provisions of ~~§ 45.1-398~~ 45.2-1916;

2. ~~To develop~~ Develop, establish, and operate, with the approval of the Director, a ~~Low-to-Moderate Income Solar Loan and Rebate Pilot~~ the Program (the Program) pursuant to the provisions of ~~§ 45.1-399~~ 45.2-1917;

3. ~~To advise~~ Advise the Director on the possibility of working with a community development financial institution or other financial institutions to further the purposes of the Program;

4. ~~To advise~~ Advise the Director on the distribution of moneys in the Fund in the form of loans or rebates pursuant to the provisions of ~~§ 45.1-399~~ 45.2-1917; and

5. ~~To submit~~ Submit to the Governor and the General Assembly an annual report for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**Drafting note: Language is updated for modern usage and technical changes are made.**

~~§ 45.1-398~~ 45.2-1916. Low-to-Moderate Income Solar Loan and Rebate Fund.

There is hereby ~~created~~ established in the state treasury a special nonreverting fund to be known as the Low-to-Moderate Income Solar Loan and Rebate Fund ~~(the Fund)~~. The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose

and any gifts, donations, grants, bequests, and other funds received on its behalf 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 of extending loans or paying rebates to electric customers who complete solar installations or energy efficiency improvements pursuant to the provisions of § ~~45.1-399~~ 45.2-1917. 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.

**Drafting note: Language is updated for modern usage and technical changes are made.**

§ ~~45.1-399~~ 45.2-1917. Low-to-Moderate Income Solar Loan and Rebate Pilot Program.

A. The Board, with the approval of the Director, shall develop and establish a Low-to-Moderate Income Solar Loan and Rebate Pilot Program (~~the Program~~) and rules for the loan or rebate application process. The Program shall be open to any Virginia resident whose household income is at or below 80 percent of the state median income or regional median income, whichever is greater. The Program shall allow only one loan per residence, irrespective of the ownership of the solar energy system that is installed. Such loan shall be available only for a solar installation or energy efficiency improvements pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

B. The Board shall accept an application only from the installer of the solar installation or the agent of the customer.

Each application shall include (i) 12 months of the customer's utility bills prior to installation of the solar energy system and an agreement to provide 12 months of utility bills to the Board following the installation; (ii) the customer's permission for the Director to (a) create a customer profile for the customer if he becomes an eligible loan or rebate customer, (b) aggregate the data provided by such eligible loan or rebate customers, and (c) use such aggregate data for the purpose of lowering energy costs and implementing effective programs; (iii) evidence of the completion of a home performance audit, conducted by a qualified local weatherization service provider, before and after installation of energy efficiency services such as lighting or insulation improvements, attic tents, weatherization, air sealing of openings in the building envelope, sealing of ducts, or thermostat upgrades, to demonstrate that such energy efficiency services were completed and resulted in a reduction in consumption of at least 12 percent; and (iv) an affidavit attesting to the receipt of a public benefit at the time the solar energy system is to be installed.

C. The Board shall review each application submitted to it on a first-come, first-served basis and shall recommend to the Director the approval or denial of each such application within 30 days of receipt. If the Director approves an application, he shall hold a reservation of funds for as long as 180 days for final loan or rebate claim and disbursement.

D. A customer whose application is approved may install an energy system that is interconnected pursuant to the provisions of § 56-594 or any section in Title 56 that addresses net energy metering provisions for electric cooperative service territories.

E. All of the work of installing the energy system shall be completed by a licensed contractor that (i) possesses an Alternative Energy System (AES) Contracting specialty as defined by the Board for Contractors pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1; (ii) possesses certification for solar installation from the North American Board of Certified Energy Practitioners, Solar Energy International, Roof Integrated Solar Energy, or a similar installer certification program; (iii) possesses a rating of "A" or higher from the local Better Business Bureau; and (iv) has installed a minimum of 150 net-metered residential solar systems in ~~Virginia~~ the Commonwealth. If the work of installing the solar energy system requires electrical work, ~~it such work~~ shall be completed by an electrical contractor licensed by the ~~Virginia~~ Department of Professional and Occupational Regulation. All photovoltaic panels, inverters, and other electrical apparatus used in the solar energy system shall be tested and certified by a federal Occupational Safety and Health Administration Nationally Recognized Testing Laboratory such as UL LLC and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

F. The customer or the installer, acting on behalf of the customer, shall submit any loan or rebate claim within 90 days of completion of the installation of the solar energy system, with completion deemed to have occurred once the solar energy system's bi-directional meter or net meter, or the respective utility's revenue grade meter, has been installed and the system has been electrified. Each rebate claim shall include, at a minimum, a date of system electrification and a time-stamped and date-stamped verification of (i) bi-directional net meter delivery or (ii) the operation of a compatible programmed smart meter capable of tracking net metering activity.

G. The Director shall review and approve or deny a loan or rebate claim within 60 days of receipt and shall provide a written explanation of each denial to the respective claimant. The Director shall disburse from the ~~Low to Moderate Income Solar Loan and Rebate~~ Fund created pursuant to ~~§ 45.1-398~~ 45.2-1916 the loan or rebate for each approved claim within 60 days of its receipt of the claim and according to the order in which its respective application was approved. Any rebate or grant shall be in the amount of no more than \$2 per DC watt for up to six kilowatts of solar capacity installed. The customer may use a rebate in addition to any federal tax credits or state incentives or enhancements earned for the same solar installation.

**Drafting note: Technical changes.**

~~§ 45.1-400. Repealed.~~

**Drafting note: Repealed by Acts 2020, c. 803, cl. 2.**

CHAPTER ~~15.1~~ 20.  
GEOHERMAL ENERGY.

**Drafting note: Existing Chapter 15.1, relating to geothermal energy, is retained as proposed Chapter 20.**

Article 1.  
General Provisions.

**Drafting note: Existing Article 1, relating to general provisions, is retained as proposed Article 1.**

~~§ 45.1-179.1. Short title; purpose.~~

~~This chapter may be cited as the Virginia Geothermal Resource Conservation Act. It is the policy of the Commonwealth of Virginia and the purpose of this law to: (i) foster the development, production, and utilization of geothermal resources, (ii) prevent waste of geothermal resources, (iii) protect correlative rights to the resource, (iv) protect existing high quality state waters, and safeguard potable waters from pollution, (v) safeguard the natural environment, (vi) promote geothermal and water resource conservation and management, and (vii) safeguard the health, safety, and welfare of the citizens of the Commonwealth.~~

**Drafting note: The first sentence of this section is deleted as unnecessary pursuant to § 1-244, which states that throughout the Code the caption of a subtitle, chapter, or article serves as a short title citation. The remainder of this section containing a declaration of policy is stricken in accordance with the Code Commission's policy that policy statements do not have general and permanent application and thus are not to be included in the Code.**

~~§ 45.1-179.2~~ 45.2-2000. Definitions.

~~The following terms As used in this chapter have the meanings respectively ascribed thereto, unless the context clearly requires otherwise a different meaning:~~

"Board" means the State Water Control Board.

~~"Correlative ~~rights~~ right" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system;~~

"Geothermal energy" means the usable energy that is produced or ~~which that~~ can be produced from a geothermal resource; ~~resources;~~ resource.

"Geothermal resource" means the natural heat of the earth and the energy, in whatever form, that is present in, associated with, or created by, or ~~which that~~ may be extracted from, ~~that~~ such natural heat, as determined by the ~~rules and~~ regulations of the Department;

"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources; ~~and.~~

**Drafting note: The term "Board" is moved into alphabetical order and technical changes are made, including changes pursuant to § 1-227, which states that throughout**

**the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-179.3~~ 45.2-2001. Application.

The provisions of this chapter regarding (i) permitting, well regulations, reservoir management, and allocation apply to geothermal resources at temperatures above the minimum temperature set forth by the Department pursuant to ~~§ 45.1-179.7, 45.2-2004~~ and (ii) leasing requirements, royalties, or severance taxes apply to geothermal resource applications producing more than the volumetric rate set forth by the Department pursuant to ~~§ 45.1-179.7 45.2-2004~~.

**Drafting note: Technical changes.**

~~§ 45.1-179.4~~ 45.2-2002. Ownership.

Ownership rights to a geothermal resource are in the owner of the surface property underlain by the geothermal resource unless such rights have been otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the Commonwealth of any rights, title, or interest they ~~may~~ might have in any geothermal resource.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-179.5~~ 45.2-2003. Findings; clarification of nature of the resource.

Geothermal resources are found and hereby declared to be sui generis, being neither a mineral ~~resource~~ resources nor a water ~~resource~~. Mineral estates resources. No mineral estate shall ~~not~~ be construed to include geothermal resources unless such inclusion is explicit in the terms of the deed or other instrument of conveyance.

**Drafting note: Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. The prohibitory language at the end of this section is recast in affirmative form consistent with current drafting practice.**

## Article 2.

### Resource Regulation.

**Drafting note: Existing Article 2, relating to resource regulation, is retained as proposed Article 2.**

~~§ 45.1-179.6~~ 45.2-2004. Duties Powers and responsibilities duties of the Department.

A. The Department ~~shall have and is hereby given~~ has jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and ~~shall have~~ has the power and authority to make and enforce ~~rules~~, regulations; and orders and do whatever ~~may~~ is reasonably ~~be~~ necessary to carry out the provisions of this chapter. Any ~~such rules and~~ regulations adopted by the Department pursuant to the provisions of this chapter

shall be ~~promulgated~~ adopted in compliance with ~~the provisions of~~ the Administrative Process Act (~~Chapter 40 of Title 2.2, § 2.2-4000 et seq.~~).

~~§ 45.1-179.7. Additional powers of Department.~~

B. The Department shall:

1. Consult with the Board in carrying out ~~all of its powers and duties and responsibilities~~ pursuant to the provisions of this chapter;

2. Develop a comprehensive geothermal permitting system for the Commonwealth; ~~which shall provide~~ that provides for the exploration and development of geothermal resources;

3. ~~Promulgate such rules and~~ Adopt regulations ~~as may be~~ necessary to provide for geothermal drilling and the exploration for and development of geothermal resources in the Commonwealth; ~~such rules and.~~ Such regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels ~~(i)~~, the Department shall set (i) minimum temperature levels for permitting, well regulations, reservoir management, and allocation of ~~the geothermal resource;~~ resources and ~~(ii) the Department shall set~~ minimum volumetric rates for geothermal leasing, royalties, and severance taxes, as necessary. The Department shall ~~also be responsible for reviewing the~~ review established temperature level and volumetric rate requirements biennially and ~~revising~~ revise the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years, and such revision shall not operate retroactively; and

5. Consult with the State Department of Health; as necessary; to protect potable waters of the Commonwealth and ~~in carrying to carry out its the powers and~~ duties and responsibilities of the Department pursuant to the provisions of this chapter.

**Drafting note: Existing §§ 45.1-179.6 and 45.1-179.7 are combined. The use of "promulgate," with regard to regulations is changed to "adopt" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process, and the term "rules" is stricken to reflect the use of "regulations" rather than "rules and regulations" per recommendation of the Code Commission in keeping with the definitions in the Administrative Process Act. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-179.8~~ 45.2-2005. Reinjection policy.

The Department, the Board, and the State Department of Health shall jointly develop; and revise as necessary; a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

**Drafting note: Technical changes.**

~~§ 45.1-179.9~~ 45.2-2006. Cancellation or suspension of permit.

~~Whenever, if the Department determines,~~ after a public hearing held in conjunction with the Board, ~~the Department determines~~ that a holder of a permit issued pursuant to the provisions of this chapter ~~is has~~ willfully ~~violating~~ violated any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future use thereof in order to prevent future violations.

**Drafting note: Language is updated for modern usage.**

~~§ 45.1-179.10~~ 45.2-2007. Penalties; injunctions.

A. Any person who ~~shall be adjudged to have violated~~ violates any ~~provisions~~ provision of this chapter ~~shall be~~ is guilty of a misdemeanor ~~and shall be liable to,~~ punishable by a civil penalty of not less than \$10 ~~nor~~ or more than \$250 for each violation.

B. In addition, upon violation of any ~~of the provisions~~ provision of this chapter, ~~or the regulations~~ regulation of the Department ~~hereunder~~ adopted pursuant to this chapter, the Department may, either before or after the institution of proceedings ~~for the collection of the penalty imposed by this section for such violation~~ pursuant to subsection A, institute a civil action in the circuit court ~~wherein~~ where the well is located for injunctive relief to restrain the violation and for ~~such~~ any other or further relief ~~in the premises as said~~ that the court shall deem deems proper.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-179.11~~ 45.2-2008. Judicial review.

Any person aggrieved by a final decision of the Department pursuant to the provisions of ~~§ 45.1-179.9~~ 45.2-2006 is entitled to judicial review ~~thereof~~ of such final decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**Drafting note: A technical change is made and language is updated for modern usage.**

## CHAPTER ~~14~~ 21.

### VIRGINIA-NUCLEAR ENERGY-CONSORTIUM.

**Drafting note: Existing Chapter 14 (§ 67-1400 et seq.) of Title 67, relating to the Virginia Nuclear Energy Consortium, is retained as proposed Chapter 21. The chapter name is updated to reflect its content.**

#### Article 1.

##### General Provisions.

**Drafting note: Existing § 67-1400 is combined with existing § 67-1700 to form proposed Article 1 of Chapter 21, relating to general provisions.**

~~§ 67-1400~~ 45.2-2100. Definitions.

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

"Authority" means the Virginia Nuclear Energy Consortium Authority established pursuant to this chapter.

"Board" means the board of directors of the Authority.

"Consortium" means the ~~nonstock, nonprofit corporation~~ Virginia Nuclear Energy Consortium established by the Authority pursuant to ~~§ 67-1404~~ 45.2-2105.

"Member" means a member of the Consortium.

**Drafting note: Technical changes.**

~~§ 67-1700~~ 45.2-2101. Nuclear energy; strategic plan.

A. The Department and the Secretaries of Commerce and Trade and Education shall work in coordination with the ~~Virginia Nuclear Energy Consortium Authority (VNECA)~~, established pursuant to ~~Chapter 14 (§ 67-1400 et seq.)~~ Article 2 (§ 45.2-2102), and the Virginia Economic Development Partnership Authority, established pursuant to Article 4 (§ 2.2-2234 et seq.) of Chapter 22 of Title 2.2, to develop a strategic plan for nuclear energy as part of the Commonwealth's overall goal of carbon-free energy.

B. Such plan may include (i) the promotion of new technologies and opportunities for innovation, including advanced manufacturing; (ii) the establishment of a collaborative research center and university nuclear leadership program to promote education in fields that meet the workforce demands of Virginia's nuclear industry; and (iii) recognition of the role of nuclear energy in the Commonwealth's goal of employing 100 percent carbon-free sources of energy by 2050.

C. Such plan shall be completed by October 1, 2020, ~~shall be updated every four years thereafter, and shall be published on the Internet by VNECA~~ the Authority.

**Drafting note: This section is relocated from existing Chapter 17 of Title 67. Technical changes are made.**

## Article 2.

### Virginia Nuclear Energy Consortium Authority.

**Drafting note: Existing Chapter 14 of Title 67, except for § 67-1400, is retained as proposed Article 2, relating to the Virginia Nuclear Energy Consortium Authority.**

~~§ 67-1401~~ 45.2-2102. Virginia Nuclear Energy Consortium Authority established.

There is hereby ~~created and constituted~~ established a political subdivision of the Commonwealth ~~to be known as the Virginia Nuclear Energy Consortium Authority (the Authority)~~. The Authority's exercise of powers conferred by this ~~chapter~~ article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

**Drafting note: Technical changes.**



§ ~~67-1402~~ 45.2-2103. Purposes; powers of Authority.

A. The Authority is established for the purposes of making the Commonwealth a national and global leader in nuclear energy and serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues.

B. The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, ~~but not limited to,~~ the following rights, powers, and duties to:

1. Adopt, use, and alter at will a corporate seal;

2. Acquire, purchase, hold, use, lease, or otherwise dispose of property, real, personal, or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority;

3. Adopt bylaws for the management and regulation of its affairs;

4. Develop and adopt a strategic plan for carrying out the purposes set out in this ~~chapter~~ article;

5. Make and enter into ~~all contracts and agreements~~ any contract or agreement necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this ~~chapter~~ article, including ~~agreements~~ an agreement with any person or federal agency;

6. Consult with the General Assembly; federal, state, and local agencies; nonprofit organizations; private industry; and other potential developers and users of nuclear energy;

7. Promote and facilitate agreements among public and private institutions of higher education in the Commonwealth and other research entities to carry out research projects relating to nuclear energy;

8. Disseminate information and research results;

9. Identify and support, in cooperation with Virginia's nuclear entities and the public and private sectors, the development of education programs related to Virginia's nuclear industry;

10. Provide for the establishment of the Consortium by the Board as provided in § ~~67-1404~~ 45.2-2105;

11. Develop a policy regarding any interest in intellectual property ~~that may be~~ acquired or developed by the Consortium;

12. In order to fund and support the activities of the Authority and the Consortium, apply for, solicit, and accept from any source, including any agency of the federal government, the Commonwealth, or any other state; ~~any municipality, county, locality~~ or other political subdivision ~~thereof~~; ~~any member~~; or any private corporation or other entity, (i) grants, including grants made available pursuant to federal legislation; (ii) aid; or (iii) contributions of money, property, or other things of value, which shall be held, used, and applied for the purposes set out by this chapter;

13. Facilitate the collaboration of members toward ~~the attainment of~~ obtaining grants and ~~the expenditure of~~ expending funds in accomplishing the purposes set out by this chapter;

14. Encourage, facilitate, and support the application, commercialization, and transfer of new nuclear energy technologies;

15. Provide public information and communication about nuclear energy and related educational and job opportunities;

16. Provide advice, assistance, and services to institutions of higher education and to other persons providing services or facilities for nuclear research or graduate education;

17. Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's public institutions of higher education, private companies, federal laboratories, and not-for-profit organizations to accomplish the purposes set out by this chapter; and

18. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

**Drafting note: In subsection B, "but not limited to" is removed following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made for clarity.**

~~§ 67-1403~~ 45.2-2104. Board of the Authority.

A. The Authority shall be governed by a board of directors consisting of 17 members appointed as follows:

1. The Director of the Department of Mines, Minerals and Energy or his designee;
2. The President and Chief Executive Officer of the Virginia Economic Development Partnership or his designee;
3. The Chancellor of the Virginia Community College System or his designee;
4. The President of Virginia Commonwealth University or his designee;
5. The President of the University of Virginia or his designee;
6. The President of Virginia Polytechnic Institute and State University or his designee;
7. The President of George Mason University or his designee;
8. Two individuals ~~to represent an~~ each representing a single institution of higher education in the Commonwealth that is not already represented on the Board, ~~at~~ At least one of which the institutions shall be a private institution of higher education;
9. Six individuals, each ~~to represent~~ representing a single business entity located in the Commonwealth that is engaged in activities directly related to the nuclear energy industry;
10. One individual ~~to represent~~ representing a nuclear energy-related nonprofit organization; and
11. One individual ~~to represent a Virginia-based~~ representing a Commonwealth-based federal research laboratory.

B. The members of the Board described in subdivisions A 1 through ~~A 7~~ shall serve terms coincident with their terms of office.

C. The 10 members of the Board described in subdivisions A 8 through ~~A 11~~ shall be appointed by the Governor. ~~The original terms of five of such members shall end on June 30,~~

2015, and the original term of the five other such members shall end on June 30, 2017, all as designated by the Governor. After the initial staggering of terms, such members shall be appointed for terms of four years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. Members of the Board described in subdivisions A 8 through A 11 may serve two successive terms on the Board.

D. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.

E. Meetings of the Board shall be held at the call of the chairman or of any seven members. Nine members of the Board shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum is present shall be is an act of the Board.

F. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

G. The Board shall annually elect from among its members a chairman, a vice-chairman, and a treasurer. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers, who need not be members of the Board, as it deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings each meeting of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings meeting.

H. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited forfeit his or her office or employment by reason of acceptance of membership on the Board or by providing service to the Authority or to the Consortium.

I. On or before November 15 of each year, the Authority shall submit its updated strategic plan, an annual summary of its activities, and recommendations for the support and expansion of the nuclear energy industry in Virginia to the Governor and the Chairmen of the House Appropriations Committee on Appropriations, the Senate Finance Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the House and Senate Committee on Commerce and Labor Committees.

**Drafting note: A change is made in subsection H pursuant to § 1-216, which states that a word used in the masculine includes the feminine and neuter. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa, and updating House and Senate committee names changed in the 2020 Session. Language in subsection C related to the staggering of initial terms is stricken as obsolete. Language is updated for modern usage.**

~~§ 67-1404~~ 45.2-2105. Establishment of the Consortium.

A. The Board shall provide for the formation, by January 1, 2014, of a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, not organized for profit, ~~which~~

~~corporation~~ that shall include in its name the words "Virginia Nuclear Energy Consortium," or some variation thereof that is approved by the Board.

B. The Consortium shall be established for the purpose of conducting activities useful in (i) making the Commonwealth a leader in nuclear energy; (ii) serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues; and (iii) carrying out the provisions of this ~~chapter~~ article, including raising money on behalf of the Authority in the corporate and nonprofit community and from other nonstate sources.

C. The membership of the Consortium shall be open to:

1. Public or private institutions of higher education in the Commonwealth;
2. ~~Virginia-based~~ Commonwealth-based federal research laboratories;
3. Nuclear energy-related nonprofit organizations;
4. Business entities with operating facilities located in the Commonwealth that are engaged in activities directly related to the nuclear energy industry; and
5. Other individuals or entities whose membership is approved by the board of directors of the Consortium through a process established by the bylaws of the Consortium.

D. The board of directors of the Consortium shall consist of members selected and approved by the Consortium pursuant to a process established by its bylaws.

E. The board of directors of the Consortium shall appoint an executive director to serve as the principal administrative officer of the Consortium. The executive director shall carry out the specific duties assigned to him by the board of directors; and develop appropriate policies and procedures for the operation of the Consortium; employ ~~such~~ persons and secure ~~such~~ services as ~~may be~~ required to carry out the purposes of the Consortium; expend funds as authorized by the Authority; and accept moneys from federal or private sources on behalf of the Authority, including moneys contributed by Consortium members to the Authority, for cost-sharing on nuclear energy research or projects. The executive director and any other employee of the Consortium (i) shall be compensated in the manner provided by the board of directors of the Authority, (ii) shall not be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), and (iii) shall not be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

F. The articles of incorporation of the Consortium shall provide that upon dissolution the net assets of the Consortium shall be transferred to the Authority.

G. The Consortium shall not be deemed to be a state or governmental agency, advisory agency, public body, or agency or instrumentality for purposes of ~~Chapters~~ Chapter 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24 (§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38 (§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§ 2.2-4600 et seq.), ~~and or~~ 47 (§ 2.2-4700 et seq.) of Title 2.2, Chapter 14 (§ 30-130 et seq.) of Title 30, or Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1.

H. The board of directors of the Consortium shall adopt, alter, and repeal bylaws governing the manner in which its business shall be transacted and the manner in which the activities of the Consortium shall be conducted.

I. The Consortium shall report on all of its ~~non-proprietary~~ nonproprietary activities at least twice a year to the Authority.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 67-1405~~ 45.2-2106. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of such persons as the Authority ~~may authorize~~ authorizes to execute such warrants or orders.

**Drafting note: Language is updated for modern usage.**

~~§ 67-1406~~ 45.2-2107. Audits; external reviews.

A. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority. The audit report and any nonproprietary information provided to the auditor in connection with the audit shall be made available to the public, upon request, in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. The Authority, if it receives state funds, shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor.

**Drafting note: Technical change.**

## ~~CHAPTER 21.~~

### ~~EXPLORATION FOR URANIUM ORE.~~

#### Article 3.

##### Exploration for Uranium Ore.

**Drafting note: Existing Chapter 21, relating to exploration for uranium ore, is retained as proposed Article 3. Throughout the article, references to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department.**

~~§ 45.1-272~~. Legislative findings; declaration of policy. [Not set out]

~~The mining of uranium within the Commonwealth has the potential to provide its citizens with employment opportunities and other economic benefits.~~

~~It also offers the Commonwealth and the nation the possibility of developing valuable resources that can be used to produce energy in a clean, efficient manner and lessen this country's dependence on foreign energy supplies.~~

~~At the same time, the General Assembly finds that the improper and unregulated exploration for uranium can adversely affect the health, safety, and general welfare of the citizens of this Commonwealth.~~

~~The General Assembly also finds that the adoption of additional statutes during the 1983 Session of the General Assembly may be necessary in order to assure that any uranium mining and milling which may occur in the Commonwealth will not adversely affect the environment or the public health and safety.~~

~~The purposes of this chapter are to encourage and promote the safe and efficient exploration for uranium resources within the Commonwealth, and to assure, pursuant to § 45.1-284 of this Code, that uranium mining and milling will be subject to statutes and regulations which protect the environment and the health and safety of the public.~~

**Drafting note: This section, enacted by Acts 1982, c. 269, is currently not set out. This section, containing a statement of legislative findings and a declaration of policy, is stricken in accordance with the Code Commission's policy that such statements do not have general and permanent application and thus are not to be included in the Code.**

~~§ 45.1-273 45.2-2108. Definitions.~~

~~The following words shall have the meanings respectively ascribed thereto: As used in this article, unless the context requires a different meaning:~~

~~"Exploration activity" means and ~~shall be~~ is limited to the drilling of test holes or stratigraphic or core holes of a depth in excess of ~~fifty~~ 50 feet for the purpose of determining the location, quantity, or quality of uranium ore.~~

~~"Person" ~~shall mean~~ means any individual, firm, corporation, partnership, association, or other legal entity.~~

~~"Usable quality water" ~~is defined as ground water~~ means groundwater that is used or can be used for a beneficial purpose, including, ~~but not limited to,~~ a domestic, livestock, or irrigation ~~uses~~ use.~~

**Drafting note: The definition of "usable quality water" is relocated from existing § 45.1-277 and "but not limited to" is removed from that definition following the term "including" on the basis of § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-279 45.2-2109. Rules and regulations Regulations.~~

~~The Director shall ~~promulgate such rules and,~~ in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations as may be necessary and proper to carry out the provisions of this ~~chapter~~ article.~~

**Drafting note: The term "promulgate such rules and regulations" is changed to "adopt regulations" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process, and the term "rules" is stricken to reflect the use of "regulations" rather than "rules and regulations" per recommendation of the Code Commission in keeping with the definitions in the Administrative Process Act. A reference to the Administrative Process Act is added from existing § 45.1-281.**

~~§ 45.1-274~~ 45.2-2110. Permit for exploration activity required; fee.

A. It ~~shall be~~ is unlawful for any person to commence any exploration activity ~~as defined herein~~ without first obtaining a permit to do so from the ~~Chief Director~~. The application for the permit shall be in ~~such a form as the Chief may prescribe~~ Director prescribes and shall be accompanied by a fee of \$250 and ~~such by any other information as may be required by this chapter article~~.

B. The application for a permit to carry out ~~any~~ exploration activity shall be accompanied by a bond, payable to the Commonwealth, with surety acceptable to the ~~Chief Director~~. The bond shall ensure compliance with the provisions of this ~~chapter article~~ and any regulations ~~promulgated~~ adopted hereunder relating to the drilling, redrilling, plugging ~~and, or~~ abandoning of any exploration activity. The bond shall be set by the ~~Chief Director~~ in ~~such an~~ amount ~~as may be~~ deemed reasonable and necessary.

C. An initial permit shall be valid for a period of one year; and may be renewed ~~for a like period of time~~ annually.

**Drafting note: The term "regulations promulgated" is changed to "regulations adopted" in keeping with recent title revisions because "adopt" is more widely used and includes the promulgation process. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department. Technical changes are made and language is updated for modern usage.**

~~§ 45.1-275~~ 45.2-2111. Maps or plats of proposed exploration activity area.

Before undertaking any exploration activity on any tract of land, the person proposing the exploration activity shall prepare or have prepared and file with the ~~Chief Director~~, together with the application required by ~~§ 45.1-274~~ 45.2-2110, an accurate map, on a scale ~~to be~~ stated thereon, showing the location of the proposed exploration activity; the courses and distances of such activity from two permanent points or landmarks on the tract; the approximate location areas in which test holes or core or stratigraphic holes may be drilled; the name of the owner; and boundaries and acreage of the tract on which the exploration activity is to take place.

**Drafting note: A reference to the Chief of the Division of Mines, which predates the formation of the Department in 1985, is changed to refer to the Director of the Department. A technical change is made and language is updated for modern usage.**

~~§ 45.1-276~~ 45.2-2112. Abandoning exploration hole; affidavits required.

Within ~~forty five~~ 45 days after the abandonment of any exploration hole, the permittee shall notify the ~~Chief Director~~ that such exploration hole has been plugged and abandoned,

giving the location of ~~such~~ the hole. The permittee shall submit an affidavit, ~~in triplicate, which shall set~~ setting forth the time and manner in which the hole was plugged and filled. One copy of ~~this~~ the affidavit shall be retained by the permittee, one shall be sent to the State Geologist, and the third shall be ~~mailed~~ sent to the ~~Chief~~ Director.

**Drafting note: A technical change is made and language is updated for modern usage. The requirement that the affidavit be submitted in triplicate is deleted and the mailing requirement is replaced by a requirement that a copy be sent to the Director. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department.**

~~§ 45.1-277~~ 45.2-2113. Plugging.

The plugging of an exploration ~~holes~~ hole shall be as follows:

1. ~~All~~ Each exploration ~~holes~~ hole shall be adequately plugged with cement from the bottom of the hole upward to a point three feet below plow depth. The remainder of the hole between the top of the plug and the surface shall be filled with cuttings or nontoxic material.

2. If multiple aquifers alternating usable quality water and ~~salt water~~ saltwater zones, or other conditions determined by the ~~Chief~~ Director to be potentially deleterious to surface water or ~~ground water~~ groundwater are encountered, the conditions ~~must~~ shall be isolated immediately by cement plugs. ~~"Usable quality water" is defined as ground water that is used or can be used for a beneficial purpose, including, but not limited to, domestic, livestock, or irrigation uses.~~ Each hole shall be plugged with cement to prevent water from flowing into or out of the hole or mixing within the hole. The length of the plug shall be determined by the ~~Chief~~ Director based on available data on the specific site.

3. Each exploration hole shall be plugged as soon as reasonably practical after drilling, unless multiple aquifers are encountered.

4. Alternative plugging procedures and materials may be utilized ~~when~~ if the applicant ~~has demonstrated~~ demonstrates to the ~~Chief's~~ Director's satisfaction that the alternatives will protect ~~ground waters~~ groundwater and comply with the provisions of this ~~chapter~~ article. In the event that a hole is more suitably plugged with a nonporous material other than cement, the material shall have characteristics at least equal to cement.

5. In the event that an exploration hole is to remain unplugged pursuant to the provisions of ~~§ 45.1-278~~ 45.2-2114, the procedure contained in subdivision 2, if applicable, shall be applied and the exploration hole shall be plugged to the extent required by that ~~paragraph~~ subdivision.

**Drafting note: The second sentence of subdivision 2, which contains a definition of "usable quality water," is relocated to § 45.2-2108, the definitions section for the article. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department. Technical changes are made and language is updated for modern usage.**



~~§ 45.1-278~~ 45.2-2114. Developing an exploration hole as a water well.

If any exploration hole drilled for the purpose of determining the location, quantity, or quality of uranium ore indicates a stratum or source of potable fresh water ~~which that~~ could be developed pursuant to established ~~EPA~~ U.S. Environmental Protection Agency safe drinking water standards for a community water system, upon the request of the owner of the property on which the exploration hole is located and ~~on~~ following application to and approval by the ~~Chief Director~~, who shall secure concurrence from the State Department of Health, the well, in lieu of being plugged and abandoned, may be developed and completed as a water well. The development and completion of an exploration hole as a water well shall be performed in accordance with applicable state water control ~~law~~ laws and ~~regulation~~ regulations.

**Drafting note: The standard reference to the U.S. Environmental Protection Agency is substituted for a short reference and a reference to the Chief of the Division of Mines, which predates the formation of the Department in 1985, is changed to refer to the Director of the Department. Language is updated for modern usage.**

~~§ 45.1-280~~ 45.2-2115. Right of inspection by ~~Chief Director~~.

For the purposes of carrying out the provisions of this ~~chapter~~ article, the ~~Chief Director~~ is hereby vested with authority to inspect at reasonable times and in a reasonable manner any area ~~or areas~~ for which he has received an application for a permit, or has granted a permit, for exploration activity.

**Drafting note: Technical changes are made, including a change pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department. Language is updated for modern usage.**

~~§ 45.1-281~~. Administrative Process Act applicable.

~~The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall be applicable to the provisions of this chapter.~~

**Drafting note: This section, which refers to the Administrative Process Act, is deleted as unnecessary and a reference to the Administrative Process Act is added to § 45.2-2109.**

~~§ 45.1-283~~ 45.2-2116. Uranium mining permit applications; ~~when accepted~~; uranium mining deemed to have significant effect on surface.

Notwithstanding any other provision of law, ~~permit applications~~ no application for a uranium mining permit shall ~~not~~ be accepted by any agency of the Commonwealth ~~prior to July 1, 1984, and~~ until a program for permitting uranium mining is established by statute. For the purpose of construing the definition of "mining" in § 45.1-180 (a) 45.2-1200, uranium mining ~~shall be~~ is deemed to have a significant effect on the surface.

**Drafting note: The prohibitory language of this section is recast in affirmative form consistent with current drafting practice and the obsolete 1984 date is stricken.**

**Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage.**

~~§ 45.1-284~~ 45.2-2117. State and local authority.

Nothing ~~contained~~ in this ~~chapter~~ article shall be construed to alter the authority of any state or local governing body, including ~~the authorities~~ any authority conferred under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, ~~relative~~ relating to ~~matters which are~~ any matter that is the subject of this ~~chapter~~ article.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage and clarity.**

~~§ 45.1-285~~ 45.2-2118. Confidentiality of logs, surveys, and reports.

A. ~~The Chief Director~~ shall hold confidential all logs, surveys, plats, and reports filed under this ~~chapter~~ article by ~~those~~ any person engaged in the exploration for uranium for a period of two years after the completion of the exploratory activities.

~~Further, upon~~ B. Upon written request by any person engaged in ~~the~~ exploration for uranium, ~~the Chief Director~~ shall hold confidential all logs, surveys, plats, and reports filed under this chapter for ~~all~~ an additional two-year ~~periods~~. ~~Such request shall be granted by the Chief~~ period. The Director shall grant such request if the requesting party certifies that he considers all such information to be of a proprietary nature relating to his competitive rights. The requesting party may renew his request every two years.

C. Nothing in this section shall be construed to deny ~~to~~ the State Geologist ~~the~~ access to ~~all logs, surveys, plats and reports~~ any log, survey, plat, or report filed under this ~~chapter~~ article. ~~The~~ However, the State Geologist, ~~however,~~ shall ~~be bound to~~ hold ~~this~~ such information confidential to the same extent as ~~the Chief is bound~~ Director.

**Drafting note: The ambiguous reference to confidentiality "for all additional two-year periods" is stricken and a two-year renewal provision is added. Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. References to the Chief of the Division of Mines, which predate the formation of the Department in 1985, are changed to refer to the Director of the Department. Language is updated for modern usage and subsection designations are added for clarity.**

~~§ 45.1-282~~ 45.2-2119. ~~Penalties~~ Civil penalty.

A. Any person who violates any provision of this ~~chapter~~ article, or who fails, neglects, or refuses to comply with any ~~rule or~~ regulation ~~issued~~ adopted by the Director; or final order of a court lawfully issued, shall be subject to a civil penalty; not to exceed \$10,000; for each violation. Each day of violation shall constitute a separate offense. All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Minerals Reclamation Fund pursuant to § 45.2-1234.

B. ~~The Chief shall have the authority to~~ Director may restrain violations of this ~~chapter article~~ in accordance with the provisions of ~~§ 45.1-358 45.2-1608~~.

**Drafting note:** This section, which provides for civil penalties, is relocated to the end of the article. The term "regulation issued" is changed to "regulation adopted" in keeping with recent title revisions because "adopt" is more widely used and includes issuance. A provision is added directing civil penalties to an appropriate nonreverting fund consistent with current drafting practice. A reference to the Chief of the Division of Mines, which predates the formation of the Department in 1985, is changed to refer to the Director of the Department. A reference to § 45.1-358, made obsolete when that section was incorporated into § 45.1-361.8, is updated. Technical changes are made and language is updated for modern usage.

#### Article 2.

##### ~~Uranium Administrative Group; Functions. [Not set out]~~

**Drafting note:** Existing Article 2 (§§ 45.1-285.1 through 45.1-285.10) of Chapter 21, enacted by Acts 1983, c. 3, which is currently not set out in the Code, is recommended for repeal as obsolete because the Uranium Administrative Group created by the article was required by § 45.1-285.5 to submit its report by December 1, 1983 and is no longer in existence.

##### ~~§ 45.1-285.1. Findings; declaration of policy. [Not set out]~~

~~The General Assembly finds: (i) that while uranium mining and milling activity can generate substantial benefits, it also raises a wide range of environmental and other local concerns; and (ii) that a preliminary study, identifying many potential environmental and other effects of uranium development and describing procedures and responsibilities that the Commonwealth and a proponent would be obligated to accept if development were to proceed, has not identified any environmental or public health concern that could preclude uranium development in Virginia.~~

~~The General Assembly further finds, however, that a possibility exists that certain impacts of uranium development activity may reduce or potentially limit certain uses of Virginia environment and resources, and that therefore additional evaluation of the costs and benefits of such activity is necessary before a final decision can be made regarding its acceptability in the Commonwealth. The General Assembly encourages private industry to participate in further studies and analyses of the costs and benefits of uranium mining and milling activity in the Commonwealth. Evaluation of these costs and benefits will be enhanced by further studies pertaining to Pittsylvania County where preliminary study has focused and where uranium development activity is currently contemplated by proponents.~~

~~The General Assembly emphasizes that uranium mining and milling activity presents issues of great concern to the public. It therefore encourages public participation in the deliberations concerning these issues.~~

**Drafting note:** This section is recommended for repeal as obsolete.

~~§ 45.1-285.2. Definitions. [Not set out]~~

~~The following words shall have the meanings respectively ascribed thereto:~~

~~"Commission" shall mean the Virginia Coal and Energy Commission.~~

~~"Decommissioning" shall mean the process by which mining, milling and tailings management operations are terminated and the associated facilities removed or rendered inactive.~~

~~"Group" shall mean the Uranium Administrative Group established in § 45.1-285.3 of this Code.~~

~~"Milling" shall mean the operation by which uranium ore is processed or treated to extract uranium.~~

~~"Mining" shall mean any activity meeting the definition of mining in § 45.1-180(a) of Chapter 16 of this title. For the purpose of construing § 45.1-180(a) of Chapter 16 of this title, uranium mining shall be construed to have a significant effect on the surface.~~

~~"Person" shall mean any individual, firm, corporation, partnership, association or other legal entity.~~

~~"Reclamation" shall mean any activity meeting the definition of reclamation in § 45.1-180(k) of Chapter 16 of this title.~~

~~"Tailings" shall mean the residue remaining after extraction of uranium from uranium ore whether or not the residue is left in piles, but shall not include ore bodies or ore stock piles.~~

~~"Tailings management" means the methods by which tailings are handled, stored or disposed of.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.3. Uranium Administrative Group. [Not set out]~~

~~In order to effectuate the provisions of this Chapter, there is created a Uranium Administrative Group which shall be composed of the following: the Chairman of the Commission or his designee who shall also serve as Chairman of the Group; the Administrator of the Council on the Environment or her designee; the Executive Director of the State Water Control Board; the Executive Director of the State Air Pollution Control Board; the Commissioner of the State Board of Health; the Director of the Department of Conservation and Economic Development; the Commissioner of the Department of Agriculture and Consumer Services; the Director of the Division of Industrial Development; one member to be designated by the local governing body of Pittsylvania County; one member to be designated by the local governing body of Halifax County; two members to be designated by the Chairman of the Commission from the State at large and two members to be designated by the Governor from the State at large.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.4. Employment of consultants; other support. [Not set out]~~

~~In performing the duties established in this article, the Group shall have the authority to employ consultants and each state agency representative shall designate one or more individuals from the respective agencies to assist in the administrative functions necessitated by the duties established in this chapter. For purposes of the performance of these duties, the individuals shall be directly responsible to the Chairman of the Group.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.5. Duties of the Group. [Not set out]~~

~~The Group shall perform the following duties:~~

~~A. Review, comment on and approve any proposals submitted by persons for studying the effects of uranium development activity at specific sites in Pittsylvania County to determine whether such study proposals address each of the statutory criteria established by § 45.1-285.6 of this article.~~

~~B. Evaluate, in light of the statutory criteria established by § 45.1-285.6 of this Code and with the aid of independent consultants, and participation by the public, if appropriate, any study submitted by private parties which analyzes the effects of uranium development activity at specific sites in Pittsylvania County.~~

~~C. Based on studies that analyze each of the statutory criteria established by § 45.1-285.6 of this Code submitted pursuant to a study plan filed in accordance with § 45.1-285.9, present a report to the Commission by December 1, 1983. The report shall:~~

~~1. Explain with respect to each specific site in Pittsylvania County that has been subject to a study meeting the criteria of this chapter: the costs and benefits of permitting uranium development at the specific site, including any beneficial or adverse effects that cannot be quantified and a description of the persons or classes of persons likely to receive the benefits or bear the costs; the reasonable alternatives for achieving the identified benefits of the uranium development activity, including an alternative siting analysis; and~~

~~2. In light of the results of site-specific studies under this chapter, discuss the advantages and disadvantages of enacting legislation under which permits could be issued for uranium mining and milling in Pittsylvania County or at specified locations therein; and~~

~~3. Include draft legislation for consideration of the Commission, if appropriate, regulating the mining and milling of uranium in Pittsylvania County and reasonably assuring that appropriate planning, design, operating, decommissioning and post-closure procedures are followed to minimize adequately any adverse environmental or human health consequences; and~~

~~4. Discuss the advantages and disadvantages of seeking agreement with the federal government providing for discontinuance of the federal government's responsibility for regulating uranium milling and tailings management. In making this recommendation the Group shall assess the adequacy of existing federal and state health, safety and environmental standards pertaining to uranium development activity; and~~

~~5. Discuss the Group's consultation with federal and state agencies, including the United States Nuclear Regulatory Commission, having expertise relevant to regulating uranium development activity; and~~

~~6. The report of the Group to the Commission may include specific recommendations if they are deemed appropriate, or~~

~~7. Advise the Commission that additional studies or a continuation of existing studies are necessary in order to adequately report under paragraphs 1-6 of this section.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.6. Study criteria. [Not set out]~~

~~The Group shall base its analysis of the costs and benefits of permitting uranium development at specific sites in Pittsylvania County on the criteria set out in this section. Any study submitted to the Group pursuant to this chapter shall address each of these criteria. The Group shall ensure that it shall receive information, from whatever sources, adequate to analyze each of the criteria:~~

~~A. Site suitability including geological, hydrological, hydrogeological, seismological, biological and meteorological characteristics, demography, and current uses of the land in the vicinity of the site.~~

~~B. Analysis of all pathways by which radionuclides and other contaminants may enter or affect ground waters, receiving surface waters, and the air and the biota and be transmitted to critical receptors as a result of mining, milling and tailings management at the specific site; the estimated cumulative dose to such critical receptors; and available data on the baseline radioactive, chemical and physical characteristics of the ground waters, receiving surface waters, air and the biota identified in the pathway analysis as potentially subject to increased levels of contamination.~~

~~C. Plans for monitoring changes from the baseline radioactive and chemical characteristics of the ground water, receiving surface waters, air and the biota identified in the pathway analysis as potentially subject to increased levels of contamination.~~

~~D. The qualifications of the potential applicant or applicants to conduct uranium development activity at the specific site, including technical and financial qualifications and past operating experience and practices.~~

~~E. The specific nature of the proposed mining, milling and tailings management activity, including:~~

~~1. With respect to mining activity, the type of mining operation and the equipment to be used; the anticipated duration of the mining operation and the number of acres to be affected; a detailed map of the site; the result of test borings or core samplings from the site; the amount of soil and waste rock to be stockpiled; plans for surface water and ground water drainage and diversion facilities; plans for domestic and mine water and waste handling systems; the quantity and quality of atmospheric releases and the methods for controlling such releases; and plans for protecting the occupational health and safety of employees working in the mines.~~

2. With respect to milling activity, the capacity of the mill; the processes to be used in milling and ore extraction; the reagents and processing materials to be used; flow diagrams and materials balance for raw materials, reagents, processing materials, finished products and by-products for the various process units; the quantity of water to be used and the water balance in the plant; the quantity and quality of liquid and solid wastes to be produced; the quantity and quality of atmospheric releases and the methods for controlling such releases; the methods for monitoring emissions from the processing facilities; the method for conveying tailings and wastewater from the mill; and plans for protecting the occupational health and safety of employees working in the mill.

3. With respect to tailings management, the quantity and characteristics of the tailings; the method of disposal; the size of the tailings disposal area; the method of liquid effluent treatment; the hydrology, hydrogeology, and surficial and bedrock geology of the disposal area; stability analysis for all embankments; seepage management techniques; seepage and ground water monitoring facilities; treatment systems for the removal of solids, radionuclides, heavy metals and other substances from wastewaters; systems for diversion of fresh water away from the tailings management area; and the quantity and quality of atmospheric releases and the methods for controlling such releases.

F. Plans, during active operations, transition and post closure phases, for decommissioning, reclamation and securing of the mining, milling and tailings management facilities, including any research required to demonstrate the effectiveness of such plans.

G. Analysis of potential accidents in connection with the proposed mining, milling, tailings management, decommissioning and post closure activity and contingency plans for responding to such accidents.

H. The extent of radiological, or nonradiological impacts resulting from mining, milling, tailings management, decommissioning and post closure activities with particular attention to the following possible effects:

1. The contamination of local ground water and surface water by discharges from mining, milling and tailings management, and the loss of such waters as suitable water supply sources, including the extent to which applicable regulatory standards may be exceeded.

2. The reduction or loss of yields from wells due to mine dewatering, or other mining, milling or tailings management activities, and the subsequent drawdown of the surrounding water table.

3. The loss of use of local ground water and surface water sources resulting from the migration of radionuclides and other contaminants from the former mining or tailings area after decommissioning, including the extent to which applicable regulatory standards may be exceeded.

4. The need to avoid full-time human residency within a certain radius of the property during operations due to emission of radon, other radionuclides, or dust from mining, milling and tailings management.

~~5. The permanent preclusion of the tailings management area after decommissioning from certain land use activities.~~

~~6. Any other effects that would impair use of the local environment during operations or after decommissioning.~~

~~I. The socioeconomic effects of the uranium development activity at the specific site and its associated regulation on the local community and the Commonwealth.~~

~~J. A description of the costs and benefits of allowing the proposed uranium development activity to proceed at the specific site, including any beneficial or adverse effects that cannot be quantified and a description of the persons or groups of persons likely to receive the benefits or bear the costs; a description of reasonable alternatives for achieving the identified benefits of the uranium development activity, including an alternative siting analysis; and an explanation of how, if at all, the benefits of uranium development activity at the specific site are likely to justify the costs and adverse effects and an explanation of why conducting uranium development activity at that site is preferable to conducting it at alternative sites.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.7. Additional factors. [Not set out]~~

~~The Group is authorized to specify criteria in addition to those enumerated in paragraphs A through J of § 45.1-285.6 of this Code as it deems necessary to formulate its report to the Commission.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.8. Recommendations to the General Assembly. [Not set out]~~

~~Upon the receipt of the report of the Group, the Commission shall hold one or more public hearings in Pittsylvania County, Halifax County and the City of Richmond and shall thereafter report to the General Assembly with specific recommendations concerning the subject matter of the report, together with specific draft legislation implementing those recommendations, if appropriate.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.9. Study filing procedure. [Not set out]~~

~~Any person who intends to file a study plan with the Group pursuant to this chapter must submit, as a condition of filing such a study, the following items to the Group within thirty days of the enactment of this act or at such later time: (i) notice of intent to file a study and (ii) a schedule for completing and filing the study.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 45.1-285.10. Applicability of studies under this chapter to any future licensing proceedings. [Not set out]~~

~~In the event that a procedure for licensing uranium development activity in Pittsylvania County is established by statute or regulation, the information in any study submitted to the~~



~~Group pursuant to this chapter may be used in part or in full to meet any requirement of the licensing procedure which such information, in the judgment of any agency responsible for interpreting such requirement, is sufficient to fulfill. However, no finding or conclusion of any such study shall be binding on any agency with respect to any issue in any future licensing proceeding.~~

**Drafting note: This section is recommended for repeal as obsolete.**



**PROVISIONS OF TITLE 67 RELOCATED TO OTHER TITLES**

~~CHAPTER 4.~~

~~CLEAN COAL PROJECTS.~~

~~TITLE 10.1. CONSERVATION.~~

~~CHAPTER 13.~~

~~AIR POLLUTION CONTROL BOARD.~~

Article 5.

Clean Coal Projects.

**Drafting note: Existing Chapter 4 (§ 67-400 et seq.) of Title 67, relating to clean coal projects, is relocated as proposed Article 5 in Chapter 13 of Title 10.1, comprising §§ 10.1-1332 and 10.1-1333.**

~~§ 67-400~~ 10.1-1332. Definitions.

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

"Center" means the Virginia Center for Coal and Energy Research.

"Clean coal project" means any project that uses any technology, including ~~technologies~~ a technology applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that (i) will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, ~~which~~ and is not in widespread use, or (ii) is otherwise defined as clean coal technology pursuant to 42 U.S.C. § 7651n.

**Drafting note: Technical changes are made, including changes pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Clause designations are added.**

~~§ 67-401~~ 10.1-1333. Permitting process for clean coal projects.

To the extent authorized by federal law, the ~~State Air Pollution Control~~ Board shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.

**Drafting note: Technical change.**

~~§§ 67-402, 67-403. Expired.~~

**Drafting note: Expired July 1, 2009, pursuant to Acts 2006, c. 939, cl. 6.**

~~Chapter 8.~~

~~Motor Vehicle Fuel Efficiency Standards.~~

TITLE 33.2. HIGHWAYS AND OTHER SURFACE TRANSPORTATION SYSTEMS.

CHAPTER 1.

DEFINITIONS AND GENERAL PROVISIONS.

**Drafting note: Existing Chapter 8 (§§ 67-800 and 67-801) of Title 67, relating to motor vehicle fuel efficiency standards, is relocated to the end of Chapter 1 (§ 33.2-100 et seq.) of Title 33.2.**

~~§ 67-800 33.2-120. Definitions~~ Efforts to increase CAFE standards.

A. As used in this section, unless the context requires a different meaning, "CAFE standards" means the corporate average fuel economy standards for passenger cars and light trucks manufactured for sale in the United States that have been implemented pursuant to the federal Energy Policy and Conservation Act of 1975 (P.L.P.L. 94-163), as amended.

~~§ 67-801. Efforts to increase CAFE standards.~~

B. It is the policy of the Commonwealth to support federal action that provides for:

1. An increase in the CAFE standards from the current standard by promoting performance-based tax credits for advanced technology, fuel-efficient vehicles to facilitate the introduction and purchase of such vehicles; and

2. Market incentives and education programs to build demand for high-efficiency, cleaner vehicles, including tax incentives for highly efficient vehicles.

**Drafting note: Existing §§ 67-800 and 67-801 are combined and technical changes are made. The word "in," apparently omitted in error from subdivision B 1, is inserted.**

~~Chapter 5.~~

~~Biodiesel Fuel.~~

CHAPTER 2.

TRANSPORTATION ENTITIES.

Article 2.

Commonwealth Transportation Board; Powers and Duties.

**Drafting note: Existing Chapter 5 (§ 67-500 et seq.) of Title 67, relating to biodiesel fuel, is relocated to the end of Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2.**

~~§ 67-500 33.2-221.1. Definitions~~ Use of biodiesel and other alternative fuels in vehicles providing public transportation.

A. As used in this ~~chapter~~ section, unless the context requires a different meaning,

~~"Biodiesel"~~ "biodiesel fuel" means a renewable, biodegradable, mono-alkyl ester combustible liquid fluid fuel from agricultural plant oils or animal fats that meets the applicable American Society for Testing and Materials (ASTM) Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

~~§ 67-501. Use of biodiesel and other alternative fuels in vehicles providing public transportation.~~

~~B. The Commonwealth Transportation Board shall encourage the use of biodiesel fuel and other alternative fuels, to the extent practicable, in buses and other vehicles used to provide public transportation in the Commonwealth.~~

**Drafting note: Existing §§ 67-500 and 67-501 are combined and technical changes are made.**

~~CHAPTER 7.~~

~~COVENANTS RESTRICTING SOLAR ENERGY COLLECTION DEVICES.~~

~~TITLE 55.1. PROPERTY AND CONVEYANCES.~~

~~CHAPTER 18.~~

~~PROPERTY OWNERS' ASSOCIATION ACT.~~

~~Article 3.~~

~~Operation and Management of Association.~~

**Drafting note: Existing Chapter 7 (§§ 67-700 and 67-701) of Title 67, relating to covenants restricting solar energy collection devices, applies to a property owners' association under the Property Owners' Association Act (§ 55.1-1800 et seq.), a unit owners' association under the Virginia Condominium Act (§ 55.1-1900 et seq.), and a proprietary lessees' association under the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.). Therefore, existing Chapter 7 of Title 67 is relocated to Chapters 18 (§ 55.1-1800 et seq.), 19 (§ 55.1-1900 et seq.), and 21 (§ 55.1-2100 et seq.) in Title 55.1.**

~~§ 67-700 55.1-1820.1. Definitions~~ Installation of solar energy collection devices.

~~A. As used in this chapter:~~ section, unless the context requires a different meaning.

~~"Community association" means an unincorporated association or corporation that owns or has under its care, custody, or control real estate subject to a recorded declaration of covenants that obligates a person, by virtue of ownership of specific real estate, to be a member of the unincorporated association or corporation.~~

~~"Solar"~~ solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

~~§ 67-701. Covenants regarding solar power.~~

~~A.~~ B. No community association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for that community the association establishes such a prohibition. However a community, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 and any disclosure packet pursuant to § 55.1-1809, as applicable, given to a purchaser shall contain a statement setting forth any restriction, limitation,

or prohibition on the right of an owner to install or use solar energy collection devices on his property.

~~B.-C.~~ A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the ~~community~~ association to show that the restriction is not reasonable according to the criteria established in this subsection.

~~C.-D.~~ The ~~community~~ association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the ~~community~~ association. ~~A community~~ An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**Drafting note: Existing §§ 67-700 and 67-701 are combined and technical changes are made.**

CHAPTER 19.  
VIRGINIA CONDOMINIUM ACT.

Article 3.

Management of Condominium.

§ 55.1-1951.1. Installation of solar energy collection devices.

A. As used in this section, unless the context requires a different meaning, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy

production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**Drafting note: Duplicates in Chapter 19 (§ 55.1-1900 et seq.) of Title 55.1 the text of proposed § 55.1-1820.1, which is located in Chapter 18 of Title 55.1 and is derived from existing §§ 67-700 and 67-701. To reflect the context of Chapter 19, the Virginia Condominium Act, references to "the association" are changed to "the unit owners' association" and the cross-reference in the final sentence of proposed subsection B is changed from "§ 55.1-1809" to "§ 55.1-1990."**

## CHAPTER 21.

### VIRGINIA REAL ESTATE COOPERATIVE ACT.

#### Article 3.

#### Management of Cooperatives.

##### § 55.1-2133.1. Installation of solar energy collection devices.

A. As used in this section, unless the context requires a different meaning, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-2161 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**Drafting note: Duplicates in Chapter 21 (§ 55.1-2100 et seq.) of Title 55.1 the text of proposed § 55.1-1820.1, which is located in Chapter 18 of Title 55.1 and is derived from existing §§ 67-700 and 67-701. To reflect the context of Chapter 21, the Virginia Real Estate Cooperative Act, the cross-reference in the final sentence of proposed subsection B is changed from "§ 55.1-1809" to "§ 55.1-2161."**

## CHAPTER 9.

### RENEWABLE ELECTRICITY PRODUCTION GRANT PROGRAM.

**Drafting note: Part of the recodification process is the identification and evaluation of programs and funds that have not been funded in the last five years. From the Code Title Recodification FAQs on the Code Commission home page: "This review includes an evaluation of the continued need for or repeal of any section that has not been implemented during the previous five years because sufficient funds were not appropriated by the General Assembly." Pursuant to Chapter 939 of the Acts of Assembly of 2006, as amended by Chapter 789 of the Acts of Assembly of 2007, the effective date of this chapter is dependent on appropriation funding. No funding has been appropriated since this requirement was established more than 13 years ago; therefore, the Renewable Electricity Production Grant Program (§ 67-900 et seq.) is proposed for repeal.**

~~§ 67-900. (Contingent effective date—see Editor's note) Definitions.~~

~~As used in this chapter, unless the context clearly requires otherwise:~~

~~"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.~~

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

~~"Fund" means the Renewable Electricity Production Grant Fund established pursuant to § 67-902.~~

~~"Qualified energy resources" means solar, wind, closed-loop biomass, organic, livestock, and poultry waste resources and lignin and other organic by-products of kraft pulping processes, bark, chip rejects, sawdust, fines and other wood waste, regardless of the point of origin.~~

~~"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity, and that is originally placed in service on or after January 1, 2007.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-901. (Contingent effective date—see Editor's note) Eligibility for grants for production of qualified energy resources.~~

~~Subject to appropriation of sufficient moneys in the Fund, an eligible corporation may receive a grant payable from the Fund for certain kilowatt hours of electricity produced after~~



December 31, 2006. The grant amount shall be ~~\$.0085~~ for each kilowatt hour of electricity (i) produced by the corporation from qualified energy resources at a qualified Virginia facility and (ii) sold and transmitted into the electric grid, or used in production by a qualified Virginia facility, in a calendar year. Grant amounts shall be based on each such kilowatt hour of electricity sold or used in production by a qualified Virginia facility beginning with calendar year 2007.

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-902. (Contingent effective date — see Editor's note) Renewable Electricity Production Grant Fund.~~

~~A. There is hereby established in the state treasury a special nonreverting fund to be known as the Renewable Electricity Production Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.~~

~~B. The Department shall allocate moneys from the Fund in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible corporations did not receive the full amount of any grant to which they were eligible in a prior year pursuant to this chapter and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the Fund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the Fund available for allocation to such class.~~

~~C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.~~

~~D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible corporations and (ii) certify to the Comptroller and each eligible corporation the amount of the grant allocated to such corporation. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification, subject to appropriation of sufficient moneys in the Fund.~~

~~E. If a grant recipient is allocated less than the full amount of a grant to which it is eligible in any year pursuant to this chapter, such corporation shall not be eligible for the deficiency in that year, but the unpaid portion of the grant to which it was eligible shall be carried forward by the Department to the following year, during which it shall be in the first class of priority as provided in clause (i) of subsection B.~~

~~F. In no case shall the Department certify grants from the Fund for kilowatts of electricity produced prior to January 1, 2007.~~

~~G. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-903. (Contingent effective date—see Editor's note) Requirements for grants generally.~~

~~A. The Department shall establish an application process by which eligible corporations shall apply for a grant under this chapter. An application for a grant under this chapter shall not be approved until the Department has verified that the electricity has been produced from qualified energy resources at a qualified Virginia facility and that sufficient moneys are available in the Fund.~~

~~B. The application shall be filed with the director of the Department no later than March 31 each year following the calendar year in which such kilowatt hours of electricity were sold or used in production by a qualified Virginia facility. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for such kilowatt hours of electricity sold or so used in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.~~

~~C. The application shall provide evidence, satisfactory to the Department, of the number of kilowatt hours of electricity produced by the corporation from qualified energy resources at a qualified Virginia facility that were sold, or used in production by a qualified Virginia facility, by such corporation in the prior calendar year.~~

~~D. As a condition of receipt of a grant, an eligible corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied. All such documents appropriately identified by the eligible corporation shall be considered confidential and proprietary.~~

~~E. A corporation receiving a grant for the production and sale of kilowatt hours of electricity under this chapter may not use the production or sale of such kilowatt hours of electricity as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.~~

**Drafting note: This section is recommended for repeal as obsolete.**

#### ~~CHAPTER 10.~~

#### ~~SOLAR AND WIND ENERGY SYSTEM ACQUISITION GRANT PROGRAM.~~

**Drafting note: Part of the recodification process is the identification and evaluation of programs and funds that have not been funded in the last five years. From the Code Title Recodification FAQs on the Code Commission home page: "This review includes an evaluation of the continued need for or repeal of any section that has not been implemented during the previous five years because sufficient funds were not appropriated by the General Assembly." Pursuant to Chapter 939 of the Acts of Assembly of 2006, as amended by Chapter 789 of the Acts of Assembly of 2007, the effective date of this chapter is dependent**

on appropriation funding. No funding has been appropriated since this requirement was established more than 13 years ago; therefore, the Solar and Wind Energy System Acquisition Grant Program (§ 67-1000 et seq.) is proposed for repeal.

~~§ 67-1000. (Contingent effective date — see Editor's note) Definitions.~~

~~As used in this chapter, unless the context clearly requires otherwise:~~

~~"Corporation" means an entity subject to the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1.~~

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

~~"Fund" means the Solar and Wind Energy System Acquisition Grant Fund established pursuant to § 67-1002.~~

~~"Individual" means the same as that term is defined in § 58.1-302.~~

~~"Photovoltaic property" means property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.~~

~~"Solar water heating property" means property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department.~~

~~"Wind powered electrical generator" means an electrical generating unit that (i) has a capacity of not more than 10 kilowatts, (ii) uses wind as its total source of fuel, (iii) is located on the individual's or corporation's premises, (iv) is intended primarily to offset all or part of the individual's or corporation's own electricity requirements, and (v) meets applicable performance and quality standards as specified by the Department.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-1001. (Contingent effective date — see Editor's note) Eligibility for grants for installation of photovoltaic property, solar water heating property, and wind powered electrical generators.~~

~~A. Subject to appropriation of sufficient moneys in the Fund, beginning with calendar year 2007, an eligible individual or corporation may receive a grant payable from the Fund for a portion of the cost of photovoltaic property, solar water heating property, or wind powered electrical generators placed in service during the calendar year by such individual or corporation. The grant amount shall be 15% of the total installed cost of photovoltaic property, solar water heating property, or wind powered electrical generators but shall not exceed an aggregate total of:~~

- ~~1. \$2,000 for each system of photovoltaic property;~~
- ~~2. \$1,000 for each system of solar water heating property; and~~
- ~~3. \$1,000 for each system of wind powered electrical generators.~~

~~B. Persons or entities placing in service photovoltaic property, solar water heating property, or wind-powered electrical generators for or on behalf of another person or entity shall not be eligible to receive a grant for such property.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-1002. (Contingent effective date — see Editor's note) Solar and Wind Energy System Acquisition Grant Fund.~~

~~A. There is hereby established in the state treasury a special nonreverting fund to be known as the Solar and Wind Energy System Acquisition Grant Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly from time to time. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this chapter in ensuing fiscal years. Interest on all moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be used solely for the payment of the grants provided under this chapter. The Department shall administer the Fund.~~

~~B. The Department shall allocate moneys from the Fund to applicants in the order in which their applications are received, until all funds allocated for that fiscal year are expended.~~

~~C. The Department shall not allocate an amount in excess of the moneys available in the Fund for the payment of grants.~~

~~D. Beginning in calendar year 2007, by June 30 of each year, the Department shall (i) determine the amount of the grants to be allocated to eligible individuals and corporations, and (ii) certify to the Comptroller and each eligible grant applicant the amount of the grant allocated to such applicant. Payment of such grants shall be made by the State Treasurer on warrant of the Comptroller within 60 days of such certification.~~

~~E. In no case shall the Department certify grants from the Fund for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service prior to January 1, 2007.~~

~~F. Actions of the Department relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act pursuant to subdivision B 4 of § 2.2-4002.~~

**Drafting note: This section is recommended for repeal as obsolete.**

~~§ 67-1003. (Contingent effective date — see Editor's note) Requirements for grants generally.~~

~~A. The Department shall establish an application process by which eligible individuals and corporations shall apply for a grant under this chapter, as follows:~~

~~1. Eligible individuals and corporations may submit an application before the equipment is installed. In this case, the Department, within 14 days of receiving the application, shall notify the applicant as to whether sufficient moneys remain in the Fund to satisfy a potential grant award to~~

the applicant. The Department shall reserve such funds for the applicant for the calendar year in which the applicant applies.

2. The application shall be filed with the director of the Department no later than March 31 of the year following the calendar year in which such property was placed in service. Failure to meet the filing deadline shall render the applicant ineligible to receive a grant for photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service in the prior calendar year. For filings by mail, the postmark cancellation shall govern the date of the filing determination.

B. In order to receive payment of grant funds, the applicant shall provide evidence, satisfactory to the Department, of the total installed cost of each system of photovoltaic property, solar water heating property, or wind-powered electrical generators placed in service by such individual or corporation in the prior calendar year.

C. As a condition of receipt of a grant, an eligible individual or corporation shall make available to the Department for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been satisfied.

D. An individual or corporation receiving a grant pursuant to this chapter for a system of photovoltaic property, solar water heating property, or wind-powered electrical generators may not use such system as the basis for claiming any other grant or credit against taxes, as provided under the Code of Virginia or in an appropriation act.

**Drafting note: This section is recommended for repeal as obsolete.**

## TITLE 56. PUBLIC SERVICE COMPANIES.

### CHAPTER ~~11~~ 29.

#### RENEWABLE ENERGY CO-LOCATION OF DISTRIBUTION FACILITIES.

**Drafting note: Existing Chapter 11 (§ 67-1100 et seq.) of Title 67, relating to renewable energy co-location of distribution facilities, is relocated as proposed Chapter 29 (§ 56-614 et seq.) of Title 56.**

~~§ 67-1100~~ 56-614. Definitions.

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

~~"Commission" means the State Corporation Commission.~~

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

~~"Locality" has the meaning ascribed thereto~~ means the same as that term is defined in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § 56-576.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time, and location of excavations and repair work; enforcement of the statewide building code; and inspections. ~~Such phrase shall~~ but does not include any existing franchise fee or public rights-of-way use fee.

**Drafting note: The definition of "Commission" is deleted as unnecessary because the term is currently defined for Title 56 in § 56-1. Technical changes are made and language is updated for modern usage.**

~~§ 67-1104~~ 56-615. Right to occupy rights-of-way; location of ~~same~~ rights-of-way.

A. Every renewable generator shall have authority to occupy and use the public roads, works, turnpikes, streets, avenues, and alleys in any county, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within the Commonwealth, with the consent of the Marine Resources Commission, for the erection of distribution facilities. However, if the road or street is in the primary state highway system or the secondary state highway system, the consent of the board of supervisors or other governing authority of any county shall not be necessary, provided that a permit for such occupation and use is first obtained from the Department of Transportation. The use of any road or street in the primary state highway system or secondary

state highway system that has been designated a limited access highway in accordance with § 33.2-401 shall not be permitted, unless the Department of Transportation approves an exception in accordance with the ~~then-current~~ then-current policy.

B. ~~No~~ Neither a locality or ~~nor~~ the Department of Transportation shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in ~~§ 67-1103~~ 56-617.

C. ~~No~~ Neither a locality or ~~nor~~ the Department of Transportation shall impose on renewable generators, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Department of Transportation of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. ~~No~~ Neither a locality receiving directly or indirectly a public rights-of-way use fee or ~~nor~~ the Department of Transportation shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. This chapter shall not affect the obligation of the Department of Transportation to give notice, pursuant to § 33.2-272, to localities when it grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way.

**Drafting note: Technical changes are made and language is updated for modern usage.**

~~§ 67-1102~~ 56-616. Occupation of property of certain localities; imposition of terms and conditions as to use of property.

A. Any incorporated city or town may impose upon a renewable generator any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its streets, avenues, and alleys, and as to the construction and maintenance of the distribution facilities of the renewable generator along, over, or under the same, that the city or town may deem expedient and proper.

B. No locality shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in ~~§ 67-1103~~ 56-617.

C. No locality shall impose on a renewable generator, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way of

a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. A renewable generator shall have the same rights, duties, and responsibilities related to the crossing of a railroad as afforded other public service corporations in §§ 56-12, 56-17, ~~56-18, 56-19, 56-20, 56-21,~~ through 56-22, 56-25, 56-26, and 56-27. Nothing in this chapter shall expand the rights of renewable generators to either cross or otherwise have access to railroad property to an extent greater than that afforded other public service corporations in ~~Title 56~~ this title.

**Drafting note: Technical changes.**

~~§ 67-1103~~ 56-617. Public rights-of-way use fee.

A. Notwithstanding any other provisions of law, there is hereby established a public rights-of-way use fee to be charged in lieu of any and all fees of general application, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise chargeable to a renewable generator by the Department of Transportation or a locality in connection with a permit for such occupation and use granted in accordance with ~~§ 67-1104~~ 56-615 or ~~67-1102~~ 56-616. The public rights-of-way use fee established by this section is imposed on all renewable generators that occupy and use public rights-of-way in order to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas to customers or to a natural gas distribution or transmission pipeline.

B. The amount of the public rights-of-way use fee for a renewable generator shall be \$1,500 per mile or any portion thereof over which the renewable generator has installed distribution facilities.

C. A renewable generator shall remit its required public rights-of-way use fee to the locality or the Department of Transportation, as applicable, prior to initiation of construction, as follows:

1. The renewable generator shall remit directly to the applicable locality all public rights-of-way use fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by the Department of Transportation; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return.

2. The public rights-of-way use fees in all other counties shall be remitted by each renewable generator to the Department of Transportation, and shall first be used to offset the administrative costs of processing the permit with the remaining fee being added to the secondary system construction improvement program funds of the counties where the facilities are located.

**Drafting note: Technical changes.**



~~§ 67-1104~~ 56-618. Reimbursement for relocation costs.

A. Renewable generators shall be reimbursed 100 percent of the eligible cost of relocating distribution facilities installed in the public rights-of-way, for the first three years after the completion of the installation, that are incurred at the direction of a locality that imposes by ordinance the public rights-of-way use fee or the Department of Transportation in any public rights-of-way in accordance with §§ 56-458 and 56-462. For the fourth through sixth year after the completion of the installation, the renewable generator shall be reimbursed 50 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way. Beginning in the seventh year, the renewable generators shall be responsible for the cost of relocating facilities installed in the public rights-of-way. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the primary state highway system or the secondary state highway system.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of public rights-of-way use fees received by that locality or the Department of Transportation from the renewable generator required to relocate its distribution facilities.

**Drafting note: No change.**

~~§ 67-1105~~ 56-619. Relocation of lines or works of renewable generator acquired by Commonwealth Transportation Board.

Whenever a renewable generator is required by the Commonwealth Transportation Board or the Commissioner of Highways to remove any part of its distribution facilities off of the right-of-way of a road now or hereafter included in the primary or secondary state highway system, or if any right-of-way, property, or interest therein used and occupied by the renewable generator with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board or the Commissioner of Highways for the uses of the primary or secondary state highway system, or if the renewable generator is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of the primary or secondary state highway system, the renewable generator shall relocate its lines or works, or the part or parts thereof affected.

**Drafting note: No change.**

~~§ 67-1106~~ 56-620. How consent of appropriate authorities obtained; terms of use.

The consent required under ~~§ 67-1104~~ 56-615, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town, or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county in which such line is to be located, or, if such permission is to be given by the Commissioner of Highways or his designee, through the issuance of a land use permit. Such use

of the public roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of the Commonwealth shall be subject to such terms, regulations, and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county, except that if the road or street is in the primary or secondary state highway system, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations, and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

**Drafting note: Technical changes.**

§ ~~67-1107~~ 56-621. Cost to Commonwealth in connection with inspection and coordination of construction of line to be paid by renewable generator.

The actual costs and expenses of the Commonwealth for the inspection or coordination of the construction or installation of any of the distribution facilities of the renewable generator, under the provisions of this chapter, under any permit of the Commonwealth Transportation Board shall be borne by the renewable generator. The sum of the payment required by this section shall be paid to the Department of Transportation within 30 days from the receipt of a progress or final bill from the Department of Transportation.

**Drafting note: No change.**

§ ~~67-1108~~ 56-622. Renewable generator may contract for right-of-way.

A renewable generator may contract with any person that owns lands, or any interest, franchise, privilege, or easement therein or in respect thereto, over which distribution facilities are proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its poles and other structures necessary for operating its facilities, and for sufficient land for the erection and occupation of offices at suitable distances along its distribution facilities.

**Drafting note: No change.**

§ ~~67-1109~~ 56-623. Construction of transmission facilities.

All posts, poles, wires, cables, lines, pipelines, conduits, and other distribution facilities ~~that shall be~~ erected under any authority conferred by this chapter shall be so located as in no way to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the public roads, turnpikes, streets, avenues, alleys, railroads, or waters in or upon which the same may be erected. All distribution facilities erected as aforesaid shall be placed at such height as provided by regulations of the State Corporation Commission or the Commonwealth Transportation Board ~~by regulation shall provide~~. Buried distribution facilities shall be laid at such distance below the surface of any public road, turnpike, street, avenue, or alley, and at such distance from the outside of any gas or water main or other conduit already laid under such public road, turnpike, street, avenue, or alley, as ~~may be~~ prescribed by regulations of the Commission or by the Commonwealth Transportation Board ~~by regulation~~.

No distribution facilities shall be strung across or laid, nor posts or poles erected, upon the property of any person without first obtaining the consent of the owner thereof. Such distribution facilities shall not damage private property without compensation therefor, nor in any way obstruct the navigation of any stream, or impair or endanger the use thereof by the public or any other person entitled to the use of the same. In consideration of co-locating on existing rights of way, the renewable generator shall meet the respective safety and clearance standards of the public service corporation including ~~but not limited to~~ the National Electrical Safety Code, the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.), gas pipeline safety standards pursuant to § 56-257.2, and the public service corporation's own safety and clearance standards as the same are communicated to the renewable generator in writing, and any applicable federal laws and regulations.

**Drafting note: The phrase "but not limited to" is removed pursuant to § 1-218, which states that throughout the Code "'Includes' means includes, but not limited to." Language is updated for modern usage.**

~~§ 67-1110~~ 56-624. Restoring condition of ground.

The portions of the surface of the roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying, or replacing distribution facilities under the provisions of this chapter shall be immediately restored to and maintained in good condition by the renewable generator doing such work. In case of the failure of the renewable generator to restore and maintain the same, the corporate authorities of the city or town, or the board of supervisors or other governing authority of the county, or the Commissioner of Highways, as the case may be, may properly restore and maintain the same, and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from the renewable generator, in any court of proper jurisdiction.

**Drafting note: Technical change.**

~~Chapter 13.~~

~~Voluntary Solar Resource Development Fund.~~

~~§§ 67-1300 through 67-1305. Expired.~~

**Drafting note: Expired July 1, 2016, pursuant to Acts 2011, cc. 806 and 839, cl. 2.**



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