

## Code of Virginia

### § 45.1-161.1. Definitions.

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

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

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

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

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

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

Whenever in this title the Chief, the Director, or the Department is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Chief, the Director, or the Department may be sent by regular mail.

(2011, c. 566.)

### § 45.1-161.2. Department continued; appointment of Director.

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

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

### § 45.1-161.3. Powers of Department.

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

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

(1984, c. 590, § 45.1-1.3; 1994, c. 28.)

### § 45.1-161.4. Powers and duties of Director.

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

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

§ 45.1-161.5. Establishment of divisions; division heads.

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

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

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

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

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

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### § 45.1-180. Definitions.

The following words and phrases when used in this chapter shall have the meanings respectively ascribed to them in this section except where the context clearly requires a different meaning:

(a) Mining. - Means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals; any activity constituting all or part of a process for the extraction or removal of minerals so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction. Nothing herein shall apply to mining of coal. This definition shall not include, nor shall this title, chapter, or section be construed to apply to the process of searching, prospecting, exploring or investigating for minerals by drilling.

(b) Disturbed land. - The areas from which overburden has been removed in any mining operation, plus the area covered by the spoil and refuse, plus any areas used in such mining operation including land used for processing, stockpiling, and settling ponds.

(c) Overburden. - All of the earth and other material which lie above a natural deposit of minerals, ores, rock or other solid matter and also other materials after removal from their natural deposit in the process of mining.

(d) Spoil. - Any overburden or other material removed from its natural state in the process of mining.

(e) Operator. - Any individual, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, or any legal entity which is engaged in mining.

(f) through (i) [Repealed.]

(j) Mining operation. - Any area included in an approved plan of operation.

(k) Reclamation. - The restoration or conversion of disturbed land to a stable condition which minimizes or prevents adverse disruption and the injurious effects thereof and presents an opportunity for further productive use if such use is reasonable.

(l) Mineral. - Ore, rock, and any other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.

(m) Division. - The Division of Mined Land Reclamation.

(n) Refuse. - All waste soil, rock, mineral tailings, slimes and other material directly connected with the mine, cleaning and preparation of substances mined including all waste material deposited in the permit area from other sources.

(1968, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1984, c. 590.)

### § 45.1-180.1.

Repealed by Acts 1974, c. 96.

### § 45.1-180.2. Legislative findings; declaration of policy.

A. The General Assembly finds that the mining of minerals within the Commonwealth is an activity that makes a contribution to the standard of living of the citizens of the Commonwealth; and that it is in the public interest to insure the availability and orderly development of mineral resources now and in the future. Uncontrolled mining of such minerals and unreclaimed land can adversely affect the environment through the destruction of vegetative

cover, the disruption of drainage patterns, the increased siltation and sedimentation of streams as well as other forms of pollution, and the temporary and, in some circumstances, permanent destruction of scenic beauty and wildlife habitats. The General Assembly further finds that it is often not practicable to extract minerals without disturbing the surface of the earth and producing waste materials, and that the very character of certain surface mining operations precludes complete restoration of the land to its original contour; but that it is essential to conduct mining in such a way as to minimize its effects on the environment.

B. The General Assembly recognizes that there are wide variations in the circumstances and conditions surrounding and arising out of the mining of minerals and that rehabilitation and conservation of land affected by mining of minerals will be assured only through proper planning, proper use of appropriate methods of mining, consideration of the impact of mining upon the environment as well as the land use of surrounding areas, and through the incorporation and use of control techniques and reclamation actions as an integral and simultaneous part of the mining of minerals.

C. The General Assembly declares that it is in the public interest and shall be the policy of the Commonwealth to require and encourage the proper control of mining of minerals so as to protect the public health, safety and welfare consistent with the protection of physical property and with maximum employment and the economic well-being of the Commonwealth through good industry and sound conservation practices, and to require and encourage thorough operations and reclamation planning, consideration of the surrounding environment, and incorporation of control techniques and reclamation actions in mining operations insofar as economically and physically practicable to assure such proper control of mining. To these ends, the Director is mandated to enforce this chapter and to adopt whatever regulations are found necessary to accomplish the provisions of this chapter.

D. The General Assembly by this chapter intends to exercise the police power of this Commonwealth in a coordinated statewide program to aid in the protection of wildlife, in restoring these lands to productive purposes and to control present and future problems associated with mining resources and the reclamation of disturbed lands to the end that mining activities shall be regulated in a manner that will effectuate the purpose of this chapter.

E. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge or otherwise affect, substantively or procedurally, the right or rights of any person who is a party to any dispute involving property rights, or the right of any person to damages or other relief on account of injury to persons or property due to mining activities regulated by this chapter and to maintain any action or other appropriate procedure therefor; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

(1977, c. 312; 1984, c. 590.)

§ 45.1-180.3. Authority of Director; enforcement of chapter by injunction.

A. The authority to promulgate rules and regulations to effectuate the provisions and the policy of this chapter and the authority to adopt definitions for use in interpreting this chapter are hereby vested in the Director.

B. The authority to administer and enforce the provisions of this chapter is hereby vested in the Director. In administering and enforcing the provisions of this chapter pursuant to the findings and legislative policy adopted by the General Assembly, the Director shall exercise the following powers in addition to any other powers conferred upon him by law:

1. To supervise the administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
2. To issue orders to enforce the provisions of this chapter, all rules and regulations promulgated thereunder, and the terms and conditions of any permit;
3. To make investigations and inspections to insure compliance with any provision of this chapter or any rules, regulations, or orders promulgated thereunder;
4. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and

disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining;

5. To receive any federal funds, state funds or any other funds and to enter into any contracts, for which funds are available, to carry out the purposes of this chapter.

C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against any violation of the provisions of this chapter, and the rules, regulations and orders promulgated hereunder or to compel the performance of acts required thereby without regard to any adequate remedy which may exist at law, such injunction to be issued without bond. However, with regard to the suspension of mining operations, § 45.1-193.1 shall control.

(1977, c. 312; 1984, c. 590.)

#### § 45.1-180.4. Exemption for restricted mining.

Any operator engaging in mining and disturbing less than one acre of land and removing less than 500 tons of minerals at any particular site, is exempt from all mining permit fees and renewal fees and bond requirements of this chapter; provided, however, each person intending to engage in such restricted mining shall submit an application for a permit, a sketch of the mining site and an operations plan, which shall be adhered to in accordance with §§ 45.1-181 and 45.1-182.1. The Director shall approve the application if he determines that the issuance of the permit shall not violate the provisions of this chapter.

(1977, c. 312.)

§ 45.1-181. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department.

It is unlawful for any operator to engage in any mining operation in Virginia, without having first obtained from the Department a permit to engage in such operation and paying a fee therefor of \$31 per acre for every acre of land to be affected by the total operation for which plans have been submitted, which shall be deposited in the state treasury in a special fund to be used by the Director for the administration of this chapter. A permit shall be obtained prior to the start of any mining operation. If within 10 days of the anniversary date of the permit the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator of \$16 per acre for land to be affected by the total operation in the next ensuing year. The renewal fees shall be deposited in the state treasury in the special fund set out above. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ 45.1-182.1 and 45.1-183. A separate permit shall be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the Director shall contain the following information: (i) the common name and geologic title, where applicable, of the mineral to be extracted; (ii) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (iii) the name and address of the owner or owners of the surface of the land; (iv) the name and address of the owner or owners of the mineral, ore or other solid matter; (v) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (vi) the total number of acres of land to be covered by the permit; (vii) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (viii) whether any mining permits of any type are now held by the applicant and the number thereof; (ix) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (x) if known, whether the applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by clause (ix), has ever had a mining permit of any type issued under the laws of this or any other state

revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited. Clause (iv) shall not apply to the shell, container chamber, passage, or open space set forth in § 55-154.2.

The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan and meeting the following requirements:

1. Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service or in such a manner as to be acceptable to the Director;
2. Identify the area to correspond with the land described in the application;
3. Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within 100 feet of any part of the affected area;
4. Be drawn to a scale of 400 feet to the inch or better;
5. Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within 500 feet of such area;
6. Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected;
7. Show the date on which the map was prepared, the north arrow and the quadrangle name; and
8. Show the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

Upon receipt of a written request by any landowner on whose property a sand and gravel operation is permitted pursuant to this section, the operator of the sand and gravel operation shall provide a copy of the map, photograph or plan to the landowner.

No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and § 45.1-182.1 and the bond from the applicant as required in § 45.1-183.

(1968, c. 734; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1983, c. 322; 1996, cc. 648, 659; 2003, cc. 542, 550; 2012, c. 695.)

§ 45.1-182.

Repealed by Acts 1977, c. 312.

§ 45.1-182.1. Operations plan; reclamation; policy of Director.

A. The application for a permit shall be accompanied by an operations plan in such form and with such accompanying material as the Director shall require. The operations plan shall describe the specifications for surface grading and restoration, including sketches delineating placement of spoil, stockpiles, and tailing ponds, to a surface that is suitable for the proposed subsequent use of the land after reclamation is completed.

B. The operations plan shall include a provision for reclamation of all land estimated to be affected by the mining operation for which the permit is sought. The reclamation provision shall be in such form and contain such accompanying material as the Director shall require and shall state:

1. The planned use to which the affected land is to be returned through reclamation;
2. Proposed actions to assure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as

practicable. The Director shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.

C. It shall be the policy of the Director to encourage adoption of productive land use, such as pasture, agricultural use, recreational areas, sanitary landfills, forestry and timberland operations, industrial and building sites, and to consider the general original contour in determining the particular reclamation program for the acreage. The Director may require an amendment to the operations plan to meet the exigencies of any unanticipated circumstance or event.

(1977, c. 312; 1984, c. 590.)

§ 45.1-183. Bond of operator.

Each operator at the time of filing his application shall furnish bond on a form to be prescribed by the Director payable to the Department and conditioned that the operator shall faithfully perform all of the requirements of this chapter and of the operations plan as approved and directed by the Department. The amount of bond shall be no less than \$200 nor more than \$1,000 per acre, based upon the number of acres of land which the operator estimates will be affected by mining operations during the next ensuing year. The minimum amount of bond furnished shall be \$1,000, except in areas of five acres or less the bond shall be no less than \$200 nor more than \$1,000 per acre. Such bond shall be executed by the operator and by a corporate surety licensed to do business in this Commonwealth; provided, however, that in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director.

(1968, c. 734; 1970, c. 245; 1972, c. 206; 1974, c. 312; 1977, c. 312.)

§ 45.1-184. Review of operations plan and reclamation provision by Director; issuance of permit.

Upon receipt of a reasonable operations plan and bond prescribed above, the Director shall review the plan and if it meets with his approval issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant shall amend his operations plan to meet the Director's reasonable objections and file a satisfactory amended plan with the Director, no permit shall be issued.

In reviewing such plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or proper drainage control is not feasible, he may disapprove the permit application. Provided, however, that the Director may approve the permit after deleting the areas from the permit application held to be objectionable in the Director's findings.

The Director shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust or corporation which has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, in which event no permit shall be issued. Except, however, if an operator who has heretofore forfeited a bond within thirty days of notice and demand by the Director pays the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or greater than the cost of reclamation, such operator shall then become eligible for another permit.

(1968, c. 734; 1974, c. 312; 1977, c. 312.)

§ 45.1-184.1. Application for permit; adjoining landowners; local official.

A. The application for a permit shall be accompanied by a statement showing the names and addresses of the owners of property within one thousand feet of the property line of any land proposed to be permitted and certification that such landowners have been notified by certified mail of the application for a permit unless notified previously. Such residents may file written objections with the Director, and may request a hearing. This section shall apply to initial applications for permits only, and no new notice shall be required for renewal applications or for permits for acreage in addition to that originally permitted.

B. The application for the permit shall also be accompanied by a statement certifying that the chief administrative

official of the local political subdivision has been notified of the proposed operation by certified mail.

(1977, c. 312.)

§ 45.1-184.2. Succession of one operator by another at uncompleted project.

Where one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation and transfer the permit to the successor operator; provided, however, that the successor operator has complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be \$16 per acre, except as provided by § 45.1-180.4. The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

(1977, c. 312; 1996, cc. 648, 659; 2003, cc. 542, 550.)

§ 45.1-185. Additional bond to be posted annually; release of previous bond; report of reclamation work.

Within ten days following the anniversary date of any permit, the operator shall post additional bond in the amount of no less than \$200 nor more than \$1,000 per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for the areas disturbed in the last twelve months if reclamation work has been completed or transferred to additional acres to be disturbed. The approval of the Director to release the bond shall be obtained in accordance with the following:

The operator shall file with the Department a written report on a form to be prescribed by the Department stating under oath that reclamation has been completed on certain lands and submit the following:

(a) Identification of the operation; (b) the county or city in which it is located and its location with reference to the nearest public highway; (c) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable it to be located and distinguished from other lands; (d) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or in such manner as to be acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area and the methods of access to the area from the nearest public highway.

(1968, c. 734; 1974, c. 312; 1977, c. 312.)

§ 45.1-186.

Repealed by Acts 1977, c. 312.

§ 45.1-186.1. Notice of noncompliance served on operator.

A. The Director may cause a notice of noncompliance to be served on the operator whenever the operator fails to obey any order by the Director to:

1. Apply the control techniques and institute the actions approved in his operations and reclamation plan;
2. Comply with any required amendments to the operations or reclamation plan; or
3. Comply with any other requirement of this chapter or any rules or regulations promulgated pursuant thereto which affect the health, safety and welfare of the Commonwealth.

B. A copy of the notice shall be delivered to the operator or served by certified mail addressed to the operator at the permanent address shown on the application for a permit. The notice shall specify in writing in what respects the operator has failed to obey the order of the Director and shall require the operator to comply with the order within a reasonable period of time as fixed by the Director, following service of the notice.

C. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond, which, when collected, shall be deposited in the state treasury in a special reclamation fund to be used by the Director in performing reclamation under the provisions of this chapter. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture: (i) of the bond shall be returned to the corporate surety; or (ii) of the collateral security, certified check or cash that has been deposited in lieu of bond, shall be returned to the person who provided it originally or to the operator. Within 30 days of the issuance of any permit revocation or bond forfeiture made under this section, the operator may request a review pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

(1977, c. 312; 2012, cc. 803, 835.)

§ 45.1-186.2. Collection of debts.

The amount by which the cost of reclamation exceeds the amount of the operator's forfeited bond shall constitute a debt of the operator to the Commonwealth of Virginia. The Director is authorized to collect such debts, together with the cost of collection, through appropriate legal action or by declaring the forfeiture of other payments. Moneys collected through legal action, less the cost of collections, shall be deposited in the special reclamation fund created under § 45.1-186.1.

(1981, c. 76.)

§ 45.1-187. Additional bond to cover amended estimate of land to be disturbed.

If, during any operation, it is found that the operator's estimate of the amount of disturbed land for which bond or other security has been posted for reclamation is less than the actual area disturbed, the Director shall order the operator to file additional bond or security sufficient to cover an amended estimate of land to be disturbed by such operation.

(1968, c. 734; 1974, c. 312.)

§ 45.1-188. Interference with reclamation unlawful; other mining operations on land.

It shall be unlawful for any owner or owners of surface rights or the owner or owners of mineral rights to interfere with the operator in the discharge of his obligations to the Commonwealth for the reclamation of lands disturbed by him. If the owner or owners of surface rights or the owner or owners of mineral rights desire to conduct other mining operations on lands disturbed by the operator furnishing bond hereunder, such owner or other person shall be in all respects subject to the provisions of this chapter and the Director shall then release an equivalent amount of bonds to the operator originally furnishing bond on the disturbed area.

(1968, c. 734; 1974, c. 312.)

§ 45.1-189.

Repealed by Acts 1977, c. 312.

§ 45.1-190.

Repealed by Acts 1974, c. 312.

§ 45.1-191. Penalty for violation of chapter, etc.

Any violation of any provision of this chapter or of any order of the Director shall be a misdemeanor punishable by a maximum fine of \$1,000 or a maximum of 1 year in jail, or both.

(1968, c. 734; 1974, c. 312.)

§ 45.1-192. Assistance of federal, state and local agencies.

In approving plans of operation and in issuing rules and regulations for reclamation, the Director may avail himself and his Department of the advice, assistance and facilities of local soil and water conservation district supervisors or any other federal, state or local agency.

(1968, c. 734.)

§ 45.1-193.

Repealed by Acts 1977, c. 312.

§ 45.1-193.1. Injunction prohibiting mining operation.

Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or endanger the health, safety, welfare and property rights of citizens of Virginia, and abatement is not feasible by the application of control techniques, the Director shall petition the appropriate circuit court for an injunction to prohibit further operations. Such injunction shall not relieve the operator from his duty to reclaim lands previously affected according to the terms and conditions of this permit.

(1977, c. 312.)

§ 45.1-194. Appeals from decisions of the Department.

An appeal from any order of the Department shall be conducted in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. The appeal shall be taken within 30 days following the issuance of the order by forwarding to the Director by certified mail a notice of appeal designating the order from which the appeal is taken.

(1968, c. 734; 1974, c. 312; 1979, c. 302; 1982, c. 117; 2012, cc. 803, 835.)

§§ 45.1-195. , 45.1-196.

Repealed by Acts 2012, cc. 803 and 835, cl. 47.

§ 45.1-197. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter.

Counties, cities and towns may establish standards and adopt regulations dealing with the same subject, provided, however, such standards and regulations shall not be below those adopted by the Director.

This chapter shall not be construed to repeal any local ordinance or regulation or charter provision now in effect in any county, city or town where the provisions are not less than the standards adopted by the Director. The Director may waive the application of this chapter if, in his opinion, a county, city or town in which mining operations are being conducted has enacted and is enforcing zoning ordinances dealing with the subject matter, prescribing standards and regulations not below those set forth in this chapter. If the Director waives the provisions hereof, the operator shall comply strictly with all the provisions of the ordinances of such counties, cities and towns in which his operations are located.

The Director may also waive the application of this chapter as to any mining or borrow pit operation which is conducted solely and exclusively for a state project and which is subject by contract to the control and supervision of a state agency, provided regulations satisfactory to the Director have been promulgated and are incorporated in any

contract for such removal.

The county, city, town or state agency shall assure strict compliance with all the provisions of the ordinances, regulations or contracts and the Director shall from time to time review the ordinances, regulations or contracts and the enforcement programs to assure compliance with this chapter. If the Director determines that there is not strict compliance with this chapter, then he may rescind his waiver of the application of this chapter.

(1968, c. 734; 1974, c. 312; 1977, c. 312.)

§ 45.1-197.1.

Repealed by Acts 1974, c. 96.

§ 45.1-197.2.

Repealed by Acts 1984, c. 590.

§ 45.1-197.3. Definition.

For the purpose of this article, the term "orphaned lands" shall mean lands disturbed by surface mining of minerals other than coal operations which were not required by law to be reclaimed or which have not been reclaimed.

(1978, c. 634.)

§ 45.1-197.4. Survey; priorities for reclamation.

The Director shall cause a survey to be conducted to determine the extent of the orphaned lands in this Commonwealth and shall establish priorities for the reclamation thereof.

(1978, c. 634.)

§ 45.1-197.5. Agreements with owners or lessees; reclamation by Director.

The Director is authorized to enter into agreements with owners or lessees of orphaned lands when the owners agree to the reclamation of such lands by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. In no event shall the Director return orphaned land to other than the minimum potential use thereof which obtained prior to the initiation of mining operations unless the landowner or owners, lessee or lessees, agree to bind himself or themselves to the payment of the additional cost upon such terms as the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him, but in no event shall the Director enter into such agreement unless funds are immediately available for the performance of the agreement by the Director as hereinafter provided.

(1978, c. 634.)

§ 45.1-197.6. Contracts for reclamation.

The Director is authorized to contract with any state agency, federal agency, or private contractor through the Division for the purpose of reclaiming orphaned lands pursuant to the agreements herein specified.

(1978, c. 634.)

§ 45.1-197.7. Acceptance of federal funds, gifts, etc.

The Director is authorized to accept federal funds or gifts or grants from any source for the purposes of this article and is further authorized to acquire by gift or purchase, but not by the exercise of the power of eminent domain, such orphaned lands as in his judgment is in the public interest and to utilize any such funds, gifts or grants for the

purposes of this article.

(1978, c. 634.)

§ 45.1-197.8. Creation of Fund.

There is hereby created in the State Treasurer's office a special fund to be known as the Minerals Reclamation Fund, hereinafter referred to as the Fund, which shall be under the supervision of the Department. The Fund shall consist of all payments made into the Fund by operators in accordance with the provisions of this article.

(1978, c. 634.)

§ 45.1-197.9. Membership in Fund; payments required.

Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 16 (§ 45.1-180 et seq.) of this title shall become a member of the Fund by making an initial payment to the Fund of fifty dollars for each acre estimated to be affected by mining operations during the next ensuing year. Thereafter, the member shall, within ten days following the anniversary date of each permit issued to the member, make a payment to the Fund of twelve dollars and fifty cents for each acre estimated to be affected by mining operations during the next ensuing year. Such payments shall continue to be made until the member has paid into the Fund a total of \$500 for each acre, estimated to be affected under the permits issued to the member.

(1978, c. 634.)

§ 45.1-197.10. Release of bonds and other securities.

When the size of the Fund shall have reached \$400,000, the bonds and other securities previously posted, pursuant to § 45.1-183, by all members shall be released.

(1978, c. 634.)

§ 45.1-197.11. Return of member payments.

Subject to the provisions of § 45.1-197.14, the Director shall return from the Fund to the member, the payments which the member has paid previously to the Fund, when the Director has determined that the member has completed satisfactory reclamation, in accordance with § 45.1-185. The payments returned shall be only those payments which the member has made for the acres which have been satisfactorily reclaimed. In lieu of a return, the member may request the Director to retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

(1978, c. 634.)

§ 45.1-197.12. Revocation of permits; reclamation work.

If a permit which has been issued to a member is revoked pursuant to § 45.1-186.1, then the payments which the member has made to the Fund, with respect to the permit so revoked, shall be forfeited to the Fund. The Director shall use the payments so forfeited or as much thereof as shall be necessary, for the reclamation of the mining operation to which the permit had applied. In the event that the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit, in accordance with § 45.1-186.1, except that if all members' bonds and other securities have been released pursuant to § 45.1-197.10 then the Director shall draw upon the Fund for the entire cost of reclamation.

(1978, c. 634.)

§ 45.1-197.13. Collection of debt where cost of reclamation exceeds member's forfeited payments, etc.

The amount by which the cost of reclamation exceeds the amount of a member's forfeited payments and, if any, the member's bond or other security also forfeited, shall constitute a debt of the member to the Commonwealth of Virginia. The Director is authorized to collect such debts together with the cost of collection, through appropriate legal action, or by declaring the forfeiture of other payments made by the member to the Fund. Moneys collected through legal action, less the costs of collection, shall be deposited in the Fund.

(1978, c. 634.)

§ 45.1-197.14. Decreases in size of Fund.

Whenever the size of the Fund shall decrease to less than \$250,000 the Director shall suspend the return of payments pursuant to § 45.1-197.11 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to \$250,000. In lieu of such an assessment all members shall at the request of the Director post bonds or other securities, within six months after the Director so notifies the members. Failure to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with § 45.1-197.12.

(1978, c. 634.)

§ 45.1-197.15. Order of return of payments.

The return of payments to members shall be in the order in which the Director approves the completion of reclamation pursuant to § 45.1-185.

(1978, c. 634.)

§ 45.1-197.16. Discontinuance of Fund.

In the event of the discontinuance of the Fund, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

(1978, c. 634.)

§ 45.1-197.17. Construction of article; Fund used solely for reclamation.

Nothing in this article shall be construed as vesting in any member any right, title or interest in the Fund, or the disposition thereof. The Fund shall be used solely for reclamation of land pursuant to this chapter.

(1978, c. 634.)

§ 45.1-197.18. Reclamation funding.

An amount equal to the average interest rate earned for all funds in the state treasury as applied to the Fund shall be paid annually to the Department to be used only for the reclamation of orphaned lands pursuant to Article 3 (§ 45.1-197.3 et seq.) of this chapter and is hereby allocated for such purposes.

(1978, c. 634; 1984, c. 590.)

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## Code of Virginia

§ 45.1-225.1. Dams and refuse piles to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director.

A. On and after July 1, 1974, new water or silt retaining dams, or a mine refuse pile, or the modification of existing mine water or silt or mine refuse retaining dams shall be designed and constructed by, or under the direction of, a qualified engineer, if such retaining dam:

1. Is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and
2. Has a storage volume of fifty acre-feet or more; or
3. Is designed to impound water or silt to a height of twenty feet or more, regardless of storage volume.

B. Water and silt retaining dam or mine refuse piles, designs, construction specifications, and other related data, including final abandonment plans, shall be approved and certified by the qualified engineer specified in subsection A of this section, and by the licensed operator or his agent.

C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B of this section shall be submitted for approval to the Director. If the submittal is approved by the Director, he shall notify the licensed operator in writing. If he disapproves, he shall notify the licensed operator with his written objections thereto and his required amendments. But in no event shall the Director fail to approve or disapprove the submittal within thirty days following the receipt thereof.

(1997, c. 390; 1998, c. 695.)

§ 45.1-225.2. Examination of dams and refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.

A. All water and silt retaining dams or mine refuse piles shall be examined daily for visible structural weakness, volume overload and other hazards by a qualified person designated by the licensed operator. When rising water and silt reaches eighty percent by volume of the safe design capacity of the dam, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations must be made during periods of rainfall that could create flooding conditions.

B. When a potentially hazardous condition exists, the operator shall initiate procedures to:

1. Remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;
2. Eliminate the potentially hazardous condition; and
3. Notify the Director.

C. Records of the inspections required by subsection A of this section shall be kept and certified by the licensed operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.

D. The licensed operator of each mineral mine on which a water and silt retaining dam is located shall adopt a plan for carrying out the requirements of subsections A and B of this section. The plan shall be submitted for approval to the Director on or before October 31, 1974. The plan shall include:

1. A schedule and procedures for inspection of the retaining dam by a qualified person;
2. Procedures for evaluating potentially hazardous conditions;

3. Procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous conditions;
4. Procedures for eliminating the potentially hazardous conditions;
5. Procedures for notifying the Director; and
6. Any additional information which may be required by the Director.

E. Before making any changes or modifications in the plan approved in accordance with subsection D of this section, the licensed operator shall obtain approval of such changes or modifications from the Director.

(1997, c. 390; 1998, c. 695.)

§ 45.1-225.3. Definitions.

For the purpose of this chapter, the term

"Impound water" means to impound water for use in carrying out any part of the process necessary in the production or preparation of minerals.

"Refuse" means waste material resulting from a mineral mining operation.

"Silt" means fine particles resulting from a mineral mining operation, suspended in or deposited by water.

"Water" means water used in mining operations.

(1997, c. 390.)

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## Code of Virginia

§ 45.1-161.311:1. Consent required before working mine near land of another.

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

(1997, c. 390.)

§ 45.1-161.311:2. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

A. The owner, tenant, or occupant of any land or minerals, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, if he has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the purpose of ascertaining whether a violation of § 45.1-161.311:1 has occurred; however, such person shall not be entitled to enter the property more often than once a month. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey shall forfeit twenty dollars for each refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is located, before whom complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant or agent, to answer such complaint. On the return of the summons executed, and proof that the complainant has right of entry, and that it has been refused without sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue his warrant, commanding the sheriff of the county or city to attend and prevent obstructions and impediments to such entry, exploration and survey. The costs of such summons, and a fee of three dollars to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by the party making the complaint.

(1997, c. 390.)

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