

# Code of Virginia

## Title 45.1 - MINES AND MINING.

### Chapter 19 - Virginia Coal Surface Mining Control and Reclamation Act of 1979

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§ 45.1-226. Short title.

This chapter shall be known as the "Virginia Coal Surface Mining Control and Reclamation Act of 1979."

(1979, c. 290.)

§ 45.1-227.

Not set out. (1979, c. 290.)

§ 45.1-228. Purpose and policy of chapter.

A. It is the purpose and policy of this chapter to do the following:

1. Provide for the implementation and enforcement, by the Commonwealth, of the federal Surface Mining Control and Reclamation Act of 1977, and the regulations of the United States Secretary of the Interior promulgated thereunder, and amendments thereto, as the same may be or become effective at any time or from time to time.
2. Promote the reclamation of coal-mined areas, and areas which have been affected by such mining, which were not adequately reclaimed, or abandoned, prior to the enactment of the federal Surface Mining Control and Reclamation Act of 1977, and which, in their unreclaimed condition, continue to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the public health or safety;
3. Exercise the police power of the Commonwealth in a coordinated statewide program to effectively control present and future problems associated with coal surface mining and provide for the reclamation of disturbed lands to insure the protection of the public welfare and safety;
4. Authorize and enable the Department to submit, and obtain approval of, a permanent state regulatory program and abandoned mine reclamation program, pursuant to the federal Surface Mining Control and Reclamation Act of 1977.

B. Nothing in this chapter is intended, nor shall be construed, to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person in any dispute involving property rights, including interests in water resources, or the right of any person to damage or other relief on account of injury to persons or property, including interests in water resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter; nor to affect the powers of the Commonwealth to initiate, prosecute and maintain actions to abate public nuisances.

(1979, c. 290; 1984, c. 590.)

§ 45.1-229. Definitions.

The following words and phrases when used in this chapter shall have the meaning respectively ascribed to them in this section except where the context clearly requires a different meaning; the Director shall have the power to adopt by regulation such other definitions as may be deemed necessary to carry out the intent of this chapter.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the Director determines that they are in compliance with the applicable performance standards promulgated pursuant to this chapter.

"Division" means the Division of Mined Land Reclamation.

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

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

"State regulatory program" or "permanent state regulatory program" means the program established by this chapter meeting the requirements of the federal act for the regulation of coal surface mining and reclamation operations within the Commonwealth, submitted to the Secretary pursuant to § 503 of the federal act.

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

"Secretary" means the Secretary of the Interior of the United States.

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

"Coal surface mining and reclamation operations" means surface mining operations and all activities necessary and incidental to the reclamation of such operations after March 20, 1979.

"Coal surface mining operations" means the following:

1. Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.1-243, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the uses of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal for interstate commerce at or near the mine site; however, such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed  $16 \frac{2}{3}$  percent of the tonnage of minerals removed for purposes of commercial use or sale or coal explorations subject to § 45.1-233 of this chapter; and

2. The areas upon which such activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to

abate any violation of such permit or the chapter due to indifference, lack of diligence, or lack of reasonable care.

"Operator" means any person engaging in coal surface mining operations whether or not such coal is sold within or without the Commonwealth.

"Permit" means a permit issued by the Director pursuant to the approved state regulatory program.

"Permit area" means the area of land indicated on the approved map submitted by the operator with his application, which area of land shall be covered by the operator's bond as required by § 45.1-241 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding a permit issued by the Director for coal surface mining pursuant to § 45.1-234, for coal exploration pursuant to § 45.1-233, or for an NPDES permit pursuant to § 45.1-254.

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

(1979, c. 290; 1984, c. 590.)

#### § 45.1-230. Authority and duties of Director.

A. The authority to publish and promulgate such regulations as may be necessary to carry out the purposes and provisions of this chapter is hereby vested in the Director. Regulations shall be consistent with regulations promulgated by the Secretary pursuant to the federal act or in conformity to any court ruling construing such act. In promulgating such regulations, the Director shall provide an opportunity for public comment, both oral and written, and shall give public notice of proposed regulations, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

A1. In addition to the adoption of regulations under this chapter, the Director may at his discretion issue or distribute to the public interpretative, advisory or procedural bulletins or guidelines pertaining to permit applications or to matters reasonably related thereto without following any of the procedures set forth in the Administrative Process Act (§ 2.2-4000 et seq.). The materials shall be clearly designated as to their nature, shall be solely for purposes of public information and education, and shall not have the force of regulations under this chapter or under any other provision of this Code.

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

1. To supervise the administration and enforcement of this chapter; to make investigations and inspections necessary to insure compliance with this chapter; to conduct hearings, administer oaths, issue subpoenas and compel the attendance of witnesses and production of written or printed material as provided for in this chapter; to issue orders and notices of violation; to review and vacate or modify or approve orders and decisions; and order the suspension, revocation, or withholding of any permit for failure to comply with any of the provisions of this chapter or any rules and regulations adopted thereunder;
2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ 45.1-260 et seq.) of this chapter;
3. To encourage and conduct investigations, research, experiments and demonstrations, and to collect and disseminate information relating to coal surface mining and reclamation of lands and waters affected by coal surface mining;

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

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

C. The Division of Mined Land Reclamation shall have the responsibilities provided under this chapter and such duties and responsibilities as the Director may assign, or as may be provided for in regulations promulgated by the Director.

(1979, c. 290; 1982, c. 425; 1984, c. 590.)

§ 45.1-231. Conflicts of interest prohibited.

A. No employee of the Department performing any function or duty under this chapter, shall have a financial interest in any underground or surface coal mining operation.

B. For the purposes of this section, "financial interest" shall include a pecuniary interest accruing to an employee or to his spouse, minor children or other relatives living in the same household.

C. The Director shall promulgate regulations by which the provisions of this section will be monitored and enforced, including provisions for the filing and review of statements and supplements by employees concerning any financial interest which may be affected by this section, for the hiring, transfer, and removal of employees consistent with the prohibition of this section, for the resolution of prohibited interests, for the confidentiality, protection and disclosure to enforcement authorities of reporting statements and for such exemptions from the provisions of this section as may be consistent with federal law.

D. [Repealed.]

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

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

(1979, c. 290; 1984, c. 590.)

§ 45.1-232.

Repealed by Acts 1984, c. 590.

§ 45.1-233. Coal exploration operations.

A. Coal exploration operations which substantially disturb the natural land surface shall be conducted in accordance with exploration regulations promulgated by the Director. Such regulations shall include, at a minimum (i) the requirement that prior to conducting any exploration under this section, any person must file with the Director notice of intention to explore and such notice shall include a description of the exploration area and the period of supposed exploration, and (ii) provisions for reclamation, in accordance with the performance standards established pursuant to § 45.1-242, of all lands disturbed in exploration, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

B. Information submitted to the Director pursuant to this section as confidential concerning trade secrets or privi-

leged commercial or financial information which relates to the competitive rights of the person or entity intended to explore the described area shall not be available for public examination.

C. Any person who conducts any coal exploration activities which substantially disturbs the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of § 45.1-246.

D. No person shall remove more than 250 tons of coal while engaged in coal exploration operations without a specific written coal exploration permit issued by the Director.

(1979, c. 290.)

§ 45.1-234. Permits required; certain operations conducted pending initial administrative decision; time for application and action of Director thereon; term; transfer, etc.

A. On and after eight months from the date on which a permanent state regulatory program is approved for this Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 17 (§ 45.1-198 et seq.) of this title 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, provided that during the continuation of a permit issued under Chapter 17 of this title, there shall be no change in the performance standards required thereunder.

B. No later than two months following the Secretary's approval of the state regulatory program, regardless of any litigation contesting that approval, all operators of coal surface mines expecting to operate such mines after the expiration of eight months from the Secretary's approval shall file an application for a permit with the Director. Such application shall cover those lands to be mined after the expiration of eight months from the Secretary's approval.

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

(1979, c. 290; 1980, c. 364; 1983, c. 134; 1984, c. 590.)

§ 45.1-235. Form and contents of permit application; fee.

A. Application for a surface mining permit shall be made to the Division in the format required by the Director and shall be signed and verified under oath by the person, or his legal representative, intending to engage in the surface mining of coal.

B. The application shall contain such information as shall be required by regulations adopted by the Director, including, but not limited to, the information required under the provisions of § 507 (b) of the federal act.

C. To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in § 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an operations plan and a reclamation plan which shall meet the requirements of this chapter and regulations promulgated by the Director.

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation for which plans have been submitted. An anniversary payment of \$13 per acre for areas disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this chapter shall be paid into a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information which pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content which is potentially toxic in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall be required to submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, not less than that specified in regulations adopted by the Director, adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, and including the length of all reclamation operations. The Director is authorized to promulgate regulations which provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

(1979, c. 290; 1982, c. 246; 1984, c. 590; 1999, c. 114; 2003, cc. 542, 550.)

#### § 45.1-236. Operations and reclamation plans.

Each application for a coal surface mining permit pursuant to the approved state regulatory program shall include an operations plan and a reclamation plan, in such form and containing such information as the Director shall require and meeting the requirements of this chapter and regulations adopted by the Director, including but not limited to the information required under § 508 (a) of the federal act. Operations plans shall not include underground workings. The operations and reclamation plans as approved by the Director shall be an integral part of the terms and conditions of the coal surface mining permit.

(1979, c. 290; 1984, c. 590.)

#### § 45.1-237. Revision of permits.

A. 1. During the term of the permit the permittee may submit an application for a revision of the permit, together with a revised operations plan and reclamation plan, to the Director.

2. An application for a revision of a permit shall not be approved unless the Director finds that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the revised reclamation plan. The Director shall establish, by regulation, the period of time within which the revision shall be approved or disapproved, as well as guidelines for a determination of the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, shall apply; however, any

revisions which propose significant alterations in the operations plan and reclamation plan shall, at a minimum, be subject to notice and hearing requirements.

3. Any extension to the area covered by the permit, except insignificant boundary revisions, must be made by application for another permit.

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

(1979, c. 290; 1984, c. 590.)

§ 45.1-238. Approval or denial of permit.

A. Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by the federal act and pursuant to the approved permanent state regulatory program, including public notification and opportunity for public hearing, the Director shall grant, require modification of, or deny the application for a permit in a reasonable time established by regulation and shall notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of the permanent state regulatory program. Within ten days after the granting of a permit the Director shall notify the government officials in the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of the federal act and the permanent state regulatory program have been complied with;

2. The applicant has demonstrated that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated unsuitable for coal surface mining pursuant to this chapter nor is it within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit;

5. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsur-

face legal relationship shall be determined in accordance with the laws of this Commonwealth; provided, however, that nothing herein shall be construed to authorize the Director to adjudicate property rights disputes.

C. The applicant shall file with his permit application a schedule listing any and all notices of violations of the federal act, this chapter and any law, rule or regulation of the United States or of this Commonwealth or of any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of the laws referred to in this subsection, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over such violation, and no permit shall be issued to an applicant after a finding by the Director after opportunity for a hearing, that the applicant, or the operator specified in the application, controls or has controlled mining operations with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

D. In addition to finding the application in compliance with subsection B of this section, if the area proposed to be mined contains prime farmland pursuant to § 507 (b) (16) of the federal act, the Director shall comply with applicable regulations issued by the Secretary in determining whether to issue a permit for such area.

(1979, c. 290.)

§ 45.1-239. Public participation in process of issuing or revising permits.

A. The Director shall establish, by regulation, procedures for the notification of and participation by the public and appropriate federal, state and local governmental authorities in the process for issuing or revising coal surface mining permits, in accordance with § 513 of the federal act.

B. Any person having an interest which is or may be adversely affected, or the officer or head of any federal, state or local governmental agency or authority shall have the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within thirty days after the last publication of the applicant's notice required by the regulation promulgated pursuant to subsection A hereof. If written objections are filed and an informal hearing requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless all the parties requesting the informal hearing stipulate agreement prior to the requested informal hearing and withdraw their request therefor.

(1979, c. 290; 1984, c. 590.)

§ 45.1-240. Decision of Director upon permit application; hearing; appeal.

A. The Director shall notify the applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and such written objections as may have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to § 45.1-239, the Director shall issue to the applicant and the parties to the hearing his written decision within sixty days of such hearings.

B. If the application is approved the permit shall be issued. If the application is disapproved, specific reasons therefor shall be set forth in the notification. Within thirty days after the applicant is notified of the final decision of the Director on the permit application, the applicant, or any person with an interest which is or may be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), and within thirty days thereafter issue to the

applicant and all persons who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § 45.1-239 shall preside at the formal adjudicatory hearing or participate in the decision therein or any administrative appeal therefrom.

C. Where a hearing is requested pursuant to subsection B herein, the Director, under such conditions as he may prescribe, may grant such temporary relief as he deems appropriate pending final determination of the proceedings if:

1. All parties to the proceeding have been notified and given an opportunity to be heard on a request for temporary relief;
2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

D. Any applicant, or any person with an interest which is or may be adversely affected and who has participated in the formal hearing as an objector, aggrieved by the decision of the Director or by the failure of the Director to act within the time limits specified in this chapter shall have a right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

(1979, c. 290; 1983, c. 92; 1986, c. 615.)

#### § 45.1-241. Performance bonds.

A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and conditioned upon faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator will initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As succeeding increments of coal surface mining and reclamation operations are initiated and conducted within the permit area, the permittee shall file with the Director an additional bond or bonds to cover such increments in accordance with this section. The amount of the bond required for each bonded area shall depend upon the reclamation requirements of the approved permit, shall reflect the probable difficulty of reclamation giving consideration to such factors as topography, geology of the site, hydrology, and revegetation potential, and shall be determined by the Director. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the Director in the event of forfeiture, but in no case shall the bond for the entire area under one permit be less than \$10,000.

B. Liability under the bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations promulgated pursuant to § 45.1-242. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States Government or of the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

C. The Director may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the Director, pursuant to regulations, the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure or bond such amount. The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be

payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit. The Director is further authorized to develop and promulgate an alternative system that will achieve the objectives and purposes of the bonding program established under this section.

D. Cash or securities so deposited shall be deposited upon the same terms as the terms upon which surety bonds may be deposited. Such securities shall be security for the repayment of such negotiable certificate of deposit.

E. The amount of the bond or deposit required and the terms of each acceptance of the applicant's bond shall be adjusted by the Director from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

(1979, c. 290; 1984, c. 590; 1997, c. 285; 1998, c. 692.)

#### § 45.1-242. Performance standards.

A. The Director shall, by regulation, establish performance standards meeting the requirement of § 515 of the federal act and consistent with regulations adopted by the Secretary thereunder which shall be applicable to all coal surface mining and reclamation operations, except as otherwise provided in this chapter.

B. Any permit issued pursuant to this chapter to conduct coal surface mining operations shall require that such operations meet all applicable performance standards established by the Director.

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

D. Because of the diversity in terrain, climate, biologic, chemical and other physical conditions in Virginia, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for coal surface mining and reclamation operations should rest with the Commonwealth, and accordingly, the Director is encouraged and authorized to develop and promulgate, with the approval of the Secretary, alternative performance standards and procedures for administering and enforcing the program created pursuant to this chapter.

E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards promulgated under this section and § 45.1-243.

(1979, c. 290; 1984, c. 590.)

§ 45.1-243. Surface effects of underground coal mining operations.

A. The Director shall promulgate regulations directed toward the surface effects of underground coal mining operations embodying the requirements of §§ 516 and 720 (a) (1) of the federal act. The provisions of this chapter relating to permits, bonds, inspections and enforcement, public review, and administrative and judicial review shall be applicable to surface operations and surface impacts incident to an underground coal mine with such modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining. Nothing in § 720 (a) (1) of the federal act shall be construed to prohibit or interrupt underground coal mining operations.

B. The Director's regulations shall require that permit applicants submit hydrologic reclamation plans that include measures that will be utilized to prevent the sudden release of accumulated water from underground workings.

C. In order to protect the stability of the land, the Director shall suspend underground coal mining under elementary and secondary schools, colleges, universities, urbanized areas, cities, towns and communities, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams if he finds imminent danger to the inhabitants or occupants of the elementary and secondary schools, colleges, universities, urbanized areas, cities, towns and communities.

(1979, c. 290; 1984, c. 590; 1993, c. 582; 1996, cc. 409, 410.)

§ 45.1-244. Inspections and monitoring.

A. For the purpose of administering and enforcing any permit issued under this chapter or of determining whether any person is in violation of any requirement of this chapter or any regulation promulgated hereunder:

1. The Director shall require any permittee to (i) establish and maintain appropriate records, (ii) make monthly reports to the Division, (iii) install, use and maintain any necessary monitoring equipment or methods, (iv) evaluate results in accordance with such methods, at such locations, intervals, and in such manner as the Director shall prescribe, and (v) provide such other information relative to coal surface mining and reclamation operations as the Director deems reasonable and necessary;

2. For those coal surface mining and reclamation operations which remove or disturb strata that serve as aquifers which significantly insure the hydrologic balance of water use either on or off the mining site, the Director shall specify those (i) monitoring sites to record the quantity and quality of surface drainage above and below the mine site as well as in the potential zone of influence, and to record level, amount, and samples of ground water and aquifers potentially affected by mining, and also directly below the deepest coal seam to be mined, and to record precipitation; and (ii) records of well logs and borehole data to be maintained. The monitoring data collection and analysis required by this section shall be conducted according to standards and procedures set forth in regulations promulgated by the Director in order to assure their reliability and validity; and

3. The authorized representatives of the Director, without advance notice and upon presentation of appropriate credentials, (i) shall have the right of entry to, upon, or through any coal surface mining and reclamation operation; and (ii) shall have the right to inspect any monitoring equipment, any method of exploration, any method of operation, or any records required by this chapter, and shall have the right to copy any such records.

No search warrant shall be required for any entry or inspection under this subsection, except with respect to entry into a building.

B. The inspections by the Director shall (i) occur on an irregular basis averaging not less than one partial inspection per month and one complete inspection per calendar quarter for the coal surface mining and reclamation operations covered by each permit; (ii) occur without prior notice to the permittee or his agents or employees except for nec-

essary on-site meetings with the permittee; and (iii) include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

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

D. Each inspector, upon detection of each violation of any requirement of this chapter or of the regulations promulgated hereunder, shall forthwith inform the operator in writing and shall report in writing any such violation to the Director.

E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas; however, information which pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content which is potentially toxic in the environment, shall be kept confidential and not made a matter of public record.

(1979, c. 290; 1984, cc. 323, 590.)

#### § 45.1-245. Enforcement of chapter generally.

A. Whenever the Director or his authorized representative determines that any condition or practices exist, or that any permittee is in violation of any requirement of this chapter or of any regulation promulgated hereunder or of any permit condition, which condition, practice or violation also creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall immediately order a cessation of coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice or violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the condition, practice or violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative. Whenever the Director or his authorized representative finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, will not completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air or water resources, the Director shall, in addition to the cessation order, impose affirmative obligations on the operator and require him to take whatever steps the Director or his authorized representative determines necessary to abate the imminent danger or the significant environmental harm.

B. Whenever the Director or his authorized representative determines that any permittee is in violation of any requirement of this chapter or any regulation thereunder, or any permit condition, but such violation does not create an imminent danger to the health or safety of the public, or cannot reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, the Director or his authorized representative shall issue a notice of violation to the permittee or his agent setting a reasonable time but not more than ninety days for the abatement of the violation and provide an opportunity for public hearing.

If, upon expiration of the period of time as originally set or subsequently extended for good cause shown upon the written finding of the Director or his authorized representative, the Director or his authorized representative finds that a violation has not been abated, he shall immediately order a cessation of coal surface mining and reclamation operations or the portion thereof relevant to the violation. Such cessation order shall remain in effect until the Director or his authorized representative determines that the violation has been abated, or until modified, vacated or terminated by the Director or his authorized representative pursuant to subsection D of this section. The Director or his authorized representative shall include in the cessation order the necessary measures to abate the violation in the most expeditious manner possible.

C. Whenever the Director or his authorized representative determines that a pattern of violations of the require-

ments of this chapter, or regulations promulgated thereunder, or any permit conditions exist or have existed, and if the Director or his authorized representative also finds that such violations are caused by the unwarranted failure of the permittee to comply with any such requirements, or that such violations are willfully caused by the permittee, the Director or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a formal public hearing. If a hearing is requested the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director or his authorized representative shall forthwith suspend or revoke the permit.

D. Notices and order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director or his authorized representative issuing such notice or order, and all such notices and orders shall be in writing and signed by such authorized representatives. Any notice or order issued pursuant to this section may be modified, vacated or terminated by the Director or his authorized representative. Any notice or order issued pursuant to this section which requires cessation of mining by the operator shall expire within thirty days of actual notice to the operator unless an informal public hearing, unless waived by the operator, is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing.

E. The Director may institute a civil action for injunctive or other relief in any court of competent jurisdiction whenever any permittee or his agent, or any other person:

1. Violates, fails or refuses to comply with any order or decision issued by the Director; or
2. Interferes with, hinders or delays the Director in carrying out the provisions of this chapter or the regulations thereunder; or
3. Refuses to admit such authorized representative to the mine; or
4. Refuses to permit inspection of the mine; or
5. Refuses to furnish any information or report requested by the Director pursuant to the provisions of this chapter or the regulations thereunder; or
6. Refuses to permit access to, and copying of, such records as the Director determines necessary in carrying out the provisions of this chapter or the regulations thereunder; or
7. Conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit.

(1979, c. 290.)

§ 45.1-246. Civil and criminal penalties.

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations thereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm

to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. Where such a public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty which is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A of this section has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. The permittee charged with the penalty shall then have 30 days to pay the proposed penalty in full or if the permittee wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the State Treasurer's office. If through administrative or judicial review of the proposed penalty, it is determined that no violation occurred, or that the amount of the penalty should be reduced, the Director shall within 30 days of that determination remit the appropriate amount to the permittee with accrued interest thereon. Failure to forward the money to the Director within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

D. If a permittee who is required to pay a civil penalty fails to do so, the Director may transmit a true copy of the final order assessing such penalty to the clerk of the court of any county or city wherein it is ascertained that the permittee owing the penalty has any estate; and the clerk to whom such copy is so sent shall record it, as a judgment is required by law to be recorded, and shall index the same as well in the name of the Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the permittee within such county or city in the amount of the penalty. The Director may collect civil penalties which are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into a special fund in the State Treasurer's office to be used by the Director for enhancing conservation and recreational opportunities in the coal-producing counties of the Commonwealth. The Director shall transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic Development Authority for the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50 percent of the fund balance to the Tourism Development Authority for the purpose of developing conservation and recreational opportunities consistent with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

E. Any person who willfully and knowingly (i) conducts coal surface mining or coal exploration operations without first obtaining a permit, or after a permit has lapsed, or after suspension or revocation of a permit; or (ii) violates a condition of a permit issued pursuant to this chapter; or (iii) disregards, fails or refuses to comply with the regulations or orders promulgated or issued pursuant to the provisions of this chapter, except an order incorporated in a decision under subsection B of this section shall, upon conviction, be punished by a fine of not more than \$10,000, by confinement in jail for not more than 12 months, or both.

F. Whenever a corporate permittee violates a condition of a permit or disregards, fails, or refuses to comply with any order issued under this chapter, except an order incorporated in a decision issued under subsection B of this section, any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure or refusal shall be subject to the same civil penalties, fines and confinement in jail that may be imposed upon a person under subsections A and E of this section.

G. Whoever knowingly makes any false statement, representation or certification, or knowingly fails to make any re-

quired statement, representation or certification, in any application, objection, record, report, plan or other document filed or required to be maintained pursuant to this chapter, the regulations promulgated thereunder, or any order or decision issued by the Director under this chapter shall, upon conviction thereof, be punished by a fine of not more than \$10,000, or by confinement in jail for not more than 12 months, or both.

H. Any operator who fails to correct a violation for which a notice or order has been issued within the period permitted for its correction, which period shall not end until the entry of a final order by the Director, in the case of any review proceedings initiated by the operator wherein the Director orders after an expedited hearing the suspension of the abatement requirements of the notice or order after determining that the operator will suffer irreparable loss or damage from the application of those requirements, or until entry of an order of the court, in the case of any review proceedings initiated by the operator wherein the court orders the suspension of the abatement requirements, shall be assessed a civil penalty of not less than \$750 for each day during which such failure or violation occurs.

(1979, c. 290; 1980, c. 510; 1993, c. 663; 2005, c. 3.)

§ 45.1-246.1. Citizen suits; rights of citizens to accompany inspectors.

A. Except as provided in subsections B or C of this section, any person having an interest which is or may be adversely affected may, in order to compel compliance with the provisions of this chapter, commence a civil action on his own behalf against:

1. The United States or any other governmental instrumentality or agency, or any other person that is alleged to be in violation of the provisions of this chapter or of any rule, regulation, order or permit issued pursuant thereto; or

2. The Director when there is alleged a failure of the Director to perform any act or duty under this chapter which is not discretionary with the Director.

B. No action may be commenced under subdivision A 1 of this section:

1. Prior to sixty days after the plaintiff has given written notice of the violation to (i) the Secretary, (ii) the Director and (iii) any alleged violator; or

2. If the Commonwealth of Virginia or the Secretary of the Interior has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or this Commonwealth to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter, provided, however, that any person may intervene as a matter of right in any such action in a court of the Commonwealth;

C. No action may be commenced under subdivision A 2 of this section prior to sixty days after the plaintiff has given written notice of such action to the Director, in such manner as shall be prescribed by regulation, provided, however, that such action may be brought immediately after such notification in any case in which it is alleged that a violation or order would constitute an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

D. Any action with respect to a violation of this chapter or the regulations thereunder may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. In any such action commenced under the provisions of this section, the Director may intervene as a matter of right, whether or not he is a party to the action.

E. The court, in issuing any final order in any action brought pursuant to subsection A of this section, may award costs of litigation, including attorney and expert witness fees, to any party, provided that the court determines such award is appropriate. If a preliminary injunction is sought the court may require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

F. Nothing in this section shall restrict any common-law or statutory right which any person or class of persons may have to seek enforcement of any of the provisions of this chapter and the regulations thereunder, or to seek any other relief, including relief against the Director.

G. Any person who as a result of the violation by any operator of any rule, regulation, order, or permit issued pursuant to this chapter, suffers injury to his person or property may bring an action for damages, including reasonable attorney and expert witness fees. Such action may be brought only in the circuit court of the county or city in which the surface coal mining operation complained of is located. Nothing in this subsection shall affect the rights established by or limits imposed under Title 65.2.

H. Whenever information provided the Director by any person results in any inspection, the Director shall notify such person of the time at which the inspection is scheduled to occur, and such person shall be allowed to accompany the inspector during the inspection.

(1980, c. 510.)

#### § 45.1-247. Forfeiture or release of performance bond.

A. The Director shall promulgate regulations, consistent with regulations promulgated by the Secretary, establishing procedures, conditions, criteria, and schedules for the forfeiture or release of performance bonds or deposits required under this chapter; however, no bond shall be fully released until all reclamation requirements of this chapter and the regulations thereunder are fully met.

B. Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation, or is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond by the Director within thirty days after the last publication of notice, as required by regulation. If written objections are filed, and a hearing requested, the Director shall inform all interested parties of the time and place of the hearing and hold a public hearing in the locality of the coal surface mining operation proposed for bond release, or in Richmond at the option of the objector, within thirty days of the request for such hearing.

C. Without prejudice to the rights of the objectors, the applicant, or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations promulgated pursuant to § 45.1-239 B, to resolve written objections.

D. For the purpose of such hearing the Director is authorized to administer oaths, subpoena witnesses, or written or printed materials, compel the attendance of witnesses, or production of materials, and take evidence including but not limited to inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made and a transcript made available on the motion of any party or by order of the Director.

(1979, c. 290; 1984, c. 590.)

#### § 45.1-248. Performance of reclamation operations by Director.

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the proceeds in the State Treasurer's office in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or he may enter into contracts for performance of such reclamation with any

individual, corporation, partnership, association, or any other legal entity, any soil conservation district, or any agency of the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.

(1979, c. 290; 1984, c. 590.)

§ 45.1-249. Administrative review of notice or order issued under § 45.1-245.

A. A permittee who is issued a notice or order pursuant to § 45.1-245, or any person having an interest which is or may be adversely affected by such notice or order by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of the notice or order within thirty days of the receipt thereof or within thirty days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate, which shall include an opportunity for a public formal hearing, at the request of the applicant or the person having an interest which is or may be adversely affected, to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact, and shall issue a written decision, incorporating therein an order vacating, affirming, modifying or terminating the notice or order complained of and incorporate his findings therein. When the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or B of § 45.1-245, the Director shall issue the written decision within thirty days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C of this section or by a court pursuant to § 45.1-251.

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under § 45.1-245, together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. Where the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or B of § 45.1-245, the order on such a request shall be issued within five days of its receipt. The Director may grant such relief, under such conditions as he may prescribe, if:

1. A hearing has been held in the locality of the permit area on the request for temporary relief in which all parties were given an opportunity to be heard;
2. The applicant shows that there is substantial likelihood that the decision of the Director will be favorable to him; and
3. Such relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air or water resources.

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to § 45.1-245, the Director shall hold a public formal hearing, unless waived by the permittee, after giving written notice of the time, place and date thereof. Within sixty days following the formal hearing, the Director shall issue and furnish to the permittee and all other parties to the hearing a written decision concerning suspension or revocation of the permit and reasons therefor. If the Director revokes the permit, the permittee shall immediately cease coal surface mining operations on the permit area and shall complete reclamation within a period specified by the Director or the Director shall declare as forfeited the performance bonds for the operation.

E. The Director is authorized to promulgate regulations providing for the award of costs and expenses, including

attorney fees, to any party to any administrative proceedings under this chapter, incurred by such person in connection with his participation in such proceedings and to assess such costs and expenses against any other party, as may be proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

(1979, c. 290; 1983, c. 93.)

§ 45.1-250. Hearings.

A. [Repealed.]

B. All formal hearings shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings. When a hearings officer presides, he shall recommend findings and a decision to the Director, who shall then issue findings and a decision, unless he provides for the making of findings and an initial decision by such hearings officer subject to review and reconsideration by the Director on appeal as of right or on the Director's own motion. Such regulations shall also provide for a reasonable time in which such appeals shall be acted upon, which shall be in addition to the period required for the making of the initial decision.

(1979, c. 290; 1984, c. 590.)

§ 45.1-251. Judicial review of final order or decision or of decision under § 45.1-263.

A. Any party aggrieved by a final order or decision, and any decision for entry upon property pursuant to § 45.1-263, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, shall have the right to the judicial review thereof in the circuit court of the county or city in which the land or a major portion thereof is located. In all other respects, judicial review shall be in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4020 et seq.).

B. The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the Director. The court may, under such conditions as it may prescribe, grant such temporary relief as it deems appropriate pending final determination of the proceedings if:

1. All parties to the proceedings have been notified and given an opportunity to be heard on a request for temporary relief;
2. The person requesting such relief shows that there is a substantial likelihood that he will prevail on the merits of the final determination of the proceeding; and
3. Such relief will not adversely affect the public health or safety or cause significant imminent environmental harm to land, air or water resources.

C. To any proceeding under this section, the court may award costs and expenses, including attorneys' fees, to any party and to assess such costs and expenses against any other party as the court may deem proper. For the purpose of this subsection, the term "party" shall include the Commonwealth or any of its agents, officers or employees.

(1979, c. 290; 1983, c. 93; 1984, c. 590; 1986, c. 615.)

§ 45.1-252. Designating areas unsuitable for coal surface mining.

A. 1. The Director shall establish a planning process enabling objective decisions based on competent and scientifically sound data and information as to which, if any, land areas of the Commonwealth are unsuitable for all or certain types of coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 of this subsection

but such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

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

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

4. Determinations of the unsuitability of land for coal surface mining, as provided for in this section, shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state and local levels.

5. The requirements of this section shall not apply to lands on which coal surface mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to the provisions of the federal act, or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.

B. Prior to designating any land areas as unsuitable for coal surface mining operations, the Director shall cause to be prepared a detailed statement on (i) the potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of such designation on the environment, the economy and the supply of coal.

C. Any person having an interest which is or may be adversely affected shall have the right to petition the Director to have an area designated as unsuitable for coal surface mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts with supporting evidence which would tend to establish the allegations. Within ten months after receipt of the petition, the Department shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time and location of the hearing. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, as required by this subsection, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. The Director shall issue and furnish to the petitioner and any other party to the hearing, within sixty days after such hearing, a written decision regarding the petition and the reasons therefor. In the event that all petitioners stipulate agreement prior to hearing and withdraw their request such hearing need not be held.

D. On and after March 20, 1979, and subject to valid existing rights, no coal surface mining operations, except those which were existing on August 3, 1977, shall be permitted:

1. On any lands within the boundaries of units of the National Park System, the National Wildlife Refuge Systems, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including study rivers designated under § 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas designated by act of Congress and any federal lands within the boundaries of any national forest, except as otherwise provided by federal law;

2. Which will adversely affect any publicly owned park or places included in the National Register of Historic Sites unless approved jointly by the Director and federal, state or local agency with jurisdiction over the park or historic site;

3. Within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join such right-of-way line and except that the Director may permit such roads to be relocated or the area affected to

lie within 100 feet of such road, if after public notice and opportunity for hearing in the locality, a written finding is made that the interests of the public and landowners affected thereby will be protected; or

4. Within 300 feet from any occupied dwelling, unless waived by the owner thereof, nor within 300 feet of any public building, school, church, community, or institutional building, public park, or within 100 feet of a cemetery.

(1979, c. 290; 1984, c. 590.)

§ 45.1-253. Certain mining operations exempt from this chapter.

The provisions of this chapter shall not apply to any of the following activities:

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

(1979, c. 290; 1984, c. 590; 1988, c. 295.)

§ 45.1-254. National pollutant discharge elimination system permits.

A. The authority to issue, amend, revoke and enforce national pollutant discharge elimination system permits under the State Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes and other wastes from coal surface mining operations, to the extent delegated by the U.S. Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-500, as amended, is vested solely in the Director, notwithstanding any provision of law contained in Title 62.1, except as provided herein. For the purpose of enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to permits, orders and regulations issued by the Director in accordance with this section.

B. The Director shall transmit to the State Water Control Board a copy of each application for a national pollutant discharge elimination system permit received by the Director, and provide written notice to the State Water Control Board of every action related to the consideration of such permit application.

C. Prior to the issuance or reissuance of a permit, applicants shall submit an application on a form approved by the Director and a fee of \$300 for each discharge outfall point under the permit. If an application is approved the permittee shall, on the anniversary of the permit approval for each year of the permit term, submit \$300 for each discharge outfall point under the permit. Each permit shall remain valid for five years. All fees provided for under this section shall be in addition to any other fees levied pursuant to this chapter.

D. No national pollutant discharge elimination system permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed national pollution discharge elimination system permit, the State Water Control Board objects in writing to the issuance of such permit. Whenever the State Water Control Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions which such permits would include if it were issued by the State Water Control Board.

E. An applicant who is aggrieved by an objection made under subsection D of this section shall have the right to a hearing before the State Water Control Board pursuant to § 62.1-44.25. If the State Water Control Board withdraws, in writing, its objection to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by a final decision of the State Water Control Board made pursuant to this subsection, shall have the right to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

F. Whenever, on the basis of any information available to it, the State Water Control Board finds that any person is in violation of any condition or limitation contained in a national pollutant discharge elimination system permit issued by the Director, it shall notify the person in alleged violation and the Director. If beyond the thirtieth day after notification by the State Water Control Board, the Director has not commenced appropriate enforcement action, the State Water Control Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

G. The Director shall promulgate such regulations as deemed necessary for the issuance, administration, monitoring and enforcement of national pollutant discharge elimination system permits for coal surface mining operations.

H. For the purpose of this section, the terms "sewage," "industrial wastes" and "other wastes" shall have the meanings ascribed to them in § 62.1-44.3.

I. The Director, by examining the available and relevant data, shall determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard.

J. If a total maximum daily load (TMDL) has been established by the State Water Control Board for the receiving water body, then there shall be consideration of the TMDL in the reasonable potential determination as to whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. If the receiving water body does not have a TMDL established, the Director may consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to determine whether a discharge may cause or contribute to an instream excursion above the narrative or numeric criteria of a water quality standard. The Director may require whole effluent toxicity testing if he determines that the discharge adversely affects the biological condition of the receiving water body.

(1979, c. 290; 1986, c. 615; 2008, c. 275; 2011, cc. 252, 290.)

§ 45.1-255.

Repealed by Acts 1984, c. 714.

§ 45.1-255.1.

Repealed by Acts 1988, c. 489.

§ 45.1-256. Training and certification of blasters.

A. In order to ensure that explosives are used only in accordance with applicable state and federal laws, the Director is authorized to promulgate regulations requiring the training, examination and certification of persons engaging in or directly responsible for blasting or the use, storage and handling of explosives in coal surface mining operations.

B. The Division shall assume primary responsibility for conducting the examinations and issuing the certificates for such persons in accordance with the regulations adopted pursuant to subdivision A of this section.

(1979, c. 290; 1984, cc. 230, 590; 1996, c. 758.)

§ 45.1-257. Impeding, etc., Director or agents a misdemeanor.

It shall be a misdemeanor, punishable by a fine of not more than \$5,000 or by confinement in jail for not more than one year, or both, for any person, except as permitted by law, to willfully resist, prevent, impede, or interfere with the Director or any of his agents in the performance of duties pursuant to this chapter.

(1979, c. 290.)

§ 45.1-258. Replacement of water supply.

A. The operator of any coal surface mining operation shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such coal surface mine operation.

B. Underground coal mining operations conducted after October 24, 1992, shall promptly replace any drinking, domestic, or residential water supply from a well or spring in existence prior to the application for a surface coal mining and reclamation permit which has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Until amendments to the regulations governing the permanent state regulatory program implementing the provisions of this subsection are effective, the Director shall issue guidelines in accordance with subsection A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection. Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.

C. Each operator of an underground coal mine shall record the daily progress of mining operations on a mine map or maps maintained at the mine site or in the company office. The map or maps shall, at a minimum, include information on the daily progress of mining operations conducted after October 24, 1992, and be maintained until the completion of the mining. The operator shall provide the map or maps to the Division upon completion of mining and upon request of the Director.

D. If the Director has ordered replacement under subsection B of this section and the operator subject to the order has failed to provide the map or maps in accordance with subsection C of this section, then the Director's order shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion of an investigation, if the Director does not order replacement under the provisions of subsection B of this section and reasonable access for a pre-mining survey was denied, the Director's determination shall not be overturned absent clear and convincing evidence to the contrary.

E. Each operator of an underground coal mine shall provide a certificate issued by an insurance company licensed to do business in the Commonwealth certifying that the operator has a public liability insurance policy in force for the underground coal mining operation which shall provide for protection in an amount adequate to replace any water supply as required by subsection B of this section. The policy shall be maintained in full force during the term of the permit, including any renewal thereof, and including the liability period necessary to complete all reclamation operations under this chapter. The provisions of this subsection shall expire on the date the amendments to the regulations governing the permanent state regulatory program implementing the provisions of subsection B of this section are approved for the Commonwealth by the Secretary of the Interior of the United States.

(1979, c. 290; 1993, c. 582.)

§ 45.1-259. Applicability of chapter to public agencies, utilities and corporations.

Any agency, unit, or instrumentality of the Commonwealth, or of federal or local government, including any publicly owned utility or publicly owned corporation of federal, state or local government, which proposes to engage in coal surface mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter.

(1979, c. 290.)

§ 45.1-260. State Reclamation Program.

A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall in-

clude the State Reclamation Plan and fund and annual reclamation projects, as provided for in this article.

B. The Director is authorized to develop and submit to the Secretary for his approval a State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of this article. The plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the programmatic capability of the Division to perform such work, and shall include such regulations, policies, and procedures as may be necessary to establish and implement the plan and annual reclamation projects, and to carry out the provisions of this article. The Director may from time to time develop and submit to the Secretary amendments and revisions to the plan, consistent with this article.

C. The Director is authorized:

1. To prepare and submit to the Secretary annual applications for the support of the State Reclamation Program and implementation of specific reclamation projects;
2. To enter into agreements with the Secretary for the emergency restoration, reclamation, abatement, control or prevention of the adverse effects of coal mining practices;
3. To administer the State Reclamation Plan and the annual reclamation projects and to receive and administer grants from the Secretary therefor;
4. To prepare and submit such information and reports as the Secretary may request.

D. The Director and the Department, in carrying out the functions of preparing and revising the State Reclamation Plan and developing annual reclamation projects, shall provide appropriate opportunities for public involvement.

(1979, c. 290; 1984, c. 590.)

§ 45.1-261. Abandoned Mine Reclamation Fund.

A. There is hereby created in the State Treasurer's office a special fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as the fund, which shall be administered by the Director.

B. The fund shall consist of deposits, made from time to time, of:

1. Amounts granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects;
2. Use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted;
3. Moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article;
4. Moneys recovered from sale of lands acquired by the Director pursuant to this article;
5. Donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes.

C. Moneys deposited in the fund shall be used to carry out the State Reclamation Program as approved by the Secretary.

(1979, c. 290.)

§ 45.1-261.1. Operators may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.

A. Notwithstanding any licensing requirement under Title 54.1, an operator shall be eligible to bid on contracts to conduct reclamation projects under the State Reclamation Program and the Coal Surface Mining Reclamation Fund in accordance with this article and Article 5 (§ 45.1-270.1 et seq.) of this chapter, provided the Director finds that the following conditions have been met: (i) the operator has had at least three years of relevant mining experience in the Commonwealth pursuant to either Chapter 17 (§ 45.1-198 et seq.) or 19 (§ 45.1-226 et seq.), or a combination of both, of this title and (ii) the operator meets all other applicable requirements of federal, state and local law.

B. Notwithstanding the provisions of Title 11, the Director may adjust the amount of required bid or performance bonds for such contracts upon a finding that such amounts are sufficient to protect the public interest.

C. The Director shall promulgate regulations to implement this section.

(1983, c. 77; 1984, c. 590; 1991, c. 495.)

§ 45.1-262. Eligible lands and water; priorities for expenditures.

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

B. The Director shall establish priorities in the State Reclamation Plan for the expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

(1979, c. 290; 1984, c. 590.)

§ 45.1-263. Right of entry, acquisition, disposition and reclamation of land adversely affected by past coal mining practices.

A. The Director shall take all reasonable actions to obtain written consent from the owner or owners of record of the land or property to be entered onto to perform an inspection for purposes of reclamation or for conducting studies or exploratory work pertaining to the need for and feasibility of reclamation, prior to such entry.

B. If the Director, pursuant to an approved state program, makes a finding of fact that:

1. Land or water resources have been adversely affected by past coal mining practices;
2. The adverse effects are at a state where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
3. The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known, or readily available; or
4. The owners will not give permission for the Director or his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control or prevent the adverse effects of past coal mining practices, then, upon giving notice by certified mail to the owners if known or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies, the Director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal min-

ing practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land to the extent provided in § 45.1-264, and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry; provided, however, that this provision is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

C. The Director, his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

D. The Director, pursuant to an approved state program, may acquire title in the name of the Commonwealth to any land or interest therein by purchase, donation, or condemnation, if such land or interest is adversely affected by past coal mining practices, after approval of the Secretary and upon a determination that acquisition of such land is necessary to successful reclamation, and that:

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and
2. Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; or
3. Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

The price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

E. The Director, with the approval of the Secretary, and in accordance with the State Reclamation Plan, may:

1. Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon such terms as will insure that the use of the land is consistent with the authorization under which the land was acquired;
2. Sell land acquired under this section which is suitable for industrial, commercial, residential, or recreational development, by public sale under a system of competitive bidding, at not less than fair market value and under such regulations promulgated to insure that such lands are put to proper use consistent with local, state or federal land use plan, if any, for the area in which the land is located; and
3. Transfer land acquired under this section to the United States to be reclaimed by the Secretary and after reclamation is completed, any state, regional, or local agency, department, or institution may purchase such land from the Secretary for governmental, educational, recreational, historical, open-space or other public purposes upon such terms as the Secretary may require.

F. Prior to the disposition of any land acquired under this section the Director, pursuant to the State Reclamation Plan, when requested after appropriate public notice shall hold a public hearing in the city or county or cities or coun-

ties where the land is located. The hearing shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

G. The Director may authorize the use, pending disposition, of land acquired under this section, for any lawful purpose that is not inconsistent with the reclamation and post-reclamation uses for which the land was acquired. The Director shall charge any user of the land a reasonable use fee, which shall go toward the purpose of operating and maintaining improvement of the land, and any excess thereof shall be deposited in the State Reclamation Fund. The Director may waive the fee if he finds in writing that a waiver is in the public interest.

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

(1979, c. 290.)

#### § 45.1-264. Commonwealth to have lien for reclamation work.

The Commonwealth shall have a lien, if perfected as hereinafter provided, on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person who owned the surface of the land prior to May 2, 1977, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed under this article, nor shall any lien attach to or be filed against any property if the Director waives the lien as hereinafter provided.

(1979, c. 290.)

#### § 45.1-265. Perfection of lien; waiver of lien.

A. The Director shall perfect the lien given under the provisions of § 45.1-264, by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is situate, a statement consisting of the names of the owner or owners of record of the property sought to be charged, an itemized account of moneys expended for the reclamation work, and notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work, and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that the direct and indirect costs of filing such lien exceeds the increase in fair market value resulting from reclamation, or that the reclamation primarily benefits health, safety or environmental values of the community or area in which the land is located, or if reclamation is necessitated by an unforeseen occurrence, that the reclamation will not result in a significant increase in the market value of the land.

(1979, c. 290.)

#### § 45.1-266. Recordation and indexing of lien; notice.

It shall be the duty of the clerk in whose office the statement described in § 45.1-265 is filed to record the same in the deed books of such office, and to index the same in the general index of deeds, in the name of the Commonwealth as well as the owner of the property, and showing the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

(1979, c. 290.)

#### § 45.1-267. Priority of lien.

Liens acquired under this article shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(1979, c. 290.)

§ 45.1-268. Hearing to determine amount of lien.

Any party having an interest in the real property against which a lien has been filed may, within sixty days of such filing, petition the court of equity having jurisdiction wherein the property or some portion thereof is located to hold a hearing to determine the increase in the market value of the land as a result of reclamation. After reasonable notice to the Director the court shall hold a hearing to determine such increase. If the court determines such increase to be erroneously excessive, it shall determine the proper amount and order that the lien and the record be amended to show this amount.

(1979, c. 290.)

§ 45.1-269. Satisfaction of lien.

Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided herein the Director may proceed to enforce the lien by a bill filed in a court of equity having jurisdiction wherein the property or some portion thereof is located.

(1979, c. 290.)

§ 45.1-270. Miscellaneous powers of Director.

A. In addition to any other remedies provided for in this chapter, the Director may petition any court of competent jurisdiction for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work pursuant to this chapter.

B. The Director is authorized, to the extent of funds available for the purposes herein, to construct and operate plants for the control and treatment of water pollution resulting from mine drainage. Such plants may include major interceptors and other facilities appurtenant to the plant. No such control or treatment shall in any way be less than that required under the federal Water Pollution Control Act.

C. The Director may transfer funds to other appropriate state or local agencies in order to carry out the reclamation authorized by this article.

(1979, c. 290.)

§ 45.1-270.1. Creation of Fund.

There is hereby created in the office of the State Treasurer a special fund to be known as the Coal Surface Mining Reclamation Fund, hereinafter referred to as the Fund, which shall be administered as set forth in this article. The Fund shall consist of all payments made into the Fund in accordance with the provisions of this article, as well as all interest earned on money contained in the Fund.

(1982, c. 334.)

§ 45.1-270.2. Participation in Fund.

A. Participation in the Fund shall be open to all operators applying for a permit under Chapter 19 (§ 45.1-226 et seq.) of this title, who can demonstrate to the Director at least a consecutive three-year history of compliance under this act or any other comparable state or federal act.

B. Participation in the Fund shall be optional as to each permit application and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § 45.1-241 and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing herein shall preclude compliance with § 45.1-241 in lieu of participation in the Fund, prior to commencement of the participation. Commencement of participation in the Fund, as to the applicable permit, shall constitute an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

C. For mining operations bonded under this article, the total cumulative amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and grading.

D. The Director may allow extended distances for rough backfilling and grading beyond those established in this section provided (i) the applicant can demonstrate to the Director at least a seven consecutive year history of compliance with this act or with any other comparable state or federal act, or (ii) the applicant submits a bond for the proposed additional area. The additional bond shall be equal to the ratio of the extended distance to the distance specified in subsection C above, times an approved cost estimate of reclamation prepared for the permit.

(1982, c. 334; 1983, c. 131; 1989, c. 432.)

§ 45.1-270.3. Initial payments into Fund; renewal payments; bonds.

A. Operators filing permit applications for coal surface mining operations participating in the pool fund shall be required to pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of \$5,000 shall be required of all operators who elect to participate in the Fund when the Director has determined the total balance of the Fund is less than \$1,750,000 pursuant to subsection B of § 45.1-270.4. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2,000,000 pursuant to subsection C of § 45.1-270.4. A renewal fee of \$1,000 shall be required of all permittees in the Fund at permit renewal.

B. In addition to the initial payments into the Fund described in subsection A of this section, all operators that participate in the Fund shall furnish to the Fund a bond which meets the criteria of § 45.1-241 and regulations issued pursuant thereto as follows:

1. For those underground mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall such total bond be less than \$40,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$10,000.

2. For underground mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such underground operations entering the Fund on or after July 1, 1991, be less than \$40,000.

3. For other coal mining operations participating in the Fund prior to July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such total bond be less than \$100,000, except that on permits which have completed all mining and for which completion reports have been approved prior to July 1, 1991, the total bond shall not be less than \$25,000.

4. For other coal mining operations entering the Fund on or after July 1, 1991, and for additional acreage bonded on or after July 1, 1991, the amount of \$3,000 per acre. In no event shall the total bond for such operations entering the Fund on or after July 1, 1991, be less than \$100,000.

C. 1. Notwithstanding the above, the Director may accept the bond of an operator of an underground mining operation without separate surety as provided in subsection C of § 45.1-241 and in any case upon a showing by such operator of a net worth, total assets minus total liabilities, certified by an independent certified public accountant equivalent to \$1,000,000. Such net worth figure shall thereafter during the existence of the permit be certified annually on the anniversary date of such permit by an independent certified public accountant.

2. The Director may accept the bond of an operator of a surface mining operation or associated facility without separate surety as provided in subsection C of § 45.1-241 upon a showing by the operator of a suitable agent for service of process, satisfactory continuous operation, financial solvency, and submission of information and an indemnity agreement in accordance with regulations implementing this section and the applicable federal regulations.

D. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § 45.1-235 or any other payments required in compliance with this chapter.

E. Fund participants shall be allowed to post incremental bonds as set forth in § 45.1-241. Such bonds will be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

F. 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 ninety days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation six months or less as of July 1, 1991, shall within ninety days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site which are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released, provided the permittee has posted bond pursuant to subsection B of this section.

(1982, c. 334; 1983, c. 131; 1989, c. 432; 1991, c. 495.)

§ 45.1-270.3:1.

Repealed by Acts 1991, c. 495.

§ 45.1-270.4. Assessment of reclamation tax revenues for Fund.

A. There is hereby levied a reclamation tax upon the production of coal by operators participating in the Fund under permits issued under this chapter as set forth herein.

B. Thirty days after the end of any calendar quarter during which the total balance of the Fund, including interest thereon, shall be less than \$1,750,000, all operators shall pay into the Fund an amount equal to:

1. Four cents per clean ton of coal produced by a surface mining operation permitted under this chapter.

2. Three cents per clean ton of coal produced by a deep mining operation permitted under this chapter.

3. One and one-half cents per clean ton of coal processed or loaded by preparation or loading facilities permitted under this chapter.

C. At the end of any calendar quarter during which the total balance in the Fund, including interest thereon, shall exceed two million dollars, payments under this section shall cease until again required pursuant to subsection B of this section.

1. For the purposes of subsection B of this section, all potential obligations shall be deducted from the balance of the Fund during each calendar quarter, including forfeitures on which engineering costs estimates have been prepared, but no money has actually been expended from the Fund.

2. Should the actual expenditures from the Fund be less than the engineering cost estimate, then the difference shall be credited to the balance of the Fund during the calendar quarter in which the final expenditure is made from the Fund to accomplish the reclamation.

D. Upon the issuance of a permit for which bond is provided pursuant to this article, each operator shall pay a reclamation tax into the Fund pursuant to the schedule set forth in subsection B of this section on coal mined and removed under authority of that permit during the one-year period commencing with and running from the date of the commencement of coal production, processing or loading from those operations covered under that permit.

E. In no event shall any operator pay reclamation tax under this section on total coal production in excess of five million tons per calendar year, regardless of the number of permits held by that operator, except as set forth in subsection D hereof. In no event shall any operator holding more than one type of permit pay tax at a rate in excess of five and one-half cents per ton on coal originally surface mined by that operator or in excess of four and one-half cents per ton on coal originally deep mined by that operator. Any operator holding one permit upon which coal is mined and processed or loaded shall pay only the tax applicable under this section to the surface mining operation or deep mining operation.

(1982, c. 334; 1983, c. 131; 1987, c. 468; 1991, c. 495.)

§ 45.1-270.4:1. Special assessment.

A. In addition to the tax assessed pursuant to § 45.1-270.4, and in order to ensure Fund solvency, the Commissioner of the Division of Mined Land Reclamation shall require each permittee to pay any special assessment made pursuant to subsection B of this section.

B. On and after July 1, 1990, the Commissioner of the Division of Mined Land Reclamation shall assess each permit in the Fund the amount of \$500. This assessment shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

On or after July 1, 1991, the Commissioner of the Division of Mined Land Reclamation shall assess an amount not to exceed \$500,000. The amount of the assessment shall be \$250 for each permit participating in the Fund which has completed all mining activity and for which a completion report has been approved. The remaining assessments shall be made in equal amounts per acre for each disturbed acre permitted under the Fund. The amount of disturbed acreage for each permit shall be determined by the most recent anniversary map, or updated anniversary map, submitted by the permittee to the Division of Mined Land Reclamation prior to July 1, 1991. The assessments under this subsection shall not apply to acreage that has been reclaimed and for which an increment of the bond has been transferred to other acreage in the permit. The assessments under this subsection shall be made only one time and all revenues collected shall be applied to the balance of the Fund. The permittee shall be responsible for payment of the assessment.

C. Failure to tender moneys assessed pursuant to the provisions of this section within thirty calendar days of assessment shall constitute a violation of the Virginia Coal Surface Mining Control and Reclamation Act (§ 45.1-226 et seq.). Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

(1990, c. 427; 1991, c. 495.)

§ 45.1-270.5. Collection of reclamation tax and penalties for nonpayment.

A. Payment of taxes under this section shall be made no later than thirty days after the end of each calendar quarter when taxes are applicable in accordance with § 45.1-270.4. The Division shall notify each operator holding a permit under Chapter 19 (§ 45.1-226 et seq.) of this title of those periods during which the taxes are applicable, and shall provide forms for reporting coal production figures subject to taxes and shall collect all taxes for the Fund.

B. Pursuant to regulations promulgated by the Director, and consistent with the provisions of § 45.1-248, all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § 45.1-236. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also promulgate regulations for the implementation of this article and for the collection of taxes hereunder.

C. The Division, upon advance written request to an operator, may audit the relevant books and records of the operator upon which taxes paid under this section are based. Failure to consent to a reasonable request for the audit shall be deemed a violation of this article by the operator.

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to § 45.1-245 B. The notice of violation shall state that upon failure of payment within fifteen days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order, the enforcement procedures set forth in § 45.1-245 et seq. shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

(1982, c. 334; 1984, c. 590.)

§ 45.1-270.5:1. Forfeiture of bonds on operations participating in the Fund; alternative remedies.

A. Forfeiture of bonds of operations participating in the Fund shall be accomplished as set forth in § 45.1-247 and the regulations promulgated by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of the surface coal mining operation, under the provisions of § 45.1-245 E, by filing a civil action for injunctive or other relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations and the approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm and no bond shall be required.

C. Proceedings under either subsection A or subsection B shall not constitute a waiver by the Director to proceed under the other subsection, nor shall the commencement of action under one subsection constitute an election to proceed solely under that subsection.

(1987, c. 468.)

§ 45.1-270.6. Reinstatement to the Fund; recovery of Fund expenditures.

A. An operator who has defaulted on any reclamation obligation and has thereby caused the Fund to incur reclama-

tion expenses as a result thereof shall not be eligible to participate in the Fund thereafter until restitution for such default has been made. Compliance with this requirement shall be a prerequisite to the filing by the operator of any new permit application under this chapter but shall not affect the operator's need to comply with all other requirements of this chapter in applying for a permit.

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish the reclamation. Such expenditures shall include but not be limited to construction costs, engineering costs, administrative costs, and legal costs. In any action to recover these costs, the defendant may not relitigate the facts giving rise to the forfeiture nor may the defendant defend by claiming the forfeiture was improper.

(1982, c. 334; 1987, c. 468.)

§ 45.1-270.7. Coal Surface Mining Reclamation Fund Advisory Committee continued as Coal Surface Mining Reclamation Fund Advisory Board.

A. The Coal Surface Mining Reclamation Fund Advisory Committee is continued and shall hereafter be known as the Coal Surface Mining Reclamation Fund Advisory Board. The Reclamation Fund Advisory Board shall consist of five members appointed by the Governor subject to confirmation by the General Assembly, three of whom shall represent the coal industry, one of whom shall be a representative of the Director and one of whom shall be a member of the public without any coal industry interests. The Commissioner of the Division shall be a continuing ex officio nonvoting member of the Reclamation Fund Advisory Board and shall serve as Secretary thereto.

B. The voting members of the Reclamation Fund Advisory Board shall initially be appointed for terms of one, two, three, four and five years, such terms to be assigned by lot. Thereafter, all members shall be appointed for five-year terms. No person shall serve more than two consecutive terms.

C. The Reclamation Fund Advisory Board shall annually elect a chairman and shall formulate rules for its organization and procedure.

D. The voting members of the Reclamation Fund Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

E. The Reclamation Fund Advisory Board shall meet not less than twice each year for the purpose of formulating recommendations to the Director concerning oversight of the general operation of the Fund. The Reclamation Fund Advisory Board shall report biannually to the Director and to the Governor on the status of the Fund and shall recommend to the Director regulations or changes thereto for the administration or operation of the Fund. The Director, in his discretion, may adopt the recommendations of the Reclamation Fund Advisory Board through regulatory action from time to time in accordance with the provisions of Chapter 19 (§ 45.1-226 et seq.) of this title and otherwise in accordance with law.

(1982, c. 334; 1985, c. 448.)

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