

CHAPTER 6.

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

Drafting note: Proposed Chapter 6, Coal Mining Property, Interests, Adjacent Owners, and Dams, retains existing Chapters 14.7, Rights of Owners of Land Adjacent to Coal Mines; 14.7:2, Trust for Coal Interests; 14.8, Emergency Seizure of Coal Properties by Commonwealth; and 18, Coal Mining Refuse Piles, Water and Silt Retaining Dams, as Articles 1 through 4, respectively.

~~CHAPTER 14.7.~~

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

Article 1.

Rights of Owners of Land Adjacent to Coal Mines.

Drafting note: Existing Chapter 14.7, Rights of Owners of Land Adjacent to Coal Mines, is retained as proposed Article 1 of Chapter 6.

§ ~~45.2-xxx~~. Consent required before working mine near land of another.

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

Drafting note: Technical changes are made.

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

A. The owner, tenant, or occupant of any land or coal, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense if he such

person has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the upon. The purpose of ascertaining such survey shall be to ascertain whether a violation of § 45.1-161.310 45.2-xxx has occurred; however. However, such person shall is not be entitled to enter the property more often than once a month. Every owner, tenant, occupant, or agent who shall refuse refuses such permission, exploration, or survey, shall forfeit twenty dollars \$20 for each refusal, to the person so refused.

B. The judge of the general district court of the county or city in which such mine is located, before whom any complaint of such refusal shall be made, may issue a summons to such owner, tenant, occupant, or agent, to answer such complaint. On the return of the summons executed, and proof that (i) the complainant has a right of entry, and that it (ii) such right has been refused without sufficient cause, the judge shall designate an early and convenient time for such entry to be made, and issue his a warrant, commanding the sheriff of the county or city to attend and prevent obstructions and impediments any obstruction or impediment to such entry, exploration and, or survey. The costs of such summons, and a fee of three dollars \$3 to the sheriff executing the warrant, shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs shall be paid by the party making the complaint.

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

~~CHAPTER 14.7:2.~~

~~TRUST FOR COAL INTERESTS.~~

~~Article 1 2.~~

~~Unknown Trusts for Coal Owners Interests.~~

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

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

57 A. ~~Any person or persons~~ coal owner or lessee ~~with greater than~~ who (i) has at least a
58 50 percent interest in the coal on a particular tract, who is seeking and (ii) seeks to impress a
59 trust upon unknown or missing owners of such tract of coal, may petition the circuit court in
60 the county or city containing the majority of the tract of coal to establish a trust to protect the
61 interests of all coal owners and lessees.

62 B. The petition shall:

63 1. Describe the particular tract of coal at issue;

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

69 ~~2-3.~~ Include the proposed terms of a lease to be offered to the trust, which. Such lease
70 shall be typical of other arm's-length leases in the area.

71 C. The petitioner shall establish to the satisfaction of the court that a diligent effort has
72 been made to identify and locate the present owners of such interests.

73 **Drafting note: Amendments are made for consistent use of "owners" and "lessees"**
74 **and of "known," "missing," and "unknown" owners. The requirement that the petition**
75 **describe the tract of coal at issue, implied in the following section, proposed § 45.2-xxx**
76 **[45.1-161.311:4], is made express in proposed subdivision B 1.**

77 ~~§ 45.1-161.311:4~~ 45.2-xxx. Advertisement upon filing of petition.

78 Immediately upon filing ~~of the petition~~ pursuant to § 45.2-xxx [§ 45.1-161.311:3], the
79 petitioner shall advertise a notice of the pending action, including a statement that the action is
80 brought for the purpose of impressing a trust authorizing the execution of a valid and present
81 coal lease for the development of a tract of coal described in the petition pursuant to the
82 provisions of subsection B of § 45.2-xxx [45.1-161.311:3]. Such notice shall appear in a local
83 newspaper of general circulation at least once a week for two consecutive weeks.

Drafting note: Technical changes are made and a cross-reference to the prior section, proposed § 45.2-xxx [45.1-161.311:3], is added.

~~§ 45.1-161.311:5~~ 45.2-xxx. Court may declare trust; trustee sale of lease.

A. If, upon presentation of a petition pursuant to § 45.2-xxx [§ 45.1-161.311:3] to the circuit court ~~of the petition~~ in the county or city containing the majority of the tract of coal, it appears to the court that development of the interests in ~~the~~ such tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests, and shall appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.

B. The trustee shall proceed in compliance with the provisions of the order to execute the lease, and after executing the lease shall submit a report thereof to the court.

C. The court shall not authorize a trustee's lease upon the coal interests of any owner whose identity and ~~whereabouts is~~ location are known, ~~or~~ can be ascertained, or ~~is~~ are discovered as a result of the action brought under this article. Any such owner may intervene as a matter of right at any time prior to the judgment approving the trustee's lease, for the purpose of establishing his title to the coal interests. ~~If the~~ such coal owner's claim is established to the satisfaction of the court, the court shall dismiss the action at the plaintiff's cost.

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

~~§ 45.1-161.311:6~~ 45.2-xxx. Duty of trustee; sale of lease; distribution of funds.

A. The trustee shall collect the proceeds from the sale of the lease and hold and invest such proceeds for the use and benefit of the unknown or missing owners. The court may authorize the trustee to expend an amount not to exceed 10 percent of the funds collected by the trustee for the purpose of searching for the unknown or missing owners.

B. Five years after the date of first commercial production of the coal interests, the proceeds in the trust shall be disposed of pursuant to the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.).

Drafting note: No change.

~~§ 45.1-161.311:7~~ 45.2-xxx. Payment of ~~attorney's~~ attorney fees, expenses, and court costs.

All ~~attorney's~~ attorney fees, expenses, and court costs incident to the original proceedings shall be paid by the lessee if a lease is executed, and by the plaintiff if for any reason no lease is executed. Subsequent to entry of judgment, all allowable attorney fees, expenses, and court costs shall be paid out of funds controlled by the trustee.

Drafting note: Technical changes.

~~Article 2.~~

~~Known Coal Owners.~~

Drafting note: Article 2 of existing Chapter 14.7:2 is combined with Article 1 of existing Chapter 14.7:2 to form proposed Article 2 of Chapter 6.

~~§ 45.1-161.311:8~~ 45.2-xxx. Production of coal by majority interest owner; petition to establish trust for known coal owners.

A. Any ~~person or persons~~ coal owner or lessee ~~with who~~ (i) has at least a two-thirds interest in the coal on a particular tract of land, ~~who is seeking and~~ (ii) seeks to extract such coal; may petition the circuit court in the county or city containing the majority of the tract of coal to establish a trust for known coal owners and lessees.

B. The petition shall:

1. Describe the particular tract of coal at issue;
2. List all known owners of interests in the tract of coal; and
- ~~2-3.~~ Include the proposed terms of a lease to be offered to the each minority owners,
which owner. Such lease shall be typical of other arm's-length leases in the area.

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to obtain the consent of each minority ~~owners'~~ consent owner to lease ~~their~~ his interest in the coal. The petitioner shall demonstrate to the court that (i) the production of the coal by the petitioner's lessee is of economic benefit to all parties; (ii) if the coal is not produced, ~~then~~ the economic value of the coal is lost and the economic benefit of owning the

coal is decreased; and (iii) there is no practical method for dividing such coal among the owners without extracting the coal.

D. Immediately upon filing the petition, the petitioner shall send by registered or certified mail, with a return receipt requested, notice of the petition to the party subject to the petition.

E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to ~~§ 45.1-161.311:5~~ 45.2-xxx.

F. The court shall escrow or direct the trustee to escrow the proceeds of the lease attributable to each of the minority interests until such time as ~~the~~ such minority owner's claim is established to the satisfaction of the court.

Drafting note: Amendments are made in subsection A for consistent use of "owners" and "lessees." Technical changes are made, including changes made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa.

~~CHAPTER 14.8.~~

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

Article 3.

Emergency Seizure of Coal Property by the Commonwealth.

Drafting note: Existing Chapter 14.8, Emergency Seizure of Coal Properties by Commonwealth, is renamed and retained as proposed Article 3, Emergency Seizure of Coal Property by the Commonwealth, of Chapter 6.

~~§ 45.1-161.313~~ 45.2-xxx. "Public uses" defined; ~~declaration~~ Declaration of policy.

A. ~~As used in this chapter, "public uses" means the mining, production and marketing of coal for the purpose of providing and furnishing heat and power to the people of Virginia.~~

B. Any substantial interruption or imminent threat of substantial interruption or existing substantial interruption of such service the mining, production, or marketing of coal for the purpose of providing and furnishing heat or power to the people of the Commonwealth is hereby declared to be contrary to the public policy of the Commonwealth, ~~and it.~~ It is the duty of the

government of the Commonwealth to exercise all available means and every power at its command to prevent ~~the same~~ such interruption so as to protect its citizens from any dangers, perils, calamities, or catastrophes ~~which~~ that would result therefrom.

Drafting note: The definition of "public uses" is relocated to the following section, proposed § 45.2-xxx [45.1-161.312]. Technical changes are made.

~~§ 45.1-161.312~~ 45.2-xxx. Mining, "Public uses" defined; mining, etc., of coal essential business; subject to seizure by Commonwealth.

A. As used in this article, "public uses" means the mining, production, or marketing of coal for the purpose of providing and furnishing heat or power to the people of the Commonwealth.

B. Any person engaged in the business of the mining, production and, or marketing of coal, any portion of which is customarily used in the manufacture of heat and or power, is hereby declared to be engaged in a business essential to the ~~welfare~~, health and, safety, and welfare of the people of Virginia, and, under the Commonwealth. Under the conditions and in the manner ~~hereinafter~~ set forth in this article, such business may be seized and operated by the Commonwealth of Virginia, or any agency created and organized for such purpose, for public uses.

Drafting note: The definition of "public uses" is relocated from existing § 45.1-161.313 as proposed subsection A, and proposed subsection B is divided into two sentences for clarity. The phrase "such business" is substituted for the implied "any person" as the entity subject to seizure. Technical changes are made.

~~§ 45.1-161.314~~ 45.2-xxx. Interruption of public uses; proclamation of emergency; seizure.

When in the judgment of the Governor there ~~is~~ exists a substantial interruption or an imminent threat of a substantial interruption or there exists a substantial interruption of the public uses, he shall proclaim that an emergency exists in ~~this the~~ the Commonwealth ~~endangering that endangers~~ the welfare, health, and safety, and welfare of its people and the enjoyment of the public and private property within its borders, ~~and it~~. It shall then be the duty of the Governor

to ~~forthwith~~ seize and operate the property of any person used in the mining, production ~~and,~~
or marketing of coal that ~~he~~ the Governor deems essential for the protection of the ~~welfare,~~
health ~~and,~~ safety, and welfare of the people of ~~Virginia~~ the Commonwealth.

**Drafting note: References to "interruption" and "threat of interruption" are
reordered to match the first section in this article. Language is updated for modern usage
and the section's single sentence is divided into two sentences for clarity. Technical
changes are made.**

~~§ 45.1-161.315~~ 45.2-xxx. Additional powers of Governor to operate seized properties.

The Governor ~~shall, in addition to his inherent power as Governor, have and may~~
exercise the powers and authority to possess and operate ~~properties of~~ for public uses any ~~person~~
person's property used in the mining, production ~~and,~~ or marketing of coal ~~for public uses~~ in
the manner ~~hereinafter~~ provided in this article.

Drafting note: Language is simplified and updated for modern usage.

~~§ 45.1-161.316~~ 45.2-xxx. Virginia Fuel Commission; purpose; membership;
compensation; staff; powers and duties; report.

~~To~~ A. The Virginia Fuel Commission (the Commission) may be established by the
Governor as a supervisory commission in the executive branch of state government. The
purpose of the Commission is to act for and on behalf of the Governor in the enforcement of
the powers and duties set forth in this ~~chapter, the Governor may appoint a commission, known~~
~~and designated as the Virginia Fuel Commission, hereafter the Commission~~ article.

B. The Commission shall ~~be composed~~ have a total membership of three nonlegislative
citizen members who are residents of the Commonwealth, one of whom. Each member of the
Commission shall be appointed to serve at the pleasure of the Governor, and any vacancy shall
be filled in the same manner as the original appointment. One member of the Commission shall
be designated by the Governor as chairman. A majority of the members shall constitute a
quorum. The meetings of the Commission shall be held at the call of the Governor or the
chairman.

223 C. Members shall receive such compensation for the performance of their duties as fixed
224 by the Governor. Funding for the costs of compensation and expenses of the members shall be
225 provided by the Department.

226 D. The Department shall provide staff support to the Commission. All agencies of the
227 Commonwealth shall provide assistance to the Commission, upon request.

228 E. The Commission, subject to the approval of the Governor, shall have, in addition to
229 such powers and duties incident hereto to this article as the Governor may have and shall
230 delegate delegates to it, the following powers power and duties duty to:

231 1. To promulgate Adopt such rules and regulations and to issue such orders as may are,
232 in the judgment of the Commission be, necessary to accomplish in full the purposes of this
233 chapter, which article. Such rules, regulations, and orders shall have the force and effect of law,
234 and the violation thereof shall be is punishable as a Class 1 misdemeanor;

235 2. To appoint Appoint and employ such officers and personnel as are, in its judgment
236 may be, required to carry out the provisions of this chapter and to article; remove, in its
237 discretion, any and all persons serving thereunder; and to fix, subject to approval by the
238 Governor, the remuneration of all such officers and other personnel. Such personnel shall work
239 subject to such safety provisions as are in force on the property at the time of acquisition;

240 3. To acquire Acquire under the power of eminent domain, or by purchase, lease, or
241 otherwise, all of the property of any person used in the business of the mining, production and,
242 or marketing of coal, including all lands, tipples, mines, ores, rights-of-way, leaseholds, and
243 every character and type of equipment deemed by the Commission necessary and or incidental
244 to the continuous mining and production of coal; and

245 4. To operate Operate, manage, and control any such properties property so acquired; to
246 purchase coal, coke and, or other fuel and to sell the same such fuel, either at retail or at
247 wholesale; to enter into contracts; to allocate and provide for the distribution of coal and other
248 fuels so as to assure ensure a distribution deemed most likely to promote the welfare, health
249 and, safety, and welfare of the people of Virginia the Commonwealth; and to do any and all

things necessary ~~and incident~~ and incidental to the mining, production ~~and, or~~ marketing of coal; and

5. In any year in which the Commission meets, submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. In any year in which the Commission meets, the chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of the next regular session of the General Assembly. The executive summary shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Drafting note: The language that provides the Governor the option to establish the Virginia Fuel Commission is updated to reflect current language preferred in the Code for commissions, boards, and councils. The provisions of existing § 45.1-161.317, which relate to appointment and compensation of board members, are relocated to subsections B and C. Technical changes are made.

~~§ 45.1-161.317. Terms and compensation of members of Commission.
Members of the Commission shall be appointed to serve at the pleasure of the Governor at a compensation fixed by the Governor.~~

Drafting note: The provisions of this section are relocated to proposed § 45.2-xxx [§ 45.1-161.316].

~~§ 45.1-161.319~~ 45.2-xxx. Negotiating purchase or lease of coal properties.
Whenever the Governor ~~shall have proclaimed~~ proclaims that an emergency exists under this ~~chapter, article~~ and the Governor has appointed appoints the Virginia Fuel Commission pursuant to § 45.2-xxx [§ 45.1-161.316], the Commission shall ~~forthwith~~ make a bona fide attempt to negotiate the purchase or lease of the coal ~~properties~~ property of ~~such persons~~ any person engaged in the mining, production ~~and, or~~ marketing of coal as the Commission deems necessary to accomplish the purposes of this ~~chapter~~ except article.

278 However, where such negotiations cannot be promptly made due to the incapacity of the
279 ~~owners, or one or more of them,~~ owner of the property, or for any other reason, ~~no~~ the
280 Commission is not required to attempt to negotiate for the acquisition of such property ~~need be~~
281 ~~made~~.

282 **Drafting note: Technical changes are made pursuant to § 1-227, which states that**
283 **throughout the Code any word used in the singular includes the plural and vice versa.**
284 **Language is updated for modern usage and the section's single sentence is divided into**
285 **two sentences for clarity. Technical changes are made.**

286 § ~~45.1-161.320~~ 45.2-xxx. Proceedings for condemnation.

287 A. Proceedings for condemnation ~~hereunder~~ pursuant to this article shall be instituted
288 and conducted in the name of the Commission, and the procedure shall, except ~~insofar~~ as altered
289 ~~herein~~ by the provisions of this article, be carried out as provided in Chapter 3 (§ 25.1-300 et
290 seq.) of Title 25.1.

291 B. The proceedings for condemnation shall be by petition to the circuit court of the
292 county or city in which the land, property ~~and, or~~ property-right, right, or the major portion
293 thereof sought to be temporarily acquired ~~are, is~~ located, ~~which~~. The petition shall set forth with
294 reasonable particularity a description and designation of the ~~interests, rights and~~ interest, right,
295 or property intended to be temporarily taken, the name ~~or names~~ of the ~~owners~~ owner of the
296 interest, right, or property ~~which~~ that is to be taken or affected; and such other facts, ~~if any~~, as
297 ~~may be deemed~~ the Commission deems necessary ~~by the Commission, in order~~ to give adequate
298 information to the court and all persons in interest, ~~which~~. The petition shall be verified by oath
299 by a member of the Commission.

300 C. Upon (i) the filing of ~~said~~ the petition described in subsection B in the office of the
301 clerk of the circuit court to which it is addressed, together with as many copies thereof as there
302 are defendants upon which it is to be served, and (ii) the depositing with the clerk for the custody
303 of the court, and for the benefit of the owners of the ~~properties~~ property taken or affected, such
304 an amount of money as the Commission shall estimate to be just compensation for the property
305 temporarily taken and ~~the~~ any damage done, ~~if any~~, the Commission shall thereupon seize and

take possession, custody, and control of ~~said the property or properties~~. The amount of money so deposited pursuant to clause (ii) shall not limit the amount of just compensation to be allowed to the ~~owners~~ owner of the property. ~~Service of said~~ The service of such petition upon the ~~defendants~~ defendant shall be made in the manner prescribed by the Rules of the Supreme Court of Virginia with respect to Practice and Procedure in Civil Actions ~~at Law~~ in effect at the time the petition is filed.

Drafting note: Technical changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Language is updated for modern usage, the new designation of subsection C is added in existing subsection B for clarity, and the title of the relevant section of the Rules of Supreme Court of Virginia is updated.

~~§ 45.1-161.321~~ 45.2-xxx. Expense of acquiring and operating coal ~~properties~~ property; funds derived from operation.

The expense of acquiring and operating any property ~~or properties~~ acquired under this ~~chapter~~ article shall be paid out of moneys transferred from the general fund ~~of the Commonwealth~~ that are not otherwise appropriated. Such transfer shall be made upon such ~~authorizations~~ authorization as the Governor ~~may prescribe~~ prescribes and shall be credited to the account of the Commission, and all funds and revenues derived from or received as a result of ~~said~~ such operations shall be paid into the state treasury and credited to the same account. Any ~~amounts~~ amount transferred upon authorization of the Governor from the general fund ~~of the Commonwealth~~ shall be ~~known and~~ designated as the "Capital Account" of the Commission, ~~which~~. Such amount, or the residue thereof, together with any surplus that ~~may~~ accrue accrues, shall be returned to the general fund ~~of the Commonwealth~~ in the event of liquidation or, in the absence of liquidation, in such installments and at such times as the Governor ~~may prescribe~~ prescribes.

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

§ ~~45.1-161.322~~ 45.2-xxx. Restoration of property to owner or operator.

A. Whenever (i) the owner or operator ~~of engaged in~~ the business of the mining, production ~~and, or~~ marketing of coal, whose property has been acquired by the Commission, ~~shall notify~~ notifies the Commission in writing, ~~stating that he is in position to, and~~ can and will resume operation and render normal service, and ~~shall satisfy~~ satisfies the Commission of the correctness of such ~~statement~~ notice, or ~~whenever~~ (ii) in the judgment of the Governor, the emergency declared by him no longer exists, the Commission shall restore the possession of the property so acquired by ~~them~~ it to ~~the~~ such owner or operator upon his request. In the event the Commission refuses such restoration of possession, the owner or operator shall have the right to have a ~~rule~~ ruling issued requiring the Commission to show cause why such possession ~~should~~ shall not be restored, and the court shall determine the matter as provided in this section provided.

B. Any such owner or operator shall be entitled to receive reasonable, proper, and lawful compensation for the use of the ~~properties so~~ property acquired by the Commonwealth pursuant to this article and shall be paid the same such compensation out of the state treasury. In the event the Commission has acquired such property by purchase, the ~~owners~~ owner or operator from whom it was acquired shall, upon reacquisition ~~shall~~, repay the purchase price less fair compensation for the use of such property. In the event the Commission and the owner or operator are unable to agree upon the amount of such compensation, either party in interest may file a petition in the circuit court for the county or city in which the majority of the property is located for the purpose of having the ~~same~~ amount of compensation judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and (i) render judgment thereon or ~~may~~ (ii) refer to a commissioner such questions as are considered proper and act upon the commissioner's report as in any other equity ~~proceedings~~ proceeding. An appeal shall lie to the Supreme Court from any final judgment of the court rendered upon the provisions of this ~~chapter~~ article.

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

~~§ 45.1-161.318 45.2-xxx. Chapter Article~~ subject to provisions of general law.

~~This chapter shall be~~ The provisions of this article are subject to all of the provisions of general law applicable to coal mining operations.

Drafting note: Technical changes.

~~CHAPTER 18.~~

~~COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.~~

Article 4.

Coal Mine Refuse Impoundments and Retaining Dams.

Drafting note: Existing Chapter 18, Coal Mining Refuse Piles, Water and Silt Retaining Dams, is renamed and retained as proposed Article 4, Coal Mine Refuse Impoundments and Retaining Dams, of Chapter 6.

~~§ 45.1-221. Repealed.~~

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

~~§ 45.1-221.1 45.2-xxx.~~ Definitions.

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

"Coal refuse" means waste material resulting from the mining and screening or processing of coal.

"Coal slurry" means waste water and impurities produced as the result of coal washing and preparation of coal for market, containing a combination of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings.

~~"Impounding water" means to impound~~ "Mine refuse impoundment" means a mine refuse pile that retains water that has been used in carrying out any part of the process necessary in the production or preparation of coal.

387 ~~"Refuse pile"~~ "Mine refuse pile" means a pile of coarse or fine coal refuse that is a result
388 of the mining or screening process that may be stacked, spread, or graded and covers ~~a minimum~~
389 ~~of~~ 20 acre-feet or more.

390 "Operator" means any person who operates, controls, or supervises ~~a water, coal slurry,~~
391 ~~or silt~~ retaining dam or ~~a mine refuse pile impounding water~~ impoundment.

392 ~~"Dam"~~ "Retaining dam" means an artificial barrier or obstruction that is designed to
393 impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream
394 toe of the structure, and has a storage volume of 20 acre-feet or more; ~~or is designed to impound~~
395 ~~water, coal slurry, or silt~~ (ii) to an elevation of 20 feet or more measured at the open channel
396 spillway or from the crest of the dam in a closed system, regardless of storage volume.

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

399 "Water" means liquid or slurry ~~as a result of~~ that results from the processing of coal in
400 mining operations.

401 **Drafting note: The term "dam" is renamed as "retaining dam" and moved into**
402 **alphabetical order and the definition is clarified and shortened to reduce redundant text.**
403 **The adjective phrase "impounding water," which is used in the existing article to modify**
404 **"mine refuse pile," is changed to the term "mine refuse impoundment" and incorporates**
405 **"mine refuse pile" in its definition. The term "refuse pile" is renamed as "mine refuse**
406 **pile" and moved into alphabetical order. Technical changes are made and language is**
407 **updated for modern usage.**

408 ~~§ 45.1-222~~ 45.2-xxx. Design and construction of ~~water, coal slurry, or silt~~ a retaining
409 ~~dams~~ dam or mine refuse ~~piles impounding water~~ impoundment; designs and other data to be
410 submitted to ~~the~~ Chief.

411 A. ~~New water, coal slurry, or silt~~ Any new retaining ~~dams,~~ dam or mine refuse ~~piles~~
412 ~~impounding water~~ impoundment, or the modification of an existing ~~water, coal slurry, or silt~~
413 retaining ~~dams~~ dam or mine refuse ~~piles impounding water~~ impoundment, shall be designed

and constructed by, or under the direction of, a licensed professional engineer, ~~if such retaining dam or~~. Such requirement shall only apply to a mine refuse pile:

1. ~~Is impoundment if it is~~ designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure; and

2. ~~Has~~ has a storage volume of 20 acre-feet or more; or

3. ~~Is designed to impound water or silt~~ (ii) to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

The design, construction specifications, and other related data, including final abandonment plans for such retaining dam or mine refuse impoundment, shall be certified by the licensed professional engineer.

B. No person shall place, construct, enlarge, alter, repair, remove, or abandon such ~~water, coal slurry, or silt retaining dam or mine refuse pile impounding water~~ impoundment until the operator has filed an application for and received approval from the Chief for such construction or modification. However, routine repairs that do not affect the engineering design criteria ~~and or~~ or safety of an approved ~~water, coal slurry, or silt retaining dam or mine refuse pile~~ impounding water impoundment are not subject to the application and approval requirements.

Drafting note: Language is updated for clarity and technical changes are made.
The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1].
Requirements that control whether a new or modified impoundment shall be constructed under the direction of a licensed professional engineer are removed as redundant for retaining dams because, as defined, "retaining dam" includes only those structures that already meet the requirements.

~~§ 45.1-223. Repealed.~~

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

§ ~~45.1-224~~ 45.2-xxx. Examination of ~~water, coal slurry, or silt~~ retaining ~~dams~~ dam or mine refuse ~~piles~~ impounding water impoundment; potentially hazardous ~~conditions~~ condition; plans to be submitted by operators.

A. ~~All water, coal slurry, or silt~~ Each retaining ~~dams~~ dam or mine refuse ~~piles~~ impounding water impoundment shall be examined by an authorized person, as defined in § ~~45.1-161.8~~ 45.2-xxx, at least every seven days or as otherwise approved by the Chief. Each such retaining dam or mine refuse pile impoundment shall be examined for compliance with approved design and maintenance requirements, visible structural weakness, volume overload, and other hazards.

B. After each examination, the authorized person, as defined in § 45.2-xxx [~~§ 45.1-161.8~~], shall promptly record the results of the examination in a book that shall be available at the retaining dam or mine refuse pile impoundment, or other designated location, for inspection by the Chief or his authorized representative. ~~All~~ Each examination ~~records~~ record shall include a description of any potentially hazardous condition found and any action taken to abate ~~any such potentially hazardous condition~~. ~~Records~~ Each record shall be countersigned by the supervisor of the authorized person creating the ~~records~~ record. ~~Where~~ If ~~such records disclose a record discloses a potentially hazardous conditions condition~~, the countersigning of the ~~records~~ record shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination was completed, and the person countersigning shall ensure that actions to eliminate or control the potentially hazardous ~~conditions~~ condition have been taken. The operator of the retaining dam or mine refuse pile impoundment may authorize ~~another~~ a person ~~with equivalent~~ who possesses authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the ~~records~~ record and ensure that action is taken to eliminate the potentially hazardous ~~conditions~~ condition disclosed in the ~~records~~ record.

C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe design capacity of ~~the a retaining dam or mine refuse pile impoundment~~, such the examination required

by subsection A shall be made more often as required by the Chief or his authorized representative.

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

1. Remove all persons from the area ~~which~~ that may reasonably be expected to be affected by the potentially hazardous condition;

2. Eliminate the potentially hazardous condition; and

3. Notify the Chief and other governing agencies by the quickest available means following the protocol established in the site's ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan pursuant to § 45.2-xxx [§ 45.1-224.1].

E. The operator of each coal site on which a ~~water, coal slurry, or silt~~ retaining dam or mine refuse pile ~~impounding water~~ impoundment is located shall submit a plan for carrying out the requirements of ~~§ 45.1-222~~ § 45.2-xxx and subsections A, B, C, and D for approval by the Chief. The plan shall include:

1. The designs, construction specifications, and other related data required ~~under~~ pursuant to § 45.1-222 § 45.2-xxx;

2. A schedule and procedures for inspection of the retaining dam or mine refuse impoundment by a qualified person under normal conditions and under conditions that could cause flooding;

3. Procedures for evaluating a potentially hazardous condition ~~conditions~~ condition;

4. Procedures for removing all persons from the area ~~which~~ that may reasonably be expected to be affected by the potentially hazardous ~~conditions~~ condition;

5. Procedures for eliminating the potentially hazardous ~~conditions~~ condition;

6. Procedures for notifying the Chief and other governing agencies; and

7. Any additional information ~~which~~ that may be required by the Chief.

F. Before making any changes or modifications in the approved plan, the operator shall obtain approval of such changes or modifications from the Chief.

G. The Chief shall notify the operator in writing whether the operator's plan is approved or disapproved. If ~~he~~ the Chief disapproves the plan, he shall provide the operator with his written objections thereto and his required amendments.

Drafting note: The provisions regarding water, coal slurry, or silt retaining dams and mine refuse piles impounding water are shortened to correspond to the changes made to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-xxx [§ 45.1-221.1]. Changes are made pursuant to § 1-227, which states that throughout the Code any word used in the singular includes the plural and vice versa. Other technical changes are made and language is updated for modern usage and clarity.

~~§ 45.1-224.1 45.2-xxx. Emergency Notification and Evacuation Plan~~ notification and evacuation plan.

A. On or before July 1 of each year, the operator of any ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment that meets the criteria of subsection A of ~~§ 45.1-222~~ 45.2-xxx shall submit to the Chief an ~~Emergency Notification and Evacuation Plan~~ emergency notification and evacuation plan. If there are no changes to a plan at the time the updated plan is due, the operator may submit a notice that there are no changes to the plan in lieu of submitting an updated plan to the Chief.

B. The plan and attendant maps, appropriate for the level of hazard of ~~the~~ such retaining dam or mine refuse ~~pile~~ impoundment, shall describe the ~~water, coal slurry, or silt~~ retaining dam or mine refuse ~~pile that impounds water~~ impoundment and shall include:

1. The name and address of the operator owning, operating, or controlling the structure;
2. The identification numbers of the structure as assigned by the Chief, the Mine Safety and Health Administration, and the Office of Surface Mining;
3. The location of the structure indicated on (i) a current United States Geological Survey ~~7 1/2-minute~~ 7.5-minute or 15-minute topographic quadrangle map, (ii) an equivalent digital map, or (iii) a topographic map of a scale approved by the Chief;
4. The name and size in acres of the watershed in which the structure is located;

5. A description of the physical and engineering properties of the foundation materials on which the structure is to be or was constructed;

6. The location of existing or proposed instrumentation;

7. A statement of the runoff attributable to the probable maximum precipitation of six-hour duration and the calculations used in determining such runoff;

8. A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff;

9. ~~The locations~~ location of any surface ~~and or~~ underground coal ~~mines~~ mine, including the depth and extent of such workings, under and within 1,000 feet around the perimeter of the retaining dam, mine refuse impoundment, and the area of impounded material, shown at a scale not to exceed one inch equals 1,000 feet;

10. A map depicting the impoundment area, and downstream and adjacent drainways, streambeds, roads, structures, and other public areas that ~~might~~ could be affected ~~should~~ if an accident were to occur at the impoundment. The map shall be at a scale not to exceed one inch equals 1,000 feet;

11. ~~The name~~ names of persons who are familiar with the plan protocols and can take actions necessary to eliminate the hazard and minimize the impact to miners, the community, and the environment;

12. A location where a command and communication center ~~can~~ could be established for the company team and emergency response personnel to report during an impoundment event;

13. The location of potential evacuation centers where affected parties may take shelter during an impoundment event;

14. An emergency contact list for agencies that would respond to an impoundment event; and

15. A list of miners employed at the site and businesses, community buildings, residences, and other occupied buildings within the impact zone that could be affected by an impoundment event, or other effective means of identifying such impact zone.

550 **Drafting note: The provisions regarding water, coal slurry, or silt retaining dams**
551 **and mine refuse piles impounding water are shortened to correspond to the changes made**
552 **to the definitions of "retaining dam" and "mine refuse impoundment" in proposed § 45.2-**
553 **xxx [§ 45.1-221.1]. Language is updated for clarity and technical changes are made,**
554 **including changes made pursuant to § 1-227, which states that throughout the Code any**
555 **word used in the singular includes the plural and vice versa.**

556 ~~§ 45.1-225. Repealed.~~

557 **Drafting note: Repealed by Acts 2005, c. 3, cl. 2, effective February 10, 2005.**

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