

1 CHAPTER ~~19~~ 10.

2 VIRGINIA COAL SURFACE MINING CONTROL AND RECLAMATION ACT OF 1979.

3 **Drafting note: Existing Chapter 19 is retained as proposed Chapter 10, consisting**  
4 **of five articles: Article 1, General and Administrative Provisions; Article 2, Regulation**  
5 **of Mining Activity; Article 3, Miscellaneous Provisions; Article 4, Abandoned Mine**  
6 **Reclamation; and Article 5, Coal Surface Mining Reclamation Fund.**

7 Article 1.

8 General and Administrative Provisions.

9 **Drafting note: Existing Article 1, concerning general and administrative**  
10 **provisions, is retained as proposed Article 1.**

11 ~~§ 45.1-226. Short title.~~

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

14 **Drafting note: This section is deleted as unnecessary pursuant to § 1-244, which**  
15 **states that throughout the Code the caption of a subtitle, chapter, or article serves as a**  
16 **short title citation.**

17 ~~§ 45.1-227. Findings and policy.~~

18 ~~A. The General Assembly finds and declares that federal enforcement and~~  
19 ~~administration of the regulatory program established by the federal Surface Mining Control~~  
20 ~~and Reclamation Act of 1977 (Public Law 95-87), would not be in the best interests of the~~  
21 ~~Commonwealth. It is the objective of the General Assembly to preclude, or minimize the~~  
22 ~~adverse effects of federal enforcement, and to allow the regulation of coal surface mining to~~  
23 ~~remain within the powers of the Commonwealth, to the fullest extent possible.~~

24 ~~It is the purpose of this chapter to enable the Commonwealth through its own~~  
25 ~~instrumentalities, to enforce and administer the provisions of the federal program, in order to~~  
26 ~~lessen federal enforcement and administration thereof.~~

27 ~~Nothing in this chapter, however, is intended, nor shall be construed, as expressing the~~  
28 ~~Commonwealth's approval of or satisfaction with the standards or provisions contained in the~~

~~29 regulatory program of the federal act, so as to limit or affect any suit, action or other  
30 proceeding brought by the Commonwealth or any person, to invalidate, set aside or modify, in  
31 whole or part, the federal act or regulations promulgated thereunder.~~

~~32 B. The proper control of surface mining of coal so as to minimize or prevent adverse  
33 disruptions and the injurious effects thereof requires thorough planning in the selection of  
34 appropriate coal surface mining sites, methods of coal surface mining, and the nature and  
35 extent and the incorporation and use of control techniques and reclamation actions as an  
36 integral and simultaneous part of coal surface mining;~~

~~37 C. Because the Commonwealth's administrative agencies, through their experience of  
38 regulating coal surface mining, have developed a special expertise in the characteristics of  
39 coal surface mining in Virginia, as well as physical conditions in Virginia's coal mining areas,  
40 and because coal mining is such an important and integral element in the economy and culture  
41 of Virginia, it is in the best interest of the Commonwealth that the development,  
42 administration and enforcement of the provisions of the federal Surface Mining Control and  
43 Reclamation Act of 1977 be carried out by State officials and instrumentalities pursuant to a  
44 permanent State regulatory program and a State abandoned mine reclamation program  
45 approved by the Secretary of the Interior of the United States.~~

**46 Drafting note: This section, which is currently not set out, is deleted as an  
47 unnecessary and nonstatutory policy statement in accordance with policies of the Code  
48 Commission. In addition, the interest of the General Assembly in providing that  
49 Virginia agencies administer and enforce requirements related to the federal Surface  
50 Mining Control and Reclamation Act of 1977 are now in place and incorporated into  
51 Title 45.1 (Mines and Mining).**

~~52 § ~~45.1-229~~ [45.2-xxx](#). Definitions.~~

~~53 The following words and phrases when As used in this chapter shall have the meaning  
54 respectively ascribed to them in this section except where, unless the context clearly requires  
55 a different meaning; the Director shall have the power to adopt by regulation such other  
56 definitions as may be deemed necessary to carry out the intent of this chapter.:~~

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

64 "Coal surface mining and reclamation ~~operations~~ operation" means a surface mining  
65 ~~operations~~ operation and ~~all activities~~ any activity necessary and incidental to the reclamation  
66 of such ~~operations after March 20, 1979~~ operation.

67 "Coal surface mining ~~operations~~ operation" means ~~the following~~:

68 1. ~~Activities~~ Any activity conducted on the surface of lands in connection with a  
69 surface coal mine or, subject to the requirements of § ~~45.1-243~~ 45.2-xxx, any surface  
70 ~~operations~~ operation and surface ~~impacts~~ impact incident to an underground coal mine, the  
71 products of which enter commerce or the ~~operations~~ operation of which directly or indirectly  
72 ~~affect~~ affects interstate commerce. Such ~~activities include~~ activity includes (i) excavation for  
73 the purpose of obtaining coal, including by such common methods as contour, strip, auger,  
74 mountaintop removal, box cut, open pit, and area mining; (ii) the ~~uses~~ use of explosives and  
75 blasting, ~~and~~; (iii) in situ distillation or retorting, leaching, or other chemical or physical  
76 processing; and (iv) the cleaning, concentrating, or other processing or preparation, ~~and~~  
77 loading of coal for interstate commerce at or near the mine site; ~~however~~. However, such  
78 ~~activities do~~ activity does not include the extraction of coal incidental to the extraction of  
79 other minerals where coal does not exceed 16 ~~2/3~~ and two-thirds percent of the tonnage of  
80 minerals removed for purposes of commercial use or sale, or coal ~~explorations~~ exploration  
81 subject to § ~~45.1-233 of this chapter~~ 45.2-xxx; and

82 2. The ~~areas~~ area upon which such ~~activities occur~~ activity occurs or where such  
83 ~~activities disturb~~ activity disturbs the natural land surface. Such ~~areas shall also include~~ area  
84 includes (i) any adjacent land ~~the whose~~ use of which is incidental to any such ~~activities~~,

85 activity; (ii) all lands affected by the construction of any new ~~roads~~ road or the improvement  
86 or use of any existing ~~roads~~ road to gain access to the site of such ~~activities~~ activity and for  
87 haulage; and ~~excavations~~ (iii) any excavation, workings, ~~impoundments~~ impoundment, ~~dams~~  
88 dam, ventilation ~~shafts~~ shaft, ~~entryways~~ entryway, refuse ~~banks~~ bank, ~~dumps~~ dump, ~~stockpiles~~  
89 stockpile, overburden ~~piles~~ pile, spoil ~~banks~~ bank, culm ~~banks~~ bank, tailings, ~~holes~~ hole or  
90 ~~depressions~~ depression, repair ~~areas~~ area, storage ~~areas~~ area, processing ~~areas~~ area, shipping  
91 ~~areas~~ area, and other ~~areas~~ area upon which ~~are~~ is sited ~~structures~~ any structure, ~~facilities~~  
92 facility, or other property or materials on the surface, resulting from or incident to such  
93 ~~activities~~ activity.

94 "Division" means the Division of Mined Land Reclamation.

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

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

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

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

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

114 "Permit area" means the area of land indicated on the approved map submitted by the  
115 operator with ~~his~~ the operator's application, ~~which~~. Such area of land shall be covered by the  
116 operator's bond as required by § ~~45.1-241~~ 45.2-xxx and shall be readily identifiable by  
117 appropriate markers on the site.

118 "Permittee" means a person holding ~~a permit~~ any of the following permits issued by  
119 the Director: (i) a permit for coal surface mining pursuant to § ~~45.1-234~~ 45.2-xxx, (ii) a permit  
120 for coal exploration pursuant to § ~~45.1-233~~ 45.2-xxx, or ~~for an NPDES~~ (iii) a national  
121 pollutant discharge elimination system permit pursuant to § ~~45.1-254~~ 45.2-xxx.

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

125 "Secretary" means the U.S. Secretary of the Interior ~~of the United States~~.

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

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

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

140           **Drafting note: The section, because it contains definitions, is relocated to the**  
141 **beginning of the chapter. The provision in the first sentence authorizing certain**  
142 **regulations is retained as a part of subsection A in proposed § 45.2-xxx [§ 45.1-230].**  
143 **Technical changes are made, including the reordering of definitions into alphabetical**  
144 **order. An obsolete provision in the definition of "coal surface mining and reclamation**  
145 **operations" is proposed for deletion and an obsolete reference to a future "permanent**  
146 **state regulatory program" is proposed for deletion because it has been adopted.**

147           § ~~45.1-228~~ 45.2-xxx. Purpose ~~and policy~~ of chapter.

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

149           1. Provide for the implementation and enforcement, by the Commonwealth, of the  
150 federal ~~Surface Mining Control and Reclamation Act of 1977,~~ act and the regulations of the  
151 ~~United States~~ U.S. Secretary of the Interior ~~promulgated~~ adopted thereunder, ~~and amendments~~  
152 ~~thereto, as the same may be or become effective at any time or from time to time.~~

153           2. Promote the reclamation of coal-mined areas, and areas ~~which~~ that have been  
154 affected by such mining, ~~which~~ and that were not adequately reclaimed, or were abandoned,  
155 prior to the enactment of the federal ~~Surface Mining Control and Reclamation Act of 1977,~~  
156 act and ~~which~~ that, in their unreclaimed condition, continue to substantially degrade the  
157 quality of the environment, prevent or damage the beneficial use of land or water resources, or  
158 endanger the public health or safety;

159           3. Exercise the police power of the Commonwealth in a coordinated statewide  
160 program to effectively control present and future problems associated with coal surface  
161 mining and provide for the reclamation of disturbed lands to ~~insure~~ ensure the protection of  
162 the public welfare and safety; and

163           4. Authorize and enable the Department to submit, and obtain approval ~~of,~~ for a  
164 ~~permanent~~ state regulatory program and abandoned mine reclamation program, pursuant to  
165 the federal ~~Surface Mining Control and Reclamation Act of 1977~~ act.

166           B. Nothing in this chapter is intended, ~~nor~~ or shall be construed, to limit, impair,  
167 abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any

168 person in any dispute involving property rights, including interests in water resources, or the  
169 right of any person to ~~damage~~ seek damages or other relief on account of injury to persons or  
170 property, including interests in water resources, and to maintain any action or other  
171 appropriate proceeding therefor, except as is otherwise specifically provided in this chapter;  
172 ~~nor~~. Nothing in this chapter is intended or shall be construed to affect the powers of the  
173 Commonwealth to initiate, prosecute ~~and, or~~ maintain actions to abate public nuisances.

174 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
175 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
176 **and includes the promulgation process. Language is updated for clarity and modern**  
177 **usage and the single sentence of subsection B is divided into two sentences for clarity.**

178 § ~~45.1-253~~ 45.2-xxx. Certain mining operations exempt from this chapter.

179 The provisions of this chapter shall not apply to ~~any of the following activities~~ the  
180 extraction of coal:

181 1. ~~The extraction of coal by~~ By a landowner for his own noncommercial use from land  
182 owned or leased by him; ~~and or~~

183 2. ~~The extraction of coal as~~ As an incidental part of federal, state, or local government-  
184 financed highway or other construction under regulations established by the Director.

185 **Drafting note: The section is relocated from existing Article 3. Technical changes**  
186 **are made.**

187 § ~~45.1-259~~ 45.2-xxx. Applicability of chapter to public agencies, utilities, and  
188 corporations.

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

194 **Drafting note: The section is relocated from existing Article 3. Technical changes**  
195 **are made.**

196 § ~~45.1-230~~ 45.2-xxx. Authority and duties of Director.

197 A. The authority to ~~publish and promulgate such~~ adopt regulations ~~as may be~~  
198 necessary to carry out the purposes and provisions of this chapter is ~~hereby~~ vested in the  
199 Director. ~~Regulations~~ Such regulations shall be consistent with regulations ~~promulgated~~  
200 adopted by the Secretary pursuant to the federal act or in conformity ~~to~~ with any court ruling  
201 construing such act. The Director may adopt by regulation definitions other than those  
202 provided in § 45.2-xxx [§ 45.1-229] as necessary to carry out the intent of this chapter. ~~In~~  
203 ~~promulgating such~~ Unless otherwise directed by law, in adopting regulations, the Director  
204 shall ~~provide an opportunity for public comment, both oral and written, and shall give public~~  
205 ~~notice of proposed regulations, in accordance~~ comply with the Administrative Process Act (§  
206 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

207 ~~A1-B.~~ B. In addition to the adoption of regulations under this chapter, the Director may  
208 ~~at his discretion~~ issue or distribute to the public interpretative, advisory, or procedural  
209 bulletins ~~or guidelines~~ pertaining to permit applications or to matters reasonably related  
210 thereto without following any of the procedures set forth in the Administrative Process Act (§  
211 2.2-4000 et seq.). ~~The~~ Such materials shall be clearly designated as to their nature, shall be  
212 provided solely for purposes of public information and education, and shall not have the force  
213 of regulations ~~under this chapter or under any other provision of this Code.~~

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

218 1. To supervise the administration and enforcement of this chapter; to make  
219 investigations and inspections necessary to ~~insure~~ ensure compliance with this chapter; to  
220 conduct hearings, administer oaths, issue subpoenas, and compel the attendance of witnesses  
221 and production of written or printed material as provided for in this chapter; to issue orders  
222 and notices of violation; to review and vacate or modify or approve orders and decisions; and  
223 to order the suspension, revocation, or withholding of any permit for failure to comply with



224 any ~~of the provisions~~ provision of this chapter or any ~~rules and regulations~~ regulation adopted  
225 ~~thereunder~~ hereunder;

226 2. To administer the program for the purchase and reclamation of abandoned and  
227 unreclaimed mine areas pursuant to Article 4 (§ ~~45.1-260~~ 45.2-xxx et seq.) ~~of this chapter~~;

228 3. To encourage and conduct investigations, research, experiments, and  
229 demonstrations; and to collect and disseminate information relating to coal surface mining and  
230 reclamation of lands and waters affected by coal surface mining;

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

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

235 ~~C.~~ D. The Division of Mined Land Reclamation shall have the responsibilities  
236 provided under this chapter and such duties and responsibilities as the Director may assign; or  
237 as may be provided for in regulations ~~promulgated~~ adopted by the Director.

238 **Drafting note: A provision of existing § 45.1-229 regarding definitions is**  
239 **relocated to proposed subsection A because it authorizes certain regulations. The term**  
240 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**  
241 **revisions because "adopt" is more widely used and includes the promulgation process.**  
242 **The proviso "unless otherwise directed by law" is added to the Administrative Process**  
243 **Act and Virginia Register Act compliance requirement in subsection A to accommodate**  
244 **any future exception contained in this Title. Language is updated for modern usage and**  
245 **technical changes are made, including changes pursuant to § 1-227, which states that**  
246 **throughout the Code any word used in the singular includes the plural and vice versa.**

247 § ~~45.1-256~~ 45.2-xxx. Training and certification of blasters.

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

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

255 **Drafting note: The section is relocated from existing Article 3. The term**  
256 **"promulgate regulations" is changed to "adopt regulations" in keeping with recent title**  
257 **revisions because "adopt" is more widely used and includes the promulgation process.**  
258 **Technical changes are made.**

259 § ~~45.1-231~~ 45.2-xxx. Conflicts of interest prohibited.

260 ~~B.~~ A. For the purposes of this section, "financial interest" ~~shall include~~ includes a  
261 pecuniary interest accruing to an employee or to ~~his~~ the employee's spouse, minor ~~children~~  
262 child, or other ~~relatives~~ relative living in the same household.

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

265 C. The Director shall ~~promulgate~~ adopt regulations ~~by which~~ for the monitoring and  
266 enforcement of the provisions of this section ~~will be monitored and enforced~~, including  
267 ~~provisions~~ regulations (i) for the filing and review of statements and supplements by  
268 employees concerning any financial interest ~~which~~ that may be affected by this section; (ii)  
269 for the hiring, transfer, and removal of employees consistent with the prohibition of this  
270 section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection,  
271 and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions  
272 from the provisions of this section as may be consistent with federal law.

273 D. ~~[Repealed.]~~

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

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

279           **Drafting note: Existing subsection B is relocated as subsection A in keeping with**  
280 **Code style that definitions are provided at the beginning of a section. The term**  
281 **"promulgate regulations" in subsection C is changed to "adopt regulations" in keeping**  
282 **with recent title revisions because "adopt" is more widely used and includes the**  
283 **promulgation process. Language is updated for modern usage and technical changes are**  
284 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
285 **word used in the singular includes the plural and vice versa. In proposed subsection E,**  
286 **two references to "this article" are replaced with "this section" because this is the only**  
287 **section in this article that pertains to conflicts of interest.**

288           § ~~45.1-257~~ 45.2-xxx. ~~Impeding~~ Resisting, etc., Director or ~~agents a misdemeanor~~  
289 agent of the Director; penalty.

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

294           **Drafting note: The section is relocated from existing Article 3. Language is**  
295 **updated for modern usage.**

296           § ~~45.1-232~~. ~~Repealed.~~

297           **Drafting note: Repealed by Acts 1984, c. 590.**

298           § 45.2-xxx. Coal Surface Mining Regulatory Fund created.

299           There is hereby created in the state treasury a special nonreverting fund to be known  
300 as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The  
301 Fund shall be established on the books of the Comptroller. All fees collected pursuant to §  
302 45.2-xxx [§ 45.1-235] or another provision of this chapter shall be paid into the state treasury  
303 and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and  
304 be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of  
305 each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in  
306 the Fund shall be used solely for administering coal surface mining state regulations.

307 Expenditures and disbursements from the Fund shall be made by the State Treasurer on  
308 warrants issued by the Comptroller upon written request signed by the Director.

309 **Drafting note: This section, with its nonreverting fund language for the Coal**  
310 **Surface Mining Regulatory Fund, is proposed to reflect current language requested by**  
311 **the Department of the Treasury for nonreverting funds in the Code. This section**  
312 **formally establishes the special fund referenced in proposed § 45.2-xxx [§ 45.1-235] in**  
313 **Article 2.**

314 Article 2.

315 Regulation of Mining Activity.

316 **Drafting note: Existing Article 2, concerning regulation of mining activity, is**  
317 **retained as proposed Article 2.**

318 § ~~45.1-233~~ 45.2-xxx. Coal exploration operations.

319 A. ~~Coal~~ Any coal exploration ~~operations which~~ operation that substantially ~~disturb~~  
320 disturbs the natural land surface shall be conducted in accordance with exploration regulations  
321 ~~promulgated~~ adopted by the Director. Such regulations shall ~~include~~, at a minimum, (i) ~~the~~  
322 ~~requirement~~ require that any person, prior to conducting any exploration under this section,  
323 ~~any person must~~ file with the Director notice of intention to explore ~~and such notice shall~~  
324 ~~include~~ that includes a description of the exploration area and the proposed period of  
325 ~~supposed~~ exploration; and (ii) include provisions for the reclamation, in accordance with the  
326 performance standards established pursuant to § ~~45.1-242~~ 45.2-xxx, of all lands disturbed in  
327 exploration, including all excavations, roads, and drill holes, and for the removal of necessary  
328 facilities and equipment.

329 B. Information submitted to the Director pursuant to this section as confidential  
330 concerning trade secrets or privileged commercial or financial information ~~which~~ that relates  
331 to the competitive rights of the person or entity intended to explore the described area shall be  
332 exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)  
333 and shall not be ~~available for public examination~~ disclosed.

334 C. Any person who conducts any coal exploration ~~activities which~~ activity that  
335 substantially disturbs the natural land surface in violation of this section or ~~regulations~~ any  
336 regulation issued pursuant thereto ~~shall be~~ is subject to the provisions of § ~~45.1-246~~ 45.2-xxx.

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

340 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
341 **227, which states that throughout the Code any word used in the singular includes the**  
342 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**  
343 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
344 **and includes the promulgation process. A cross-reference to the Virginia Freedom of**  
345 **Information Act is added in subsection B and the prohibition on making information**  
346 **available is replaced with a prohibition on disclosure for clarity. Language is updated**  
347 **for modern usage.**

348 § ~~45.1-234~~ 45.2-xxx. ~~Permits~~ Permit required for coal surface mining operation;  
349 ~~certain operations conducted pending initial administrative decision; time for application and~~  
350 ~~action of Director thereon;~~ term; transfer, etc.

351 ~~A. On and after eight months from the date on which a permanent state regulatory~~  
352 ~~program is approved for the Commonwealth by the Secretary, no~~ No person shall engage in or  
353 carry out any coal surface mining ~~operations~~ operation without having first obtained a permit  
354 to engage in ~~the operations~~ such operation issued by the Director, in accordance with ~~the~~  
355 ~~approved~~ state ~~regulatory program, except that a person conducting coal surface mining~~  
356 ~~operations under a valid permit issued by the Director pursuant to Chapter 19 (§ 45.1-226 et~~  
357 ~~seq.) may conduct operations beyond the period if an application for a new permit has been~~  
358 ~~filed in accordance with the provisions of this chapter, but the initial administrative decision~~  
359 ~~has not yet been rendered. Operations so conducted pending an administrative decision shall~~  
360 ~~be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247,~~

361 ~~45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing~~  
362 ~~those sections~~ regulations.

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

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

377 **Drafting note: Obsolete provisions regarding the future adoption of a regulatory**  
378 **program, which has occurred, and the grandfathering of mining operations that existed**  
379 **prior to the adoption of the regulatory program are proposed for deletion.**

380 § ~~45.1-235~~ 45.2-xxx. Form and contents of permit application; fee.

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

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

388 C. To the extent that funds are available from the federal Office of Surface Mining  
389 [Reclamation and Enforcement](#), the Director shall provide for permit application assistance to  
390 small operators as provided in § ~~507(e)~~ [507\(c\)](#) and (h) of the federal act. Such assistance shall  
391 be provided in accordance with regulations adopted by the Director.

392 D. Each applicant for a permit shall be required to submit to the Division as part of the  
393 permit application an ~~operations~~ [operation](#) plan and a reclamation plan ~~which shall that~~ meet  
394 the requirements of this chapter and regulations ~~promulgated~~ [adopted](#) by the Director.

395 E. Each application for a coal surface mining permit issued under this chapter shall be  
396 accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation  
397 for which plans have been submitted. ~~An anniversary~~ [A](#) payment of \$13 per acre for ~~areas~~ [any](#)  
398 [area](#) disturbed under the permit shall be payable annually on the anniversary date of the  
399 permit. All fees collected under the provisions of this ~~chapter~~ [section](#) shall be paid into ~~a~~  
400 ~~special fund of the Department to be used for the administration of the coal surface mining~~  
401 ~~regulatory program and are hereby appropriated for that purpose~~ [the Coal Surface Mining](#)  
402 [Regulatory Fund created pursuant to § 45.2-xxx](#).

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

409 G. Each applicant for a coal surface mining permit shall ~~be required to~~ submit to the  
410 Division as part of the permit application a certificate issued by an insurance company  
411 authorized to do business in the Commonwealth, certifying that the applicant has a public  
412 liability insurance policy in force for the surface mining and reclamation ~~operations~~ [operation](#)  
413 for which such permit is sought. Such policy shall provide for personal injury and property  
414 damage protection in an amount, [that is](#) not less than that specified in regulations adopted by  
415 the Director, [and is](#) adequate to compensate any ~~persons~~ [person who is injured or whose](#)

416 property is damaged as a result of a surface coal mining and reclamation ~~operations~~ operation,  
417 including by the use of explosives, and who is entitled by law to compensation under  
418 applicable provisions of law. Such policy shall be maintained in full force and effect during  
419 the ~~terms~~ term of the permit ~~or~~ and any renewal, ~~and~~ including the length of all reclamation  
420 operations. The Director ~~is authorized to promulgate~~ may adopt regulations ~~which that~~  
421 provide for the submission by the applicant of evidence of self-insurance, meeting the  
422 requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

423 **Drafting note: In subsection B, the phrase "but not limited to" is removed**  
424 **pursuant to § 1-218, which states that throughout the Code "'Includes' means includes,**  
425 **but not limited to." In subsection C, the name of the federal Office of Surface Mining**  
426 **Reclamation and Enforcement is updated. In subsection E, reference to a special fund is**  
427 **changed to specify the Coal Surface Mining Regulatory Program Fund created in**  
428 **proposed § 45.2-xxx. Technical changes are made, including changes pursuant to § 1-**  
429 **227, which states that throughout the Code any word used in the singular includes the**  
430 **plural and vice versa. Language is updated for clarity and modern usage.**

431 § ~~45.1-236~~ 45.2-xxx. ~~Operations~~ Operation and reclamation plans.

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

441 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
442 **227, which states that throughout the Code any word used in the singular includes the**  
443 **plural and vice versa. The phrase "but not limited to" is removed pursuant to § 1-218,**



444 which states that throughout the Code "'Includes' means includes, but not limited to."

445 Language is updated for modern usage.

446 § ~~45.1-237~~ 45.2-xxx. Revision of permits.

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

450 2. An application for a revision of a permit shall not be approved unless the Director  
451 finds that reclamation as required by the federal act and ~~the permanent~~ state ~~regulatory~~  
452 ~~program~~ regulations can be accomplished under the revised reclamation plan. The Director  
453 shall establish, by regulation, the period of time within which the revision shall be approved  
454 or disapproved, as well as ~~guidelines~~ parameters for a determination of the scale or extent of a  
455 revision request for which all permit application information requirements and procedures,  
456 including notice and hearings, shall apply; however, any revisions ~~which~~ that propose  
457 significant alterations in the ~~operations~~ operation plan and reclamation plan shall, at a  
458 minimum, be subject to notice and hearing requirements.

459 3. Any extension to the area covered by the permit, except an insignificant boundary  
460 ~~revisions~~ revision, ~~must~~ shall be made by application for another permit.

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

466 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
467 **227, which states that throughout the Code any word used in the singular includes the**  
468 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**  
469 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
470 **and includes the promulgation process. Language is updated for modern usage.**

471 § ~~45.1-238~~ 45.2-xxx. Approval or denial of permit.

472 A. Upon the basis of a complete mining application and reclamation plan or a revision  
473 or renewal thereof, as required by the federal act and pursuant to ~~the approved permanent~~  
474 state ~~regulatory program~~ regulations, including public notification and opportunity for public  
475 hearing, the Director shall grant, require modification of, or deny the application for a permit  
476 in a reasonable time established by regulation and shall notify the applicant in writing. The  
477 applicant shall have the burden of establishing that the application is in compliance with all of  
478 the requirements of ~~the permanent~~ state ~~regulatory program~~ regulations. Within ~~ten~~ 10 days  
479 after the granting of a permit, the Director shall notify the government officials in the ~~city or~~  
480 county or city in which the area of land to be affected is located that a permit has been issued  
481 and shall describe the location of the land.

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

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

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

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

495 4. The area proposed to be mined is not included within an area designated as  
496 unsuitable for coal surface mining pursuant to this chapter ~~nor is it~~ or located within an area  
497 under study for such designation in an administrative proceeding commenced pursuant to this  
498 chapter, ~~unless in such an area as to which an administrative proceeding has commenced, the~~

499 ~~applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial~~  
500 ~~commitments in relation to the operation for which he seeks a permit; and~~

501 5. In ~~cases where~~ any case in which the private mineral estate has been severed from  
502 the private surface estate, the applicant has submitted to the Director:

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

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

507 c. If the conveyance does not expressly grant the right to extract coal by surface  
508 mining methods, evidence that the surface-subsurface legal relationship ~~shall~~ will be  
509 determined in accordance with the laws of ~~this~~ the Commonwealth; ~~provided, however, that~~  
510 ~~nothing.~~ Nothing herein shall be construed to authorize the Director to adjudicate any  
511 property rights ~~disputes~~ dispute.

512 C. The applicant shall file with ~~his~~ each permit application a schedule listing ~~any and~~  
513 all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the  
514 United States ~~or of this,~~ the Commonwealth, ~~or of~~ any department or agency in the United  
515 States pertaining to air or water environmental protection, incurred by the applicant in  
516 connection with any coal surface mining operation during the three-year period preceding the  
517 date of application. The schedule shall also indicate the final resolution of ~~any~~ each such  
518 notice of violation. Where the schedule or other information available to the Director  
519 indicates that any coal surface mining operation owned or controlled by the applicant is  
520 currently in violation of ~~the laws~~ any law, rule, or regulation referred to in this subsection, the  
521 permit shall not be issued until the applicant submits proof that such violation has been  
522 corrected or is in the process of being corrected to the satisfaction of the authority,  
523 department, or agency ~~which~~ that has jurisdiction over such violation, ~~and no.~~ No permit shall  
524 be issued to an applicant after a finding by the Director ~~after,~~ following an opportunity for a  
525 hearing, that the applicant, or the operator specified in the application, controls or has  
526 controlled any mining ~~operations~~ operation with a demonstrated pattern of willful violations

527 of the federal act or this chapter of such nature and duration and with such resulting  
528 irreparable damage to the environment as to indicate an intent not to comply with the federal  
529 act or this chapter.

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

535 **Drafting note: Changes are made for clarity, including the insertion of the word**  
536 **"evidence" and the substitution of "will" for "shall" in subdivision B 5 c, the division of**  
537 **the last sentence in subsection C into two sentences, and the rephrasing of subsection D**  
538 **to avoid the implication that the Director is required to find an application in**  
539 **compliance with subsection B. In subdivision B 4, an obsolete provision regarding the**  
540 **grandfathering of a mining operation in an unsuitable area for which the applicant**  
541 **made legal and financial commitments prior to 1977 is proposed for deletion. Technical**  
542 **changes are made, including the replacement of "guidelines" with "parameters" and**  
543 **changes pursuant to § 1-227, which states that throughout the Code any word used in**  
544 **the singular includes the plural and vice versa.**

545 ~~§ 45.1-239~~ 45.2-xxx. Public participation in process of issuing or revising permits.

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

550 B. Any person having an interest ~~which~~ that is or may be adversely affected, or the  
551 officer or head of any federal, state, or local governmental agency or authority ~~shall have,~~ has  
552 the right to file written objections to the proposed initial or revised application for a permit for  
553 a coal surface mining operation with the Director within ~~thirty~~ 30 days after the last  
554 publication of the applicant's notice required by the regulation ~~promulgated~~ adopted pursuant

555 to subsection A ~~hereof~~. If no written ~~objections are~~ objection is filed and an informal hearing  
556 is requested, the Director shall then hold an informal hearing in the manner and location  
557 prescribed by regulation, unless ~~all the parties~~ every party requesting the informal hearing  
558 stipulate stipulates agreement prior to the requested informal hearing and ~~withdraw their~~  
559 withdraws such request therefor.

560 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
561 **227, which states that throughout the Code any word used in the singular includes the**  
562 **plural and vice versa. The term "promulgate regulations" is changed to "adopt**  
563 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
564 **and includes the promulgation process. Language is updated for modern usage.**

565 § ~~45.1-240~~ 45.2-xxx. Decision of Director upon permit application; hearing; appeal.

566 A. The Director shall notify ~~the~~ each applicant for a permit within a reasonable time,  
567 as set forth in regulations, taking into account the time needed for proper investigation of the  
568 site, the complexity of the permit application, and ~~such~~ written objections ~~as may that~~ have  
569 been filed, of his written decision to approve or disapprove the application, in whole or in  
570 part, except that if an informal hearing has been held pursuant to § ~~45.1-239~~ 45.2-xxx, the  
571 Director shall issue to the applicant and the parties to the hearing his written decision within  
572 ~~sixty~~ 60 days of such hearings.

573 B. If ~~the~~ such application is approved ~~the,~~ a permit shall be issued. If ~~the~~ such  
574 application is disapproved, specific reasons ~~therefor~~ shall be ~~set forth~~ given in the notification.  
575 Within ~~thirty~~ 30 days after the applicant is notified of the final decision of the Director on ~~the~~  
576 such permit application, the applicant, or any person with an interest ~~which that~~ is or may be  
577 adversely affected, may request a hearing on the reasons for the final determination. The  
578 Director shall hold a formal adjudicatory hearing in accordance with the Administrative  
579 Process Act (§ 2.2-4000 et seq.); and within ~~thirty~~ 30 days thereafter shall issue to the  
580 applicant and ~~all persons~~ every person who participated in the hearing the written decision of  
581 the Director granting or denying the permit in whole or in part and stating the reasons  
582 therefor. No person who presided at an informal hearing under § ~~45.1-239~~ 45.2-xxx shall

583 preside at the formal adjudicatory hearing or participate in the decision therein or any  
584 administrative appeal therefrom.

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

588 1. All parties to the proceeding have been notified and given an opportunity to be  
589 heard on ~~a~~ any request for temporary relief;

590 2. The person requesting such relief shows that there is a substantial likelihood that he  
591 will prevail on the merits of the final determination of the proceeding; and

592 3. Such relief will not adversely affect the public health or safety or cause significant  
593 imminent environmental harm to land, air, or water resources.

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

599 **Drafting note: Language is updated for clarity and modern usage.**

600 § ~~45.1-241~~ 45.2-xxx. Performance bonds.

601 A. After a coal surface mining permit application has been approved, but before such  
602 permit is issued, the applicant shall file with the Director, on a form prescribed and furnished  
603 by the Director, a bond for performance payable to the Commonwealth and conditioned upon  
604 the faithful performance of all the requirements of this chapter and the permit. The bond shall  
605 cover that area of land within the permit area upon which the operator ~~will~~ plans to initiate  
606 and conduct surface coal mining and reclamation operations within the initial term of the  
607 permit. As each succeeding ~~increments~~ increment of coal surface mining and reclamation  
608 operations ~~are~~ is initiated and conducted within the permit area, the permittee shall file with  
609 the Director an additional bond ~~or bonds~~ to cover such ~~increments~~ increment in accordance  
610 with this section. The amount of the bond required for each bonded area shall be determined

611 by the Director and shall (i) depend upon the reclamation requirements of the approved  
612 permit, ~~shall~~ and (ii) reflect the probable difficulty of reclamation, giving consideration to  
613 such factors as topography, geology of the site, hydrology, and revegetation potential, ~~and~~  
614 ~~shall be determined by the Director~~. The amount of the bond shall be sufficient to assure the  
615 completion of the reclamation plan if the work ~~has to be~~ is performed by the Director in the  
616 event of forfeiture, but in no case shall the bond for the entire area under one permit be less  
617 than \$10,000.

618 B. Liability under ~~the~~ a performance bond shall be for the duration of the coal surface  
619 mining and reclamation operation and for a period coincident with the operator's  
620 responsibility for revegetation as required under regulations ~~promulgated~~ adopted pursuant to  
621 ~~§ 45.1-242~~ 45.2-xxx. The bond shall be executed by the operator and a corporate surety  
622 licensed to do business in the Commonwealth, except that the operator may elect to deposit  
623 cash, negotiable bonds of the United States ~~Government~~ or ~~of~~ the Commonwealth, or  
624 negotiable certificates of deposit of any bank organized for transacting business in the United  
625 States. The cash deposit or market value of such securities shall be equal to or greater than the  
626 amount of the bond required for the bonded area.

627 ~~D.~~ C. Cash or securities ~~so~~ deposited pursuant to subsection B shall be deposited upon  
628 the same terms as the terms upon which surety bonds may be deposited. Such securities shall  
629 be security for the repayment of such negotiable certificate of deposit.

630 ~~C.~~ D. The Director may accept a letter of credit on certain designated funds issued by  
631 a financial institution authorized to do business in the United States. ~~The letters~~ Such letter of  
632 credit shall be irrevocable, and unconditional, shall be payable to the Department upon  
633 demand, and shall afford ~~to~~ the Department protection equivalent to a corporate surety's bond.  
634 Such letter of credit shall be provided on a form and in a format established by the Director.  
635 Nothing in this section shall relieve the permittee of responsibility under the permit or the  
636 issuer of liability on the letter of credit.

637 E. The issuer of ~~the~~ a letter of credit pursuant to subsection D shall give prompt notice  
638 to the permittee and the Department of any notice received or action filed alleging the

639 insolvency or bankruptcy of the issuer, or alleging any ~~violations~~ violation of a regulatory  
640 ~~requirements which~~ requirement that could result in the suspension or revocation of the  
641 issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any  
642 of its obligations under the letter of credit for any reason, the issuer shall immediately notify  
643 the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy,  
644 insolvency, or the suspension or revocation of its charter or license, the permittee shall be  
645 deemed to be without proper performance bond coverage and shall promptly notify the  
646 Department, ~~and the~~. The Department shall then issue a notice to the permittee specifying a  
647 reasonable period, ~~which shall~~ not ~~exceed ninety~~ exceeding 90 days, to replace bond  
648 coverage. If an adequate bond is not posted by the end of the period allowed, the permittee  
649 shall cease coal extraction and coal processing operations and shall immediately begin to  
650 conduct reclamation operations in accordance with ~~the~~ its reclamation plan. ~~Coal~~ No coal  
651 extraction ~~and or~~ coal processing ~~operations~~ operation shall ~~not~~ resume until the Department  
652 has determined that an acceptable bond has been posted. If an acceptable bond has not been  
653 posted by the end of the period allowed, the Department may suspend the permit until an  
654 acceptable bond is posted. ~~The letter of credit shall be provided on the form and format~~  
655 ~~established by the Director. Nothing herein shall relieve the permittee of responsibility under~~  
656 ~~the permit or the issuer of liability on the letter of credit.~~

657 F. The Director ~~is further authorized to~~ may develop and ~~promulgate~~ adopt an  
658 alternative system ~~that will~~ to achieve the objectives and purposes of the bonding program  
659 established under this section.

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

663 **Drafting note: The section is proposed for reorganization by placing the text of**  
664 **subsection D after the subsection to which it refers, subsection B; by moving general**  
665 **provisions regarding the letter of credit from the end of subsection C to the beginning of**  
666 **that subsection, where such letters are addressed; by separating provisions regarding**



667 the failure of a letter of credit in proposed subsection D; and by separating a provision  
668 authorizing alternative systems in proposed subsection E. Technical changes are made,  
669 including changes pursuant to § 1-227, which states that throughout the Code any word  
670 used in the singular includes the plural and vice versa. Language is updated for modern  
671 usage.

672 § ~~45.1-242~~ 45.2-xxx. Performance standards.

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

677 B. Any permit issued pursuant to this chapter to conduct a coal surface mining  
678 ~~operations~~ operation shall require that such ~~operations meet~~ operation meets all applicable  
679 performance standards established by the Director.

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

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

692 E. The Director, with the approval of the Secretary, may authorize departures on an  
693 experimental basis from the environmental protection performance standards ~~promulgated~~  
694 adopted under this section and § ~~45.1-243~~ 45.2-xxx.

695           **Drafting note: The superfluous and nonstatutory policy text of subsection D is**  
696 **proposed for deletion because it is obsolete, referring to future regulations that have**  
697 **been adopted. The term "promulgate regulations" is changed to "adopt regulations" in**  
698 **keeping with recent title revisions because "adopt" is more widely used and includes the**  
699 **promulgation process. Technical changes are made, including changes pursuant to § 1-**  
700 **227, which states that throughout the Code any word used in the singular includes the**  
701 **plural and vice versa. Language is updated for modern usage.**

702           § ~~45.1-243~~ 45.2-xxx. Surface effects of underground coal mining operations.

703           A. The Director shall ~~promulgate~~ adopt regulations directed toward the surface effects  
704 of underground coal mining operations and embodying the requirements of §§ 516 and ~~720~~  
705 ~~(a) (1)~~ 720(a)(1) of the federal act. The provisions of this chapter relating to permits, bonds,  
706 inspections and enforcement, public review, and administrative and judicial review shall be  
707 applicable to any surface ~~operations and~~ operation or surface ~~impacts~~ impact incident to an  
708 underground coal mine with such modifications to the permit application requirements, permit  
709 approval or denial procedures, and bond requirements as are necessary to accommodate the  
710 ~~distinct difference~~ differences between surface and underground coal mining. Nothing in §  
711 ~~720 (a) (1)~~ 720(a)(1) of the federal act shall be construed to prohibit or interrupt any  
712 underground coal mining ~~operations~~ operation.

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

716           C. ~~In order to protect the stability of the land, the~~ The Director shall suspend  
717 underground coal mining under any elementary ~~and or~~ secondary ~~schools~~ school, ~~institutions~~  
718 institution of higher education, urbanized ~~areas~~ area, ~~cities~~ city, ~~towns and communities~~ town,  
719 or community, and adjacent to any industrial or commercial ~~buildings~~ building, major  
720 ~~impoundments~~ impoundment, or permanent ~~streams~~ stream, if he finds imminent danger to  
721 ~~the inhabitants or occupants of the elementary and secondary schools, institutions of higher~~

722 ~~education, urbanized areas, cities, towns and communities~~ people from such underground coal  
723 mining.

724 **Drafting note: Subsection C is rephrased to clarify that any danger to people**  
725 **caused by coal mining under or adjacent to certain locations is cause for suspension of**  
726 **underground coal mining. Technical changes are made, including changes pursuant to §**  
727 **1-227, which states that throughout the Code any word used in the singular includes the**  
728 **plural and vice versa. Language is updated for modern usage.**

729 § ~~45.1-244~~ 45.2-xxx. Inspections and monitoring.

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

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

739 2. For ~~those~~ any coal surface mining and reclamation ~~operations which remove~~  
740 operation that removes or ~~disturb~~ disturbs strata that serve as aquifers ~~which~~ and thereby  
741 significantly ~~insure~~ ensure the hydrologic balance of water use, either on or off the mining  
742 site, the Director shall specify ~~those (i)~~ monitoring sites ~~to~~ at which the permittee shall record  
743 (i) the quantity and quality of surface drainage above and below the mine site ~~as well as~~ and  
744 in the potential zone of influence, ~~and to record~~; (ii) the level, amount, and characteristics of  
745 samples of ~~ground water~~ groundwater and aquifers that are potentially affected by mining,  
746 ~~and also~~ or are located directly below the deepest coal seam to be mined; and ~~to record~~ (iii)  
747 amount of precipitation; ~~and (ii)~~. The Director shall specify certain records of well logs and  
748 borehole data to be maintained. The monitoring data collection and analysis required by this

749 section shall be conducted according to standards and procedures set forth in regulations  
750 ~~promulgated~~ adopted by the Director in order to assure their reliability and validity; and

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

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

759 B. ~~The inspections~~ Inspections by the Director shall (i) occur on an irregular basis  
760 averaging not less than one partial inspection per month and one complete inspection per  
761 calendar quarter for the coal surface mining and reclamation ~~operations~~ operation covered by  
762 each permit; (ii) occur without prior notice to the permittee or ~~his agents~~ any agent or  
763 ~~employees~~ employee of the permittee except for necessary on-site meetings with the  
764 permittee; and (iii) include the filing of inspection reports adequate to enforce the  
765 requirements of this chapter and ~~to~~ carry out ~~the its~~ terms and purposes ~~of this chapter~~.

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

769 D. Each inspector, upon detection of ~~each~~ a violation of any requirement of this  
770 chapter or of ~~the regulations promulgated~~ a regulation adopted hereunder, shall ~~forthwith~~  
771 promptly inform the operator in writing and shall report ~~in writing any~~ such violation to the  
772 Director in writing.

773 E. Copies of any records, reports, inspection materials, or information obtained by the  
774 Director under this article shall be made immediately available to the public at central and  
775 sufficient locations in the area of mining so that they are conveniently available to residents in  
776 such areas; ~~however~~. However, information ~~which~~ that pertains only to the analysis of the

777 chemical and physical properties of the coal, excepting information regarding mineral or  
778 elemental content ~~which~~ that is potentially toxic in the environment, shall be kept confidential  
779 and ~~not made a matter of public record~~ be exempt from disclosure under the Virginia Freedom  
780 of Information Act (§ 2.2-3700 et seq.).

781 **Drafting note: Subdivision A 2 is reorganized for clarity, including by dividing**  
782 **the first sentence into two sentences. A cross-reference to the Freedom of Information**  
783 **Act is added and technical changes are made, including changes pursuant to § 1-227,**  
784 **which states that throughout the Code any word used in the singular includes the plural**  
785 **and vice versa. The term "promulgate regulations" is changed to "adopt regulations" in**  
786 **keeping with recent title revisions because "adopt" is more widely used and includes the**  
787 **promulgation process. Language is updated for modern usage.**

788 § ~~45.1-245~~ 45.2-xxx. Enforcement of chapter generally.

789 A. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that any  
790 condition or ~~practices exist,~~ practice or ~~that~~ any violation by a permittee ~~is in violation~~ of any  
791 requirement of this chapter ~~or of any,~~ regulation ~~promulgated~~ adopted hereunder, ~~or of any~~  
792 permit condition, ~~which condition, practice or violation also~~ (i) creates an imminent danger to  
793 the health or safety of the public, ~~or~~ (ii) is causing, ~~or~~ can reasonably be expected to cause  
794 significant, imminent environmental harm to land, air, or water resources, the Director ~~or his~~  
795 ~~authorized representative~~ shall immediately order a cessation of the coal surface mining and  
796 reclamation operation or the portion thereof relevant to the condition, practice, or violation.  
797 Such cessation order shall remain in effect until the Director ~~or his authorized representative~~  
798 determines that the condition, practice, or violation has been abated, ~~or~~ until such order is  
799 modified, vacated, or terminated by the Director ~~or his authorized representative~~. Whenever  
800 the Director ~~or his authorized representative~~ finds that the ordered cessation of coal surface  
801 mining and reclamation operations, or any portion thereof, ~~will~~ is not expected to completely  
802 abate the imminent danger to health or safety of the public or the significant imminent  
803 environmental harm to land, air, or water resources, the Director shall, in addition to ordering  
804 the cessation ~~order~~ of the operation, impose affirmative obligations on the operator and

805 require ~~him~~ such operator to take whatever steps the Director ~~or his authorized representative~~  
806 determines necessary to abate the imminent danger or the significant environmental harm.

807 B. ~~Whenever~~ If the Director ~~or his authorized representative~~ determines that ~~any a~~  
808 permittee is in violation of any requirement of this chapter ~~or~~ any regulation ~~thereunder~~  
809 adopted hereunder, or any permit condition, but such violation does not create an imminent  
810 danger to the health or safety of the public, or cannot reasonably be expected to cause  
811 significant, imminent environmental harm to land, air, or water resources, the Director ~~or his~~  
812 ~~authorized representative~~ shall issue a notice of violation to the permittee or his agent setting a  
813 reasonable ~~time but~~ period of not more than ~~ninety~~ 90 days for the abatement of the violation  
814 and shall provide an opportunity for public hearing. ~~If, upon~~

815 C. Upon expiration of the period of time ~~as~~ originally set pursuant to subsection B or  
816 subsequently extended for good cause shown upon the written finding of the Director ~~or his~~  
817 ~~authorized representative~~, if the Director ~~or his authorized representative~~ finds that a violation  
818 has not been abated, he shall immediately order a cessation of coal surface mining and  
819 reclamation operations or the portion thereof relevant to the violation. Such cessation order  
820 shall remain in effect until the Director ~~or his authorized representative~~ determines that the  
821 violation has been abated, or until such order is modified, vacated, or terminated by the  
822 Director ~~or his authorized representative~~ pursuant to subsection ~~D of this section~~ E. The  
823 Director ~~or his authorized representative~~ shall include in the cessation order the necessary  
824 measures to abate the violation in the most expeditious manner possible.

825 C. ~~D.~~ Whenever the Director ~~or his authorized representative~~ determines that a pattern  
826 of violations of the requirements of this chapter, ~~or regulations promulgated thereunder~~ any  
827 regulation adopted hereunder, or any permit ~~conditions exist~~ condition exists or ~~have~~ has  
828 existed, and if the Director ~~or his authorized representative~~ also finds that such violations are  
829 (i) caused by the unwarranted failure of the permittee to comply with any such requirements,  
830 or ~~that such violations are~~ (ii) willfully caused by the permittee, the Director ~~or his authorized~~  
831 ~~representative~~ shall ~~forthwith~~ promptly issue an order to the permittee to show cause as to  
832 why the permit should not be suspended or revoked and shall provide opportunity for a formal

833 public hearing. If a hearing is requested, the Director shall inform all interested parties of the  
834 time and place of the hearing. Upon the permittee's failure to show cause as to why the permit  
835 should not be suspended or revoked, the Director ~~or his authorized representative~~ shall  
836 ~~forthwith~~ promptly suspend or revoke the permit.

837 ~~D. Notices and order~~ E. Each notice or order issued pursuant to this section shall set  
838 forth with reasonable specificity the nature of the violation and the remedial action required,  
839 the period of time established for abatement, and a reasonable description of the portion of the  
840 coal surface mining and reclamation operation to which the notice or order applies. Each  
841 notice or order shall be given promptly to the permittee or his agent by the Director ~~or his~~  
842 ~~authorized representative issuing such notice or order~~, and ~~all such notices and orders~~ shall be  
843 in writing and signed by ~~such authorized representatives~~ the Director. Any notice or order  
844 issued pursuant to this section may be modified, vacated, or terminated by the Director ~~or his~~  
845 ~~authorized representative~~. Any notice or order issued pursuant to this section ~~which that~~  
846 requires cessation of mining by the operator shall expire within ~~thirty~~ 30 days of actual notice  
847 to the operator unless an informal public hearing, ~~unless waived by the operator~~, is held at the  
848 site or close enough to the site to allow viewings thereof during the course of the public  
849 hearing. Such informal public hearing may be waived by the operator.

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

852 1. Violates, or fails or refuses to comply with any order or decision issued by the  
853 Director; ~~or~~

854 2. Interferes with, hinders, or delays the Director in carrying out the provisions of this  
855 chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~

856 3. Refuses to admit ~~such authorized representative~~ the Director to ~~the a~~ mine; ~~or~~

857 4. Refuses to permit inspection of ~~the a~~ mine; ~~or~~

858 5. Refuses to furnish any information or report requested by the Director pursuant to  
859 the provisions of this chapter or the regulations ~~thereunder~~ adopted hereunder; ~~or~~

860           6. Refuses to permit access to, and copying of, such records as the Director determines  
861 necessary in carrying out the provisions of this chapter or the regulations ~~thereunder~~ adopted  
862 hereunder; or

863           7. Conducts any coal surface mining or coal exploration ~~operations~~ operation without  
864 first obtaining a permit, ~~or~~ after a permit has lapsed, or after suspension or revocation of a  
865 permit.

866           **Drafting note: Changes are proposed for clarity, including the reorganization of**  
867 **existing subsection A and the addition of subsection designation C to the second**  
868 **paragraph of existing subsection B. The phrase "or his authorized representative" is**  
869 **proposed for deletion because such agent will be proposed for inclusion in the definition**  
870 **of "Director" in § 45.2-xxx in Chapter 1 [existing § 45.1-161.1 in Chapter 14.1].**  
871 **Language is updated for clarity and modern usage and technical changes are made,**  
872 **including changes pursuant to § 1-227, which states that throughout the Code any word**  
873 **used in the singular includes the plural and vice versa. The term "promulgate**  
874 **regulations" is changed to "adopt regulations" in keeping with recent title revisions**  
875 **because "adopt" is more widely used and includes the promulgation process.**

876           § ~~45.1-246~~ 45.2-xxx. Civil and criminal penalties.

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



887 whether the permittee was negligent; and the demonstrated good faith of the permittee  
888 charged in attempting to achieve rapid compliance after notification of the violation.

889 B. A civil penalty may be assessed by the Director only after the person charged with  
890 a violation has been given an opportunity for a public hearing. ~~Where~~ After such ~~a~~ public  
891 hearing has been held, the Director shall make findings of fact and issue a written decision as  
892 to the occurrence of the violation and the amount of the penalty ~~which~~ that is warranted,  
893 incorporating therein, when appropriate, an order ~~therein~~ requiring that the penalty be paid.  
894 When appropriate, the Director shall consolidate such ~~hearings~~ hearing with other  
895 proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be  
896 a formal adjudicatory hearing in accordance with the Administrative Process Act ~~(Chapter 40~~  
897 ~~(§ 2.2-4000 et seq.)-of Title 2.2)~~. When the person charged with such ~~a~~ violation fails to avail  
898 himself of the opportunity for a public hearing, a civil penalty shall be assessed by the  
899 Director after the Director determines that a violation has occurred and the amount of the  
900 penalty warranted, and issues an order requiring that the penalty be paid.

901 C. Upon the issuance of a notice or order charging that a violation described under  
902 subsection A ~~of this section~~ has occurred, the Director shall inform the permittee within 30  
903 days of the proposed amount of the penalty. ~~The~~ Such permittee ~~charged with the penalty~~  
904 shall ~~then have~~, within 30 days ~~to of being so informed~~, pay the proposed penalty in full or, if  
905 the permittee ~~wishes to contest~~ contests either the amount of the penalty or the fact of the  
906 violation, forward the proposed amount to the Director for placement in an interest-bearing  
907 trust account in the ~~State Treasurer's office~~ state treasury. Failure to forward the money to the  
908 Director within 30 days constitutes a waiver of all legal rights to contest the violation or the  
909 amount of the penalty. If through administrative or judicial review of the proposed penalty, it  
910 is determined that no violation occurred, or that the amount of the penalty ~~should~~ will be  
911 reduced, the Director shall within 30 days of ~~that~~ such determination remit the appropriate  
912 amount to the permittee with accrued interest thereon. ~~Failure to forward the money to the~~  
913 ~~Director within 30 days shall result in a waiver of all legal rights to contest the violation or the~~  
914 ~~amount of the penalty~~.

915 D. If a permittee ~~who is~~ required to pay a civil penalty fails to do so, the Director may  
916 transmit a true copy of the final order assessing such penalty to the clerk of the court of any  
917 county or city wherein it is ascertained that the permittee owing the penalty has any estate;  
918 and the clerk to whom such copy is ~~so~~ sent shall record ~~it~~ such final order, as a judgment is  
919 required by law to be recorded, and ~~shall~~ index ~~the same as well~~ it in the name of the  
920 Commonwealth as of the person owing the penalty, ~~and thereupon~~. Upon such recording and  
921 indexing, there shall be a lien in favor of the Commonwealth on the property of the permittee  
922 within such county or city in the amount of the penalty. The Director may collect civil  
923 penalties ~~which~~ that are owed in the same manner as provided by law in respect to judgment  
924 of a court of record. All civil penalties shall be paid into a special fund in the ~~State Treasurer's~~  
925 ~~office~~ state treasury to be used by the Director for enhancing conservation and recreational  
926 opportunities in the coal-producing counties of the Commonwealth. The Director shall  
927 transfer quarterly 50 percent of the fund balance to the Virginia Coalfield Economic  
928 Development Authority, created pursuant to Chapter 60 (§ 15.2-6000 et seq.) of Title 15.2, for  
929 the purposes of developing infrastructure and improvements at Breaks Interstate Park and 50  
930 percent of the fund balance to the Virginia Coalfield Regional Tourism Development  
931 Authority for the purpose of developing conservation and recreational opportunities consistent  
932 with the provisions of Chapter 55 (§ 15.2-5500 et seq.) of Title 15.2.

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

941 F. Whenever a corporate permittee violates a condition of a permit or disregards, or  
942 fails, or refuses to comply with any order issued under this chapter, except an order

943 incorporated in a decision issued under subsection B ~~of this section~~, any director, officer, or  
944 agent of such corporation who willfully and knowingly authorized, ordered, or carried out  
945 such violation, failure, or refusal ~~shall be~~ is subject to the same civil penalties, fines, and  
946 confinement in jail ~~that to which a person~~ may be ~~imposed upon a person~~ subject under  
947 subsections A and E ~~of this section~~.

948 G. Whoever knowingly makes any false statement, representation, or certification, or  
949 knowingly fails to make any required statement, representation, or certification, in any  
950 application, objection, record, report, plan, or other document filed or required to be  
951 maintained pursuant to this chapter, ~~the regulations promulgated thereunder~~ any regulation  
952 adopted hereunder, or any order or decision issued by the Director under this chapter shall,  
953 upon conviction ~~thereof~~, be punished by a fine of not more than \$10,000, ~~or~~ by confinement  
954 in jail for not more than 12 months, or both.

955 H. Any operator who within the period permitted for the correction of such violation  
956 fails to correct a violation for which a notice or order has been issued ~~within the~~ shall be  
957 assessed a civil penalty of not less than \$750 for each day during which such failure or  
958 violation occurs. Such period ~~permitted~~ for ~~its~~ the correction, ~~which period~~ of a violation shall  
959 not end until the entry of (i) a final order by the Director, in the case of any review  
960 proceedings initiated by the operator wherein the Director orders, after an expedited hearing,  
961 the suspension of the abatement requirements of the notice or order after determining that the  
962 operator ~~will~~ is likely to suffer irreparable loss or damage from the application of those  
963 requirements, or ~~until entry of~~ (ii) an order of the court, in the case of any review proceedings  
964 initiated by the operator wherein the court orders the suspension of the abatement  
965 requirements, ~~shall be assessed a civil penalty of not less than \$750 for each day during which~~  
966 ~~such failure or violation occurs~~.

967 **Drafting note: Organizational changes are proposed for clarity, including the**  
968 **moving of the last sentence in subsection C to a different location within that subsection**  
969 **and the moving of the last phrase in subsection H to a different location within that**  
970 **subsection. Language is updated for modern usage.**

971 § ~~45.1-246.1~~ 45.2-xxx. Citizen suits; rights of citizens to accompany inspectors.

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

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

979 2. The Director, when there is alleged a failure of the Director to perform any act or  
980 duty under this chapter ~~which~~ that is not a discretionary ~~with~~ act on the part of the Director.

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

982 1. Prior to ~~sixty~~ 60 days after the plaintiff has given written notice of the violation to  
983 ~~(i)~~ the Secretary, ~~(ii)~~ the Director, and ~~(iii)~~ any alleged violator; or

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

990 C. No action ~~may~~ shall be commenced under subdivision A 2 ~~of this section~~ prior to  
991 ~~sixty~~ 60 days after the plaintiff has given written notice of such action to the Director, ~~in such~~  
992 a manner ~~as shall be~~ prescribed by regulation, ~~provided, however, that~~. However, such action  
993 may be brought immediately after such notification in any case in which it is alleged that a  
994 violation or order would constitute an imminent threat to the health or safety of the plaintiff or  
995 would immediately affect a legal interest of the plaintiff.

996 D. Any action with respect to a violation of this chapter or ~~the regulations thereunder~~ a  
997 regulation adopted hereunder may be brought only in the circuit court of the county or city in  
998 which the surface coal mining operation complained of is located. In any such action

999 commenced under the provisions of this section, the Director may intervene as a matter of  
1000 right, whether or not ~~he~~ [the Director](#) is a party to the action.

1001 E. The court, in issuing any final order in any action brought pursuant to subsection A  
1002 ~~of this section~~, may award costs of litigation, including attorney and expert witness fees, to  
1003 any party, ~~provided that~~ [if](#) the court determines such award is appropriate. If a preliminary  
1004 injunction is sought, the court may require the filing of a bond or equivalent security in  
1005 accordance with the rules of civil procedure.

1006 F. Nothing in this section shall restrict any common-law or statutory right ~~which of~~  
1007 any person or class of persons ~~may have~~ to seek enforcement of any ~~of the provisions~~  
1008 [provision](#) of this chapter and the regulations ~~thereunder~~, [adopted hereunder](#) or to seek any  
1009 other relief, including relief against the Director.

1010 G. Any person who as a result of the violation by any operator of any ~~rule~~, regulation,  
1011 order, or permit issued pursuant to this chapter, suffers injury to his person or property may  
1012 bring an action for damages, including reasonable attorney and expert witness fees. Such  
1013 action ~~may~~ [shall](#) be brought only in the circuit court of the county or city in which the surface  
1014 coal mining operation complained of is located. Nothing in this subsection shall affect the  
1015 rights established by or limits imposed under ~~Title 65.2~~ [the Virginia Workers' Compensation](#)  
1016 [Act \(§ 65.2-100 et seq.\)](#).

1017 H. Whenever information provided [to](#) the Director by any person results in any  
1018 inspection, the Director shall notify such person of the time at which the inspection is  
1019 scheduled to occur, and such person shall be allowed to accompany the inspector during the  
1020 inspection.

1021 **Drafting note: Language is updated for modern usage and technical changes are**  
1022 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
1023 **word used in the singular includes the plural and vice versa.**

1024 § ~~45.1-247~~ [45.2-xxx](#). Forfeiture or release of performance bond.

1025 A. The Director shall ~~promulgate~~ [adopt](#) regulations, consistent with regulations  
1026 ~~promulgated~~ [adopted](#) by the Secretary, establishing procedures, conditions, criteria, and

1027 schedules for the forfeiture or release of performance bonds or deposits required under this  
1028 chapter; however, no bond shall be fully released until all reclamation requirements of this  
1029 chapter and the regulations ~~thereunder~~ adopted hereunder are fully met.

1030 B. Any person with a valid legal interest ~~which might~~ that could be adversely affected  
1031 by release of the bond, or the responsible officer or head of any federal, state, or local  
1032 governmental agency ~~which~~ that (i) has jurisdiction by law or special expertise with respect to  
1033 any environmental, social, or economic impact involved in the operation; or (ii) is authorized  
1034 to develop and enforce environmental standards with respect to such operations, ~~shall have~~  
1035 has the right to file written objections to the proposed release from bond by the Director  
1036 within ~~thirty~~ 30 days after the last publication of notice, as required by regulation. If a written  
1037 ~~objections are~~ objection is filed, and a hearing requested, the Director shall inform all  
1038 interested parties of the time and place of the hearing and hold a public hearing, either in the  
1039 locality of the coal surface mining operation proposed for bond release; or in Richmond, at the  
1040 option of the objector, within ~~thirty~~ 30 days of the request for such hearing.

1041 C. Without prejudice to the rights of ~~the objectors~~ any objector, the applicant, or the  
1042 responsibilities of the Director pursuant to this section, the Director may establish an informal  
1043 conference, in accordance with regulations ~~promulgated~~ adopted pursuant to § ~~45.1-239 B~~  
1044 45.2-xxx, to resolve written objections.

1045 D. For the purpose of ~~such~~ the hearing specified in subsection B, the Director is  
1046 authorized to administer oaths, subpoena witnesses; or written or printed materials, compel  
1047 the attendance of witnesses; or production of materials, and take evidence, including ~~but not~~  
1048 ~~limited to~~ inspections of the land affected or other coal surface mining operations carried on  
1049 by the applicant in the general vicinity. A verbatim record of each public hearing shall be  
1050 made, and a transcript shall be made available on the motion of any party or by order of the  
1051 Director.

1052 **Drafting note: In subsection D, the phrase "but not limited to" is removed**  
1053 **pursuant to § 1-218, which states that throughout the Code "'Includes' means includes,**  
1054 **but not limited to." Language is updated for clarity and modern usage and technical**

1055 changes are made, including changes pursuant to § 1-227, which states that throughout  
1056 the Code any word used in the singular includes the plural and vice versa.

1057 § ~~45.1-248~~ 45.2-xxx. Performance of reclamation operations by Director.

1058 In the event of forfeiture of a performance bond, in whole or in part, the Director shall  
1059 deposit the proceeds in the ~~State Treasurer's office~~ state treasury in a special fund to be used  
1060 by the Director to complete the reclamation plan and other regulatory requirements pertaining  
1061 to the operation for which the forfeited bond had been posted. The Director may use the  
1062 resources and facilities of the Division or ~~he may~~ enter into contracts for performance of such  
1063 reclamation with any individual, corporation, partnership, association, or ~~any~~ other legal  
1064 entity, any soil conservation district, or any agency of the state or federal government. After  
1065 completion of the reclamation and payment of all costs and administrative expenses  
1066 associated with the completion of reclamation, any additional funds from the forfeiture of the  
1067 bond shall be returned.

1068 **Drafting note: Language is updated for modern usage and technical changes are**  
1069 **made.**

1070 § ~~45.1-249~~ 45.2-xxx. Administrative review of notice or order issued under § ~~45.1-245~~  
1071 45.2-xxx.

1072 A. A permittee who is issued a notice or order pursuant to § ~~45.1-245~~ 45.2-xxx, or any  
1073 person having an interest ~~which that~~ is or ~~may~~ could be adversely affected by such notice or  
1074 order by any modification, vacation, or termination of such notice or order, may apply to the  
1075 Director for the review of ~~the~~ such notice or order within ~~thirty~~ 30 days of the receipt thereof  
1076 or within ~~thirty~~ 30 days of its modification, vacation, or termination. Upon receipt of such  
1077 application, the Director shall cause such investigation to be made as he deems appropriate,  
1078 ~~which~~. Such investigation shall ~~include an opportunity for a public formal hearing~~, at the  
1079 request of the applicant or the person having an interest ~~which that~~ is or ~~may~~ could be  
1080 adversely affected, include a public formal hearing to enable the applicant or such person to  
1081 present information relating to the issuance and continuance of such notice or order or the

1082 modification, vacation, or termination thereof. The filing of an application for review under  
1083 this subsection shall not operate as a stay of any order or notice.

1084 B. Upon receiving the report of such investigation, the Director shall make findings of  
1085 fact, and shall issue a written decision, incorporating therein an order vacating, affirming,  
1086 modifying, or terminating the notice or order complained of ~~and~~. Such order shall incorporate  
1087 his the Director's findings ~~therein of fact~~. ~~When If~~ the application for review concerns an  
1088 order for cessation of coal surface mining and reclamation operations issued pursuant to the  
1089 provisions of subsection A or B of § ~~45.1-245~~ 45.2-xxx, the Director shall issue the written  
1090 decision within ~~thirty~~ 30 days of the receipt of the application for review unless temporary  
1091 relief has been granted by the Director pursuant to subsection C ~~of this section~~ or by a court  
1092 pursuant to § ~~45.1-251~~ 45.2-xxx.

1093 C. Pending completion of the hearing required by this section, the applicant may file  
1094 with the Director a written request that the Director grant temporary relief from any notice or  
1095 order issued under § ~~45.1-245~~ 45.2-xxx, together with a detailed statement giving reasons for  
1096 granting such relief. The Director shall issue an order granting or denying such relief  
1097 expeditiously. ~~Where~~ If the applicant requests relief from an order for cessation of coal  
1098 surface mining and reclamation operations issued pursuant to subsection A or B of § ~~45.1-245~~  
1099 45.2-xxx, the order on such a request shall be issued within five days of its receipt. The  
1100 Director may grant such relief, under such conditions as ~~he may prescribe~~ the Director  
1101 prescribes, if:

1102 1. A hearing has been held in the locality of the permit area on the request for  
1103 temporary relief in which all parties were given an opportunity to be heard;

1104 2. The applicant shows that there is substantial likelihood that the decision of the  
1105 Director will be favorable to ~~him~~ the applicant; and

1106 3. Such relief will not adversely affect the health or safety of the public or cause  
1107 significant imminent environmental harm to land, air, or water resources.

1108 D. Following the issuance of an order to show cause as to why a permit should not be  
1109 suspended or revoked pursuant to § ~~45.1-245~~ 45.2-xxx, the Director shall hold a public formal



1110 hearing, unless waived by the permittee, after giving written notice of the time, place, and  
1111 date thereof. Within ~~sixty~~ 60 days following the formal hearing, the Director shall issue and  
1112 furnish to the permittee and ~~all~~ every other ~~parties~~ party to the hearing a written decision  
1113 concerning suspension or revocation of the permit and reasons therefor. If the Director  
1114 revokes the permit, the permittee shall immediately cease coal surface mining operations on  
1115 the permit area and shall complete reclamation within a period specified by the Director, or  
1116 the Director shall declare as forfeited the performance bonds for the operation.

1117 E. The Director ~~is authorized to promulgate~~ may adopt regulations providing for the  
1118 award of costs and expenses, including attorney fees, to any party to any administrative  
1119 proceedings under this chapter, incurred by such person in connection with his participation in  
1120 such proceedings, and ~~to~~ may assess such costs and expenses against any other party, as ~~may~~  
1121 be the Director deems proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall~~  
1122 include includes the Commonwealth or any of its agents, officers, or employees.

1123 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
1124 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
1125 **and includes the promulgation process. Language is updated for clarity and modern**  
1126 **usage and technical changes are made, including changes pursuant to § 1-227, which**  
1127 **states that throughout the Code any word used in the singular includes the plural and**  
1128 **vice versa.**

1129 § ~~45.1-250~~ 45.2-xxx. Hearings.

1130 ~~A. [Repealed.]~~

1131 ~~B. All~~ Every formal ~~hearings~~ hearing shall be conducted in accordance with § 2.2-  
1132 4020 unless the parties consent to informal proceedings. When a hearings officer presides, ~~he~~  
1133 such officer shall recommend findings and a decision to the Director, who shall then issue  
1134 findings and a decision, unless ~~he~~ the Director provides for the making of findings and an  
1135 initial decision by such hearings officer subject to review and reconsideration by the Director  
1136 on appeal as of right or on the Director's own motion. Such regulations shall also provide for a

1137 reasonable time in which such appeals shall be acted upon, which shall be in addition to the  
1138 period required for the making of the initial decision.

1139 **Drafting note: Language is updated for modern usage and technical changes are**  
1140 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
1141 **word used in the singular includes the plural and vice versa.**

1142 § ~~45.1-251~~ 45.2-xxx. Judicial review of final order or decision or ~~of~~ decision under §  
1143 ~~45.1-263~~ 45.2-xxx.

1144 A. Any party aggrieved by a final order ~~or~~, decision, ~~and any or~~ decision for entry  
1145 upon property pursuant to § ~~45.1-263~~ 45.2-xxx, issued by the Director, after exhaustion of the  
1146 administrative remedies provided for in this chapter, ~~shall have~~ has the right to the judicial  
1147 review thereof in the circuit court of the county or city in which the land at issue or a major  
1148 portion thereof is located. In all other respects, judicial review shall be in accordance with the  
1149 provisions of the ~~Virginia~~ Administrative Process Act (§ ~~2.2-4020~~ 2.2-4000 et seq.).

1150 B. The commencement of a proceeding under this section shall not, unless specifically  
1151 ordered by the court, operate as a stay of the order or decision of the Director. The court may,  
1152 under such conditions as it ~~may prescribe~~ prescribes, grant such temporary relief as it deems  
1153 appropriate pending final determination of the proceedings if:

1154 1. All parties to the proceedings have been notified and given an opportunity to be  
1155 heard on a request for temporary relief;

1156 2. The person requesting such relief shows that there is a substantial likelihood that he  
1157 will prevail on the merits of the final determination of the proceeding; and

1158 3. Such relief will not adversely affect the public health or safety or cause significant  
1159 imminent environmental harm to land, air, or water resources.

1160 C. ~~To any proceeding under this section, the~~ The court may award costs and expenses,  
1161 including ~~attorneys'~~ attorney fees, to any party to any proceeding under this section and ~~to~~  
1162 may assess such costs and expenses against any other party as the court ~~may deem~~ deems  
1163 proper. For the purpose of this subsection, ~~the term~~ "party" ~~shall include~~ includes the  
1164 Commonwealth or any of its agents, officers, or employees.

1165           **Drafting note: Language is updated for clarity and modern usage and technical**  
1166 **changes are made.**

1167           § ~~45.1-252~~ 45.2-xxx. Designating areas unsuitable for coal surface mining.

1168           A. 1. The Director shall establish a planning process ~~enabling~~ that enables objective  
1169 decisions, based on competent and scientifically sound data and information ~~as to,~~ regarding  
1170 which, ~~if any,~~ land areas of the Commonwealth, if any, are unsuitable for ~~all or certain types~~  
1171 ~~of~~ coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3 ~~of~~  
1172 ~~this subsection but such.~~ Such designation shall not prevent the mineral exploration pursuant  
1173 to this chapter of any area so designated.

1174           2. Upon petition pursuant to subsection C ~~of this section,~~ the Director shall designate  
1175 ~~an~~ a land area as unsuitable for all or certain types of coal surface mining operations if ~~he~~ the  
1176 Director determines that reclamation pursuant to the requirements of this chapter is not  
1177 technologically and economically feasible.

1178           3. Upon petition pursuant to subsection C ~~of this section,~~ the Director may designate a  
1179 surface area ~~may be designated~~ as unsuitable for certain types of coal surface mining  
1180 operations if such operations will (i) be incompatible with existing land use plans or  
1181 programs; ~~or~~ (ii) affect fragile or historic lands in which such operations could result in  
1182 significant damage to important historic, cultural, scientific ~~and,~~ or aesthetic values ~~and or~~  
1183 natural systems; ~~or~~ (iii) affect renewable resource lands, including aquifers and aquifer  
1184 recharge areas, in which such operations could result in a substantial loss or reduction of long-  
1185 range productivity of water supply or ~~of~~ food or fiber products, ~~and such lands to include~~  
1186 ~~aquifers and aquifer recharge areas;~~ or (iv) affect natural hazard lands, including areas subject  
1187 to frequent flooding and areas of unstable geology, in which such operations could  
1188 substantially endanger life and property, ~~such lands to include areas subject to frequent~~  
1189 ~~flooding and areas of unstable geology.~~

1190           4. ~~Determinations~~ Any determination of the unsuitability of a land area for coal  
1191 surface mining, ~~as provided for in~~ made pursuant to this section, shall be integrated as closely

1192 as possible with present and future land use planning and regulation processes at the federal,  
1193 state, and local levels.

1194 5. The requirements of this section shall not apply to ~~lands~~ any land area (i) on which  
1195 a coal surface mining ~~operations were~~ operation was being conducted on August 3, 1977, ~~or;~~  
1196 (ii) on which a coal surface mining operation was being conducted under a permit issued  
1197 pursuant to the provisions of the federal act; ~~or~~ (iii) where substantial legal and financial  
1198 commitments in either such operation were in existence prior to January 4, 1977.

1199 B. Prior to designating any land ~~areas~~ area as unsuitable for a coal surface mining  
1200 ~~operations~~ operation, the Director shall cause to be prepared a detailed statement on (i) the  
1201 potential coal resources of the area, (ii) the demand for coal resources, and (iii) the impact of  
1202 such designation on the environment, the economy, and the supply of coal.

1203 C. Any person having an interest ~~which that~~ is or ~~may~~ could be adversely affected  
1204 ~~shall have~~ has the right to petition the Director to have an area designated as unsuitable for  
1205 coal surface mining operations, or to have such a designation terminated. Such ~~a~~ petition shall  
1206 contain allegations of facts with supporting evidence ~~which that~~ would tend to establish the  
1207 allegations. Within ~~ten~~ 10 months after receipt of the petition, the Department shall hold a  
1208 public hearing in the locality ~~of~~ in which the affected area is located, after appropriate notice  
1209 and publication of the date, time, and location of the hearing. After a person having an interest  
1210 ~~which that~~ is or ~~may~~ could be adversely affected has filed a petition ~~and~~ but before the  
1211 hearing, ~~as~~ required by this subsection, any person may intervene by filing allegations of facts  
1212 with supporting evidence ~~which that~~ would tend to establish the allegations. The Director  
1213 shall issue and furnish to the petitioner and any other party to the hearing, within ~~sixty~~ 60  
1214 days after such hearing, a written decision regarding the petition and the reasons therefor. In  
1215 the event that all petitioners stipulate agreement prior to the hearing and withdraw their  
1216 ~~request~~ requests, such hearing need not be held.

1217 D. ~~On and after March 20, 1979, and subject~~ Subject to valid existing rights, no coal  
1218 surface mining ~~operations~~ operation, except ~~those which were existing~~ an operation that  
1219 existed on August 3, 1977, shall be permitted:

1220 1. On any lands within the boundaries of ~~units~~ any unit of the National Park System,  
1221 the National Wildlife Refuge ~~Systems~~ System, the National Trails System ~~of Trails~~, the  
1222 National Wilderness Preservation System, or the Wild and Scenic Rivers System, including  
1223 study rivers designated under § 5(a) of the Wild and Scenic Rivers Act ~~and;~~ any National  
1224 Recreation ~~Areas~~ Area designated by act of Congress ~~and;~~ or any federal lands within the  
1225 boundaries of any national forest, except as otherwise provided by federal law;

1226 2. ~~Which~~ That will adversely affect any publicly owned park or ~~places included~~ any  
1227 site listed in the National Register of Historic ~~Sites~~ Places unless approved jointly by the  
1228 Director and the federal, state, or local agency with jurisdiction over the park or historic site;

1229 3. Within 100 feet of the outside right-of-way line of any public road, except where a  
1230 mine access ~~roads~~ road or haulage ~~roads join~~ road joins such right-of-way line ~~and except that~~  
1231 ~~the~~ However, the Director may permit such ~~roads~~ mine access or haulage road to be relocated  
1232 or the area affected to lie within 100 feet of such public road, if, after public notice and  
1233 opportunity for hearing in the locality, a written finding is made that the interests of the public  
1234 and landowners affected thereby will be protected; or

1235 4. Within 300 feet ~~from~~ of any occupied dwelling, unless waived by the owner thereof,  
1236 ~~nor;~~ within 300 feet of any public building, school, church, community, or institutional  
1237 building, or public park, ; or within 100 feet of a cemetery.

1238 **Drafting note: The names of the National Trails System and the National**  
1239 **Register of Historic Places are corrected and the meaning of subdivision A 5 is clarified**  
1240 **as referring to, among others, any land area on which a coal surface mining operation**  
1241 **was being conducted under federal permit. An obsolete reference to March 20, 1979, is**  
1242 **proposed for deletion from subsection D. References to January 4 and August 3, 1977,**  
1243 **are retained because they could apply to current operations established earlier.**  
1244 **Language is updated for modern usage and technical changes are made, including**  
1245 **changes pursuant to § 1-227, which states that throughout the Code any word used in**  
1246 **the singular includes the plural and vice versa.**

1247 Article 3.

1248 ~~Miscellaneous Provisions~~ National Pollutant Discharge Elimination System Permit;  
1249 Replacement of Water Supply.

1250 **Drafting note: Existing Article 3, concerning miscellaneous provisions, is retained**  
1251 **as proposed Article 3. Existing §§ 45.1-253, 45.1-256, 45.1-257, and 45.1-259 are**  
1252 **relocated.**

1253 § ~~45.1-254~~ 45.2-xxx. National ~~pollutant discharge elimination system~~ Pollutant  
1254 Discharge Elimination System permits.

1255 ~~H.~~ A. For the purpose of this section, ~~the terms "sewage,"~~:

1256 "Board" means the State Water Control Board.

1257 ~~"industrial-Industrial wastes" and~~ means the same as that term is defined in § 62.1-  
1258 44.3.

1259 "NPDES" means the National Pollutant Discharge Elimination System.

1260 ~~"other-Other wastes" shall have~~ means the same as that term is defined in § 62.1-44.3.

1261 "Sewage" means the meanings ascribed to them same as that term is defined in § 62.1-  
1262 44.3.

1263 ~~A.~~ B. The authority to issue, amend, revoke, and enforce ~~national pollutant discharge~~  
1264 ~~elimination system~~ National Pollutant Discharge Elimination System permits under the State  
1265 Water Control Law (§ 62.1-44.2 et seq.) for the discharge of sewage, industrial wastes, and  
1266 other wastes from coal surface mining operations, to the extent delegated by the U.S.  
1267 Environmental Protection Agency and required under the federal Clean Water Act, P.L. 92-  
1268 500, as amended, is vested solely in the Director, notwithstanding any provision of law  
1269 contained in Title 62.1, except as provided ~~herein~~ in this section. For the purpose of  
1270 enforcement under this section, the provisions of §§ 62.1-44.31 and 62.1-44.32 shall apply to  
1271 permits, orders, and regulations issued by the Director in accordance with this section.

1272 ~~B.~~ C. The Director shall transmit to the State Water Control Board a copy of each  
1273 application for ~~a national pollutant discharge elimination system~~ an NPDES permit received  
1274 by the Director, and provide written notice to the ~~State Water Control~~ Board of every action  
1275 related to the consideration of such permit application.

1276 ~~C-D.~~ Prior to the issuance or reissuance of a permit, ~~applicants~~ each applicant shall  
1277 submit an application on a form approved by the Director and a fee of \$300 for each discharge  
1278 outfall point under ~~the~~ such permit. If an application is approved, the permittee shall, on the  
1279 anniversary of the permit approval for each year of the permit term, submit \$300 for each  
1280 discharge outfall point under ~~the~~ such permit. Each permit shall remain valid for five years.  
1281 All fees provided for under this section shall be in addition to any other fees levied pursuant  
1282 to this chapter.

1283 ~~D-E.~~ No ~~national pollutant discharge elimination system~~ NPDES permit shall be  
1284 issued if, within 30 days of the date of the transmittal of the complete application and the  
1285 proposed ~~national pollution discharge elimination system~~ NPDES permit, the ~~State Water~~  
1286 ~~Control~~ Board objects in writing to the issuance of such permit. Whenever the ~~State Water~~  
1287 ~~Control~~ Board objects to the issuance of such permit under this section, such written objection  
1288 shall contain a statement of the reasons for such objection and the effluent limitations and  
1289 conditions ~~which~~ that such ~~permits~~ permit would include if it were issued by the ~~State Water~~  
1290 ~~Control~~ Board.

1291 ~~E-F.~~ An applicant who is aggrieved by an objection made under subsection ~~D E~~ of  
1292 ~~this section shall have~~ has the right to a hearing before the ~~State Water Control~~ Board  
1293 pursuant to § 62.1-44.25. If the ~~State Water Control~~ Board withdraws, in writing, its objection  
1294 to the issuance of a certificate, the Director may issue the permit. Any applicant, aggrieved by  
1295 a final decision of the ~~State Water Control~~ Board made pursuant to this subsection, ~~shall have~~  
1296 has the right to judicial review in accordance with the provisions of the Administrative  
1297 Process Act (§ 2.2-4000 et seq.).

1298 ~~F-G.~~ Whenever, on the basis of any information available to it, the ~~State Water~~  
1299 ~~Control~~ Board finds that any person is in violation of any condition or limitation contained in  
1300 ~~a national pollutant discharge elimination system~~ an NPDES permit issued by the Director, it  
1301 shall notify the person allegedly in ~~alleged~~ violation and the Director. If ~~beyond~~ after the  
1302 thirtieth day ~~after~~ following notification by the ~~State Water Control~~ Board, the Director has

1303 not commenced appropriate enforcement action, the ~~State Water Control~~ Board may take  
1304 appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

1305 ~~G. H.~~ The Director shall ~~promulgate~~ adopt such regulations as deemed necessary for  
1306 the issuance, administration, monitoring, and enforcement of ~~national pollutant discharge~~  
1307 ~~elimination system~~ NPDES permits for coal surface mining operations.

1308 I. The Director, by examining the available and relevant data, shall determine whether  
1309 a discharge ~~may~~ could cause or contribute to an instream excursion above the narrative or  
1310 numeric criteria of a water quality standard.

1311 J. If a total maximum daily load (TMDL) has been established by the ~~State Water~~  
1312 ~~Control~~ Board for the receiving water body, then there shall be consideration of the TMDL in  
1313 the reasonable potential determination as to whether a discharge ~~may~~ could cause or  
1314 contribute to an instream excursion above the narrative or numeric criteria of a water quality  
1315 standard. If the receiving water body does not have a TMDL established, the Director may  
1316 consider biological monitoring, chemical monitoring, and whole effluent toxicity testing to  
1317 determine whether a discharge ~~may~~ could cause or contribute to an instream excursion above  
1318 the narrative or numeric criteria of a water quality standard. The Director may require whole  
1319 effluent toxicity testing if he determines that the discharge adversely affects the biological  
1320 condition of the receiving water body.

1321 **Drafting note: Subsection H, which contains definitions, is moved to the**  
1322 **beginning of the section and the frequently recurring phrases National Pollutant**  
1323 **Discharge Elimination System and State Water Control Board are given short**  
1324 **references. Language is updated for modern usage and technical changes are made,**  
1325 **including changes pursuant to § 1-227, which states that throughout the Code any word**  
1326 **used in the singular includes the plural and vice versa.**

1327 ~~§ 45.1-255.~~

1328 ~~Repealed.~~

1329 **Drafting note: Repealed by Acts 1984, c. 714.**

1330 ~~§ 45.1-255.1.~~



1331 ~~Repealed.~~

1332 **Drafting note: Repealed by Acts 1988, c. 489.**

1333 § ~~45.1-258~~ 45.2-xxx. Replacement of water supply.

1334 A. The operator of any coal surface mining operation shall replace the water supply of  
1335 an owner of interest in real property who obtains all or part of ~~his~~ such owner's supply of  
1336 water for domestic, agricultural, industrial, or other legitimate use from an underground or  
1337 surface source where such supply has been affected by contamination, diminution, or  
1338 interruption proximately resulting from such coal surface ~~mine~~ mining operation.

1339 B. ~~Underground~~ Every underground coal mining ~~operations conducted after October~~  
1340 ~~24, 1992,~~ operation shall promptly replace any drinking, domestic, or residential water supply  
1341 from a well or spring that was in existence prior to the application for a surface coal mining  
1342 and reclamation permit ~~which~~ and that has been affected by contamination, diminution, or  
1343 interruption resulting from underground coal mining operations. ~~Until amendments to the~~  
1344 ~~regulations governing the permanent state regulatory program implementing the provisions of~~  
1345 ~~this subsection are effective, the Director shall issue guidelines in accordance with subsection~~  
1346 ~~A of § 45.1-230 regarding the replacement of any water supply pursuant to this subsection.~~

1347 Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining  
1348 operations.

1349 C. Each operator of an underground coal mine shall record the daily progress of  
1350 mining operations on ~~a~~ one or more mine ~~map or~~ maps maintained at the mine site or in the  
1351 company office. ~~The~~ Such map ~~or maps~~ shall, at a minimum, include information on the daily  
1352 progress of mining operations ~~conducted after October 24, 1992,~~ and be maintained until the  
1353 completion of the mining. The operator shall provide ~~the~~ such map ~~or maps~~ to the Division  
1354 upon completion of mining and upon request of the Director.

1355 D. If the Director has ordered replacement of a water supply under subsection B ~~of~~  
1356 ~~this section~~ and the operator subject to the order has failed to provide the required map ~~or~~  
1357 ~~maps~~ in accordance with subsection C ~~of this section~~, then the Director's replacement order  
1358 shall not be overturned absent clear and convincing evidence to the contrary. Upon conclusion

1359 of an investigation, if the Director does not order replacement under the provisions of  
1360 subsection B ~~of this section~~ and reasonable access for a pre-mining survey was denied, the  
1361 Director's determination shall not be overturned absent clear and convincing evidence to the  
1362 contrary.

1363 ~~E. Each operator of an underground coal mine shall provide a certificate issued by an~~  
1364 ~~insurance company licensed to do business in the Commonwealth certifying that the operator~~  
1365 ~~has a public liability insurance policy in force for the underground coal mining operation~~  
1366 ~~which shall provide for protection in an amount adequate to replace any water supply as~~  
1367 ~~required by subsection B of this section. The policy shall be maintained in full force during~~  
1368 ~~the term of the permit, including any renewal thereof, and including the liability period~~  
1369 ~~necessary to complete all reclamation operations under this chapter. The provisions of this~~  
1370 ~~subsection shall expire on the date the amendments to the regulations governing the~~  
1371 ~~permanent state regulatory program implementing the provisions of subsection B of this~~  
1372 ~~section are approved for the Commonwealth by the Secretary of the Interior of the United~~  
1373 ~~States.~~

1374 **Drafting note: Obsolete pre-1992 provisions are proposed for deletion from**  
1375 **subsections B and C, and subsection E is proposed for deletion because it expired when**  
1376 **state primacy was approved by the federal government on December 15, 1981. Technical**  
1377 **changes are made, including changes pursuant to § 1-227, which states that throughout**  
1378 **the Code any word used in the singular includes the plural and vice versa.**

1379 Article 4.

1380 Abandoned Mine Reclamation.

1381 **Drafting note: Existing Article 4, concerning abandoned mine reclamation, is**  
1382 **retained as proposed Article 4.**

1383 § ~~45.1-260~~ [45.2-xxx](#). State Reclamation Program.

1384 A. The Commonwealth's program for the reclamation of land and water adversely  
1385 affected by past mining shall include the State Reclamation Plan and fund and annual  
1386 reclamation projects, as provided for in this article.

1387 B. The Director is authorized to develop and submit to the Secretary for ~~his~~ approval a  
1388 State Reclamation Plan in accordance with the provisions of Title IV of the federal act and of  
1389 this article. The plan shall generally identify the areas to be reclaimed, the purposes for which  
1390 the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed  
1391 reclamation to surrounding areas, the specific criteria for ranking and identifying projects to  
1392 be funded, and the programmatic capability of the Division to perform such work, and shall  
1393 include such regulations, policies, and procedures as may be necessary to establish and  
1394 implement the plan and annual reclamation projects, and to carry out the provisions of this  
1395 article. The Director may from time to time develop and submit to the Secretary amendments  
1396 and revisions to the plan, consistent with this article.

1397 C. The Director is authorized to:

1398 1. ~~To prepare~~ Prepare and submit to the Secretary annual applications for the support  
1399 of the State Reclamation Program and implementation of specific reclamation projects;

1400 2. ~~To enter~~ Enter into agreements with the Secretary for the emergency restoration,  
1401 reclamation, abatement, control, or prevention of the adverse effects of coal mining practices;

1402 3. ~~To administer~~ Administer the State Reclamation Plan and the annual reclamation  
1403 projects and ~~to~~ receive and administer grants from the Secretary therefor; and

1404 4. ~~To prepare~~ Prepare and submit such information and reports as the Secretary ~~may~~  
1405 ~~request~~ requests.

1406 D. The Director and the Department, in carrying out the functions of preparing and  
1407 revising the State Reclamation Plan and developing annual reclamation projects, shall provide  
1408 appropriate opportunities for public involvement.

1409 **Drafting note: Technical changes are made.**

1410 § ~~45.1-261~~ 45.2-xxx. Abandoned Mine Reclamation Fund.

1411 A. There is hereby created in the ~~State Treasurer's office~~ state treasury a special  
1412 nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this  
1413 article as ~~the fund, which~~ "the Fund." The Fund shall be established on the books of the  
1414 Comptroller and shall be administered by the Director.

1415 B. ~~The fund shall consist of deposits, made from time to time, of:~~

1416 ~~1. Amounts~~ All funds granted by the Secretary for purposes of conducting the  
1417 approved State Reclamation Plan and annual reclamation projects;

1418 ~~2. Use~~ use fees charged for uses of lands acquired or reclaimed pursuant to this article,  
1419 after expenditures for maintenance have been deducted;

1420 ~~3. Moneys~~ moneys recovered through the satisfaction of liens filed against privately  
1421 owned land pursuant to this article;

1422 ~~4. Moneys~~ moneys recovered from sale of lands acquired by the Director pursuant to  
1423 this article; and

1424 ~~5. Donations~~ donations made for the purposes of this article and other moneys made  
1425 available or appropriated to the Director for such purposes shall be paid into the state treasury  
1426 and credited to the Fund.

1427 C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to  
1428 it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal  
1429 year shall not revert to the general fund but shall remain in the Fund.

1430 D. Moneys ~~deposited~~ in the ~~fund~~ Fund shall be used ~~to carry~~ solely for the purpose of  
1431 carrying out the State Reclamation Program as approved by the Secretary. Expenditures and  
1432 disbursements from the Fund shall be made by the State Treasurer on warrants issued by the  
1433 Comptroller upon written request signed by the Director.

1434 **Drafting note: The nonreverting fund language for the Abandoned Mine**  
1435 **Reclamation Fund is updated to reflect current language requested by the Department**  
1436 **of the Treasury for nonreverting funds in the Code. Technical changes are made.**

1437 § ~~45.1-261.1~~ 45.2-xxx. ~~Operators~~ Operator may perform reclamation; bidding;  
1438 conditions; adjustment of required bonds; regulations.

1439 A. Notwithstanding any licensing requirement under Title 54.1, an operator ~~shall be~~ is  
1440 eligible to bid on contracts to conduct reclamation projects under the State Reclamation  
1441 Program and the Coal Surface Mining Reclamation Fund in accordance with this article and  
1442 Article 5 (§ ~~45.1-270.1~~ 45.2-xxx et seq.), ~~provided if~~ if the Director finds that the following

1443 conditions have been met: (i) the operator has had at least three years of relevant mining  
1444 experience in the Commonwealth pursuant to ~~Chapter 19 (§ 45.1-226 et seq.)~~ [this chapter](#) and  
1445 (ii) the operator meets all other applicable requirements of federal, state, and local law.

1446 B. Notwithstanding the provisions of Title 11 ([§ 11-1 et seq.](#)), the Director may adjust  
1447 the ~~amount~~ [amounts](#) of required bid or performance bonds for such contracts upon a finding  
1448 that such amounts are sufficient to protect the public interest.

1449 C. The Director shall ~~promulgate~~ [adopt](#) regulations to implement this section.

1450 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
1451 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
1452 **and includes the promulgation process. Technical changes are made, including changes**  
1453 **pursuant to § 1-227, which states that throughout the Code any word used in the**  
1454 **singular includes the plural and vice versa.**

1455 ~~§ 45.1-262~~ [45.2-xxx](#). Eligible lands and water; priorities for expenditures.

1456 A. Lands and water eligible for reclamation or drainage abatement expenditures under  
1457 this article are those ~~which~~ [that](#) were [\(i\)](#) mined for coal or ~~which were~~ [\(ii\)](#) affected by ~~such~~  
1458 [coal](#) mining, waste banks, coal processing, or other coal mining processes, and [were](#)  
1459 abandoned or left in an inadequate reclamation status and for which there is no continuing  
1460 reclamation responsibility under state or federal ~~laws~~ [law](#).

1461 B. The Director shall establish priorities in the State Reclamation Plan for the  
1462 expenditure of funds in conformance with the priorities set forth in § 403 of the federal act.

1463 **Drafting note: Technical changes are made.**

1464 ~~§ 45.1-263~~ [45.2-xxx](#). Right of entry, acquisition, disposition, and reclamation of land  
1465 adversely affected by past coal mining practices.

1466 A. The Director shall take all reasonable actions to obtain written consent from the  
1467 owner or owners of record of the land or property to be entered onto to perform an inspection  
1468 for purposes of reclamation or for conducting studies or exploratory work pertaining to the  
1469 need for and feasibility of reclamation, prior to such entry.

1470 B. ~~If~~ The provisions of subsection C shall apply if the Director, pursuant to an  
1471 approved state program, makes ~~a finding~~ findings of fact that:

1472 1. Land or water resources have been adversely affected by past coal mining practices;

1473 2. The adverse effects are ~~at a state where~~ significant enough that, in the public  
1474 interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and

1475 3. The owners of the land or water resources where entry ~~must~~ will be made to restore,  
1476 reclaim, abate, control, or prevent the adverse effects of past coal mining practices (i) are not  
1477 known; or readily available; or

1478 4. ~~The owners~~ (ii) will not give permission for the Director or his agents, employees,  
1479 or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the  
1480 adverse effects of past coal mining practices, ~~then, upon~~.

1481 C. Upon making the findings of fact required by subsection B and giving notice by  
1482 certified mail to the owners if known or, if not known, by posting notice upon the premises  
1483 and advertising once in a newspaper of general circulation in the ~~municipality or~~ county or  
1484 city in which the land lies, the Director, his agents, employees, or contractors shall have the  
1485 right to enter upon the property adversely affected by past coal mining practices and any other  
1486 property to have access to such property to do all things necessary or expedient to restore,  
1487 reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an  
1488 exercise of the police power for the protection of public health, safety, and general welfare  
1489 and shall not be construed as an act of condemnation of property ~~nor of~~ or trespass thereon.

1490 The moneys expended for such work and the benefits accruing to any such premises so  
1491 entered upon shall be chargeable against such land to the extent provided in § ~~45.1-264, 45.2-~~  
1492 xxx and shall mitigate or offset any claim in or any action brought by any owner of any  
1493 interest in such premises for any alleged damages by virtue of such entry; ~~provided, however,~~  
1494 ~~that this.~~ Such provision regarding the mitigation or offsetting of a claim or action by an  
1495 owner is not intended to create new rights of action or eliminate the existing sovereign  
1496 immunity of the Commonwealth and its agents and employees.

1497 ~~C.~~D. The Director, and his agents, employees, or contractors shall have the right to  
1498 enter upon any property for the purpose of conducting studies or exploratory work to  
1499 determine the existence of adverse effects of past coal mining practices and to determine the  
1500 feasibility of restoration, reclamation, abatement, control, or prevention of such adverse  
1501 effects. Such entry shall be construed as an exercise of the police power for the protection of  
1502 public health, safety, and general welfare and shall not be construed as an act of  
1503 condemnation of property ~~nor~~ or trespass thereon.

1504 ~~D.~~E. The Director, pursuant to an approved state program, may acquire title in the  
1505 name of the Commonwealth to any land or interest therein by purchase, donation, or  
1506 condemnation, if such land or interest is adversely affected by past coal mining practices,  
1507 after approval of the Secretary and upon ~~a determination~~ determinations that acquisition of  
1508 such land is necessary ~~to~~ for successful reclamation, and that:

1509 1. The acquired land, after restoration, reclamation, abatement, control, or prevention  
1510 of the adverse effects of past coal mining practices, will serve ~~recreation and historic purposes~~  
1511 recreational, historical, conservation ~~and, or~~ or reclamation purposes or provide open space  
1512 benefits; and

1513 2. ~~Permanent~~ Either (a) permanent facilities, such as a treatment plant or a relocated  
1514 stream channel, will be constructed on the land for the restoration, reclamation, abatement,  
1515 control, or prevention of the adverse effects of past coal mining practices; or

1516 3. ~~Acquisition~~ (b) acquisition of coal refuse disposal sites and all coal refuse thereon  
1517 will serve the purposes of this article or that public ownership is desirable to meet emergency  
1518 situations and prevent recurrences of the adverse effects of past coal mining practices.

1519 F. The price paid for land acquired under this section shall reflect the market value of  
1520 the land as adversely affected by past coal mining practices.

1521 ~~E.~~G. The Director, with the approval of the Secretary, and in accordance with the  
1522 State Reclamation Plan, may:

1523 1. Transfer the administrative responsibility for land acquired under this section to any  
1524 state, regional, or local agency, department, or institution, with or without cost, upon ~~such~~

1525 terms ~~as that~~ will ~~insure~~ ensure that the use of the land is consistent with the authorization  
1526 under which the land was acquired;

1527         2. Sell land acquired under this section ~~which that~~ is suitable for industrial,  
1528 commercial, residential, or recreational development, by public sale under a system of  
1529 competitive bidding, at not less than fair market value and under ~~such~~ regulations  
1530 ~~promulgated~~ adopted to ~~insure~~ ensure that such lands are put to proper use consistent with  
1531 local, state, or federal land use ~~plan~~ plans, if any, for the area in which the land is located; and

1532         3. Transfer land acquired under this section to the United States to be reclaimed by the  
1533 Secretary ~~and after~~. After such reclamation is completed, any state, regional, or local agency,  
1534 department, or institution may purchase such land from the Secretary for governmental,  
1535 educational, recreational, historical, open-space, or other public ~~purposes~~ purpose upon such  
1536 terms as the Secretary ~~may require~~ requires.

1537         ~~F.~~ H. Prior to the disposition of any land acquired under this section, the Director,  
1538 pursuant to the State Reclamation Plan, when requested and after appropriate public notice,  
1539 shall hold a public hearing in the ~~city or county~~ or city or ~~cities or counties~~ or cities where the  
1540 land is located. The hearing shall be held at a time ~~which that~~ shall afford local citizens and  
1541 governments the maximum opportunity to participate in the decision concerning the use or  
1542 disposition of the lands after restoration, reclamation, abatement, control, or prevention of the  
1543 adverse effects of past coal mining practices.

1544         ~~G.~~ I. The Director may authorize the use, pending disposition, of land acquired under  
1545 this section, for any lawful purpose that is not inconsistent with the reclamation and post-  
1546 reclamation uses for which the land was acquired. The Director shall charge any user of the  
1547 land a reasonable use fee, ~~which that~~ shall go toward the purpose of operating and  
1548 maintaining improvement of the land, and any excess thereof shall be deposited in the State  
1549 Reclamation Fund. The Director may waive the fee if ~~he~~ the Director finds in writing that a  
1550 waiver is in the public interest.



1551 ~~H-J.~~ Any state, regional, or local agency, department, or institution may purchase or  
1552 otherwise acquire and develop lands ~~which~~ that the Secretary is authorized to dispose of  
1553 pursuant to § 407(h) of the federal act.

1554 **Drafting note: Language is updated for modern usage and technical changes are**  
1555 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
1556 **word used in the singular includes the plural and vice versa. Proposed subsection E is**  
1557 **reorganized for clarity.**

1558 § ~~45.1-264~~ 45.2-xxx. Commonwealth to have lien for reclamation work.

1559 The Commonwealth shall have a lien, if perfected as ~~hereinafter~~ provided in § 45.2-  
1560 xxx [§ 45.1-265], on land reclaimed by the Director pursuant to this article for the amount of  
1561 the increase in the appraised market value of the land resulting from the reclamation, ~~except~~  
1562 ~~that.~~ However, no such lien shall attach to or be filed against the property of any person who  
1563 owned the surface of the land prior to May 2, 1977, and who ~~neither consented~~ did not  
1564 consent to, ~~nor participated~~ participate in, ~~nor exercised~~ or exercise control over the mining  
1565 operation ~~which~~ that necessitated the reclamation performed under this article, ~~nor.~~ Nor shall  
1566 any such lien attach to or be filed against any property if the Director waives the lien as  
1567 ~~hereinafter~~ provided in § 45.2-xxx [§ 45.1-265].

1568 **Drafting note: Changes are proposed for clarity, including the division of the**  
1569 **section's single sentence into three sentences and, to avoid ambiguity, the replacement of**  
1570 **"hereinafter" with a more specific description in the first sentence and the last sentence.**  
1571 **Language is updated for modern usage.**

1572 § ~~45.1-265~~ 45.2-xxx. Perfection of lien; waiver of lien.

1573 A. The Director shall perfect the lien given under the provisions of § ~~45.1-264,~~ 45.2-  
1574 xxx by filing, within six months after completion of the reclamation, in the clerk's office of  
1575 the court of the county or city in which the land or any part thereof is ~~situate~~ located, a  
1576 statement consisting of the ~~names~~ name of the owner ~~or owners~~ of record of the property  
1577 sought to be charged; an itemized account of moneys expended for the reclamation work; and  
1578 and; notarized copies of appraisals, made by an independent appraiser, of the fair market

1579 value of the land both before and upon completion of the reclamation work<sup>2</sup>; and a brief  
1580 description of the property to which the lien attaches.

1581 B. The Director shall waive a lien if he determines that the direct and indirect costs of  
1582 filing such lien ~~exceeds~~ exceed the increase in fair market value resulting from reclamation<sup>7</sup>; or  
1583 that the reclamation primarily benefits health, safety<sup>2</sup> or environmental values of the  
1584 community or area in which the land is located, ~~or if~~ If reclamation is necessitated by an  
1585 unforeseen occurrence, the Director shall waive a lien if he determines that the reclamation  
1586 will not result in a significant increase in the market value of the land.

1587 **Drafting note: Language is updated for modern usage and technical changes are**  
1588 **made by dividing the single sentence of subsection B into two sentences for clarity and a**  
1589 **change made pursuant to § 1-227, which states that throughout the Code any word used**  
1590 **in the singular includes the plural and vice versa.**

1591 § ~~45.1-266~~ 45.2-xxx. Recordation and indexing of lien; notice.

1592 It ~~shall be~~ is the duty of the clerk in whose office the statement described in § ~~45.1-~~  
1593 ~~265~~ 45.2-xxx is filed to record ~~the same~~ such statement in the deed books of such office<sup>7</sup>; and  
1594 to index ~~the same~~ such recording in the general index of deeds<sup>7</sup>. Such indexing shall be made  
1595 in the name of the Commonwealth as well as the owner of the property<sup>7</sup>; and ~~showing~~ shall  
1596 show the type of such lien. From the time of such recording and indexing, all persons shall be  
1597 deemed to have notice thereof.

1598 **Drafting note: Language is updated for modern usage and technical changes are**  
1599 **made.**

1600 § ~~45.1-267~~ 45.2-xxx. Priority of lien.

1601 ~~Liens~~ Any lien acquired under this article shall have priority as a lien second only to  
1602 the lien of real estate taxes imposed upon the land.

1603 **Drafting note: A technical change is made pursuant to § 1-227, which states that**  
1604 **throughout the Code any word used in the singular includes the plural and vice versa.**

1605 § ~~45.1-268~~ 45.2-xxx. Hearing to determine amount of lien.

1606 Any party having an interest in the real property against which a lien has been filed  
1607 may, within ~~sixty~~ 60 days of such filing, petition the circuit court ~~of equity~~ having jurisdiction  
1608 wherein the property or some portion thereof is located to hold a hearing to determine the  
1609 increase in the market value of the land as a result of reclamation. After reasonable notice to  
1610 the Director, the court shall hold a hearing to determine such increase. If the court determines  
1611 such increase to be erroneously excessive, it shall determine the proper amount and order that  
1612 the lien and the record be amended to show this amount.

1613 **Drafting note: The reference to a court of equity is updated to refer to a circuit**  
1614 **court and technical changes are made.**

1615 § ~~45.1-269~~ 45.2-xxx. Satisfaction of lien.

1616 ~~Liens~~ Any lien acquired under this article shall be satisfied to the extent of the value of  
1617 the consideration received at the time of transfer of ownership. Any unsatisfied portion shall  
1618 remain as a lien on the property and shall be satisfied in accordance with this section. If an  
1619 owner fails to satisfy a lien as provided ~~herein~~ in this article, the Director may proceed to  
1620 enforce the lien by a bill filed in a circuit court ~~of equity~~ having jurisdiction wherein the  
1621 property or some portion thereof is located.

1622 **Drafting note: The reference to a court of equity is updated to refer to a circuit**  
1623 **court and technical changes are made, including a change made pursuant to § 1-227,**  
1624 **which states that throughout the Code any word used in the singular includes the plural**  
1625 **and vice versa.**

1626 § ~~45.1-270~~ 45.2-xxx. Miscellaneous powers of Director.

1627 A. In addition to any other remedies provided for in this chapter, the Director may  
1628 petition any court of competent jurisdiction for an injunction to restrain any interference with  
1629 the exercise of the right to enter or to conduct any work pursuant to this chapter.

1630 B. The Director is authorized, to the extent of funds available for the purposes herein,  
1631 to construct and operate plants for the control and treatment of water pollution resulting from  
1632 mine drainage. Such plants may include major interceptors and other facilities appurtenant to

1633 ~~the~~ each plant. No such control or treatment shall in any way be less than that required under  
1634 the federal Clean Water ~~Pollution Control~~ Act.

1635 C. The Director may transfer funds to other appropriate state or local agencies in order  
1636 to carry out the reclamation authorized by this article.

1637 **Drafting note: The name of the Clean Water Act is updated and a technical**  
1638 **change is made.**

1639 Article 5.

1640 Coal Surface Mining Reclamation Fund.

1641 **Drafting note: Existing Article 5, concerning the Coal Surface Mining**  
1642 **Reclamation Fund, is retained as proposed Article 5.**

1643 § ~~45.1-270.1~~ 45.2-xxx. ~~Creation of~~ Coal Surface Mining Reclamation Fund.

1644 There is hereby created in the ~~office of the State Treasurer~~ state treasury a special  
1645 nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, ~~hereinafter~~  
1646 referred to in this article as "the Fund, ~~which shall be administered as set forth in this article.~~"

1647 The Fund shall ~~consist of all~~ be established on the books of the Comptroller. All payments  
1648 made into the Fund in accordance with the provisions of this article, ~~as well as all interest~~  
1649 shall be paid into the state treasury and credited to the Fund. Interest earned on ~~money~~  
1650 ~~contained~~ moneys in the Fund shall remain in the Fund and be credited to it. Any moneys  
1651 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert  
1652 to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for  
1653 the purposes set forth in this article. Expenditures and disbursements from the Fund shall be  
1654 made by the State Treasurer on warrants issued by the Comptroller upon written request  
1655 signed by the Director.

1656 **Drafting note: The nonreverting fund language for the Coal Surface Mining**  
1657 **Reclamation Fund is updated to reflect current language requested by the Department**  
1658 **of the Treasury for nonreverting funds in the Code. Technical changes are made.**

1659 § ~~45.1-270.2~~ 45.2-xxx. Participation in Fund.

1660 A. Participation in the Fund shall be open to ~~all operators~~ any operator applying for a  
1661 permit under ~~Chapter 19 (§ 45.1-226 et seq.) of this title, this chapter~~ who can demonstrate to  
1662 the Director a history of at least ~~a three~~ three consecutive ~~three-year history years~~ of compliance  
1663 under this ~~act~~ chapter or any other comparable state or federal act.

1664 B. Participation in the Fund ~~shall be~~ is optional as to each permit application, and  
1665 approval of such participation by the Division, upon payment by the operator of all entrance  
1666 fees to the Fund required by this article, shall constitute compliance with all requirements of §  
1667 ~~45.1-241~~ 45.2-xxx and regulations issued pursuant thereto. Such participation shall relieve the  
1668 operator of all bonding requirements except those set forth in this article. Nothing ~~herein in~~  
1669 this article shall preclude compliance with § ~~45.1-241~~ 45.2-xxx in lieu of participation in the  
1670 Fund, prior to commencement of ~~the such~~ participation. Commencement of participation in  
1671 the Fund, as to the applicable permit, ~~shall constitute~~ constitutes an irrevocable commitment  
1672 to participate therein as to the applicable permit and for the duration of the coal surface  
1673 mining operations covered thereunder.

1674 C. For any mining ~~operations~~ operation bonded under this article, the total cumulative  
1675 amount of exposed highwall shall not exceed 1,500 linear feet. The width of the coal pit shall  
1676 be limited to two mining cuts or 500 feet, whichever is less, measured perpendicular from the  
1677 most advanced highwall to the coal outcrop or to the nearest point of rough backfilling and  
1678 grading.

1679 D. The Director may allow extended distances for rough backfilling and grading  
1680 beyond those established in this section ~~provided if~~ (i) the applicant can demonstrate to the  
1681 Director a history of at least ~~a seven~~ consecutive ~~year history years~~ of compliance with this  
1682 ~~act~~ chapter or with any other comparable state or federal act, or (ii) the applicant submits a  
1683 bond for the proposed additional area. The additional bond shall be equal to the ratio of the  
1684 extended distance to the distance specified in subsection C ~~above~~, times an approved cost  
1685 estimate of reclamation prepared for the permit.

1686           **Drafting note: Language is updated for modern usage and technical changes are**  
1687 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
1688 **word used in the singular includes the plural and vice versa.**

1689           § ~~45.1-270.3~~ 45.2-xxx. Initial payments into Fund; renewal payments; bonds.

1690           A. ~~Operators~~ Any operator filing a permit ~~applications~~ application for a coal surface  
1691 mining ~~operations~~ operation participating in the pool fund shall ~~be required to~~ pay into the  
1692 Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An  
1693 entrance fee of \$5,000 shall be required of ~~all operators~~ each operator who ~~elect~~ elects to  
1694 participate in the Fund ~~when~~ if the Director has determined that the total balance of the Fund  
1695 is less than ~~\$1,750,000~~ \$1.75 million. The entrance fee shall be reduced to \$1,000 when the  
1696 total Fund balance is greater than \$2 million. A renewal fee of \$1,000 shall be required of ~~all~~  
1697 permittees each permittee in the Fund at permit renewal.

1698           1. For the purposes of this section, all planned expenditures shall be deducted from the  
1699 balance of the Fund during each calendar quarter, including ~~forfeitures~~ any forfeiture on  
1700 which engineering cost estimates have been prepared; but no money from the Fund has  
1701 actually been expended ~~from the Fund~~.

1702           2. ~~Should~~ If the actual expenditures from the Fund ~~be~~ are less than the engineering  
1703 cost estimate, ~~then~~ the difference shall be credited to the balance of the Fund during the  
1704 calendar quarter in which the final expenditure is made from the Fund to accomplish the  
1705 reclamation.

1706           B. In addition to the initial payments into the Fund described in subsection A ~~of this~~  
1707 ~~section, all operators that participate,~~ every operator who participates in the Fund shall furnish  
1708 to the Fund a bond ~~which~~ that meets the criteria of § ~~45.1-241~~ 45.2-xxx and regulations issued  
1709 pursuant thereto as follows:

1710           1. For ~~those~~ an underground mining ~~operations~~ operation participating in the Fund  
1711 prior to July 1, 1991, the amount of \$1,000 per acre covered by each permit. In no event shall  
1712 such total bond be less than \$40,000, except that on ~~permits which have~~ a permit that has

1713 completed all mining and for which a completion ~~reports have been~~ report was approved prior  
1714 to July 1, 1991, the total bond shall not be less than \$10,000.

1715 2. For an underground mining ~~operations~~ operation entering the Fund on or after July  
1716 1, 1991, and for any additional acreage bonded ~~on or~~ after ~~July 1, 1991~~ such date, the amount  
1717 of \$3,000 per acre. In no event shall the total bond for such underground ~~operations~~ operation  
1718 entering the Fund on or after July 1, 1991, be less than \$40,000.

1719 3. For any other coal mining ~~operations~~ operation participating in the Fund prior to  
1720 July 1, 1991, the amount of \$1,500 per acre covered by each permit. In no event shall such  
1721 total bond be less than \$100,000, except that on ~~permits which have~~ a permit that has  
1722 completed all mining and for which a completion ~~reports have been~~ report was approved prior  
1723 to July 1, 1991, the total bond shall not be less than \$25,000.

1724 4. For any other coal mining ~~operations~~ operation entering the Fund on or after July 1,  
1725 1991, and for any additional acreage bonded ~~on or~~ after ~~July 1, 1991~~ such date, the amount of  
1726 \$3,000 per acre. In no event shall the total bond for such ~~operations~~ operation entering the  
1727 Fund on or after July 1, 1991, be less than \$100,000.

1728 C. All fees and payments provided in this article shall be in addition to initial permit  
1729 application and anniversary payments provided pursuant to § ~~45.1-235~~ 45.2-xxx or any other  
1730 payments required in compliance with this chapter.

1731 D. Each Fund ~~participants~~ participant shall be allowed to post incremental bonds as set  
1732 forth in § ~~45.1-241~~ 45.2-xxx. Such bonds ~~will~~ shall be posted in annual increments according  
1733 to a schedule contained in the permit application and approved annually by the Director on the  
1734 anniversary date.

1735 E. Any mining operation participating in the Fund that has been in temporary  
1736 cessation for more than six months as of July 1, 1991, shall within 90 days of that date post  
1737 bond equal to the total estimated cost of reclamation for all portions of the permitted site  
1738 ~~which~~ that are in temporary cessation. Any mining operation participating in the Fund that has  
1739 been in temporary cessation for six months or less as of July 1, 1991, shall within 90 days  
1740 after the date on which the operation has been in temporary cessation for more than six

1741 months post bond equal to the total estimated cost of reclamation for all portions of the  
1742 permitted site ~~which~~ that are in temporary cessation. Any mining operation participating in  
1743 the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on  
1744 which the operation has been in temporary cessation for more than six months, post bond  
1745 equal to the total estimated cost of reclamation for all portions of the permitted site ~~which~~ that  
1746 are in temporary cessation. Such bond shall remain in effect throughout the remainder of the  
1747 period during which the site is in temporary cessation. At such time as the site returns to  
1748 active status, the bond posted under this subsection may be released, ~~provided~~ if the permittee  
1749 has posted bond pursuant to subsection B ~~of this section~~.

1750 **Drafting note: Language is updated for modern usage and technical changes are**  
1751 **made, including changes pursuant to § 1-227, which states that throughout the Code any**  
1752 **word used in the singular includes the plural and vice versa.**

1753 ~~§ 45.1-270.3:1. Repealed.~~

1754 **Drafting note: Repealed by Acts 1991, c. 495.**

1755 ~~§ 45.1-270.4~~ 45.2-xxx. Assessment of reclamation tax revenues for Fund.

1756 A. There is hereby levied a reclamation tax upon the production of coal by ~~operators~~  
1757 each operator participating in the Fund under ~~permits~~ a permit issued under this chapter as set  
1758 forth ~~herein~~ in this article.

1759 B. Thirty days after the end of each calendar quarter during which the total balance of  
1760 the Fund, including interest thereon, is less than \$20 million, ~~all operators~~ each operator shall  
1761 pay into the Fund an amount equal to:

1762 1. Four cents per clean ton of coal produced by a surface mining operation permitted  
1763 under this chapter.;

1764 2. Three cents per clean ton of coal produced by a deep mining operation permitted  
1765 under this chapter.;

1766 3. One and one-half cents per clean ton of coal processed or loaded by a preparation or  
1767 loading ~~facilities~~ facility permitted under this chapter.



1768 C. At the end of each calendar quarter during which the total balance in the Fund,  
1769 including interest thereon, exceeds \$20 million, payments under this section shall cease until  
1770 again required pursuant to subsection B.

1771 D. In no event shall any operator pay reclamation tax under this section on total coal  
1772 production in excess of five million tons per calendar year, regardless of the number of  
1773 permits held by that operator. In no event shall any operator holding more than one type of  
1774 permit pay tax at a rate in excess of five and one-half cents per ton on coal originally-~~surface~~  
1775 ~~mined~~ surface-mined by that operator or in excess of four and one-half cents per ton on coal  
1776 originally-~~deep-mined~~ deep-mined by that operator. Any operator holding one permit upon  
1777 which coal is mined and processed or loaded shall pay only the tax applicable under this  
1778 section to the surface mining operation or deep mining operation.

1779 **Drafting note: Technical changes are made, including changes pursuant to § 1-**  
1780 **227, which states that throughout the Code any word used in the singular includes the**  
1781 **plural and vice versa.**

1782 § ~~45.1-270.5~~ 45.2-xxx. Collection of reclamation tax and penalties for nonpayment.

1783 A. Payment of taxes under this section shall be made no later than ~~thirty~~ 30 days after  
1784 the end of each calendar quarter when taxes are applicable in accordance with § ~~45.1-270.4~~  
1785 45.2-xxx. The Division shall notify each operator holding a permit under ~~Chapter 19 (§ 45.1-~~  
1786 ~~226 et seq.) of this title~~ this chapter of those periods during which the taxes are applicable,  
1787 ~~and shall~~ provide forms for reporting coal production figures subject to taxes, and ~~shall~~ collect  
1788 all taxes for the Fund.

1789 B. Pursuant to regulations ~~promulgated~~ adopted by the Director, and consistent with  
1790 the provisions of § ~~45.1-248~~ 45.2-xxx, all funds paid into the Fund, and interest accrued to the  
1791 Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to §  
1792 ~~45.1-236~~ 45.2-xxx. From the interest accrued to the Fund, amounts sufficient to properly  
1793 administer the Fund are hereby appropriated to the Division. The Director shall also  
1794 ~~promulgate~~ adopt regulations for the implementation of this article and for the collection of  
1795 taxes hereunder.

1796 C. The Division, upon advance written request to an operator, may audit the relevant  
1797 books and records of the operator upon which taxes paid under this section are based. Failure  
1798 to consent to a reasonable request for the audit shall be deemed a violation of this article by  
1799 the operator.

1800 D. Upon the failure of an operator to pay taxes when due under this section, the  
1801 Division shall issue a notice of violation pursuant to [subsection B of § 45.1-245-B](#), [45.2-xxx](#).  
1802 The notice of violation shall state that upon failure of payment within ~~fifteen~~ [15](#) days  
1803 thereafter, the Division shall issue a cessation order to the operator for failure to abate the  
1804 notice of violation. Upon the issuance of the cessation order, the enforcement procedures set  
1805 forth in ~~§ 45.1-245 et seq.~~ [Article 2](#) shall apply. Civil penalties imposed upon an operator  
1806 pursuant to a violation of this article shall be placed in the Fund.

1807 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
1808 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
1809 **and includes the promulgation process. Technical changes are made.**

1810 ~~§ 45.1-270.5:1~~ [45.2-xxx](#). Forfeiture of bonds on operations participating in the Fund;  
1811 alternative remedies.

1812 A. Forfeiture of bonds of ~~operations~~ [an operation](#) participating in the Fund shall be  
1813 accomplished as set forth in ~~§ 45.1-247~~ [45.2-xxx](#) and the regulations ~~promulgated~~ [adopted](#) by  
1814 the Director.

1815 B. In addition to forfeiture, the Director may proceed against the permittee of ~~the a~~  
1816 surface coal mining operation, under the provisions of [subsection E of § 45.1-245-E](#), [45.2-xxx](#)  
1817 by filing a civil action for injunctive or other relief in any court of competent jurisdiction to  
1818 compel the permittee to perform the reclamation work in full compliance with this chapter,  
1819 the regulations, and ~~the~~ approved permit plans. Any injunctive relief shall be granted without  
1820 the necessity of pleading or proving inadequate remedy at law or irreparable harm, and no  
1821 bond shall be required.

1822 C. Proceedings under either subsection A or ~~subsection~~ B shall not constitute a waiver  
1823 by the Director to proceed under the other subsection, nor shall the commencement of action  
1824 under one subsection constitute an election to proceed solely under that subsection.

1825 **Drafting note: The term "promulgate regulations" is changed to "adopt**  
1826 **regulations" in keeping with recent title revisions because "adopt" is more widely used**  
1827 **and includes the promulgation process. Technical changes are made.**

1828 § ~~45.1-270.6~~ 45.2-xxx. Reinstatement to the Fund; recovery of Fund expenditures.

1829 A. An operator who has defaulted on any reclamation obligation and has thereby  
1830 caused the Fund to incur reclamation expenses ~~as a result thereof~~ shall not be eligible to  
1831 participate in the Fund thereafter until restitution for such default has been made. Compliance  
1832 with this requirement shall be a prerequisite to the filing by the operator of any new permit  
1833 application under this chapter but shall not affect the operator's ~~need~~ obligation to comply  
1834 with all other requirements of this chapter in applying for a permit.

1835 B. The Director may file a motion for judgment in any court of competent jurisdiction  
1836 against the permittee to recover all moneys expended by the Fund to accomplish ~~the a~~  
1837 reclamation. Such expenditures shall include ~~but not be limited to~~ construction costs,  
1838 engineering costs, administrative costs, and legal costs. In any action to recover these costs,  
1839 the defendant ~~may~~ shall not relitigate the facts giving rise to the forfeiture ~~nor may the~~  
1840 ~~defendant or~~ defend by claiming the forfeiture was improper.

1841 **Drafting note: Language is updated for modern usage and technical changes are**  
1842 **made. In subsection B, the phrase "but not limited to" is removed pursuant to § 1-218,**  
1843 **which states that throughout the Code "'Includes' means includes, but not limited to."**

1844 § ~~45.1-270.7~~ 45.2-xxx. ~~Coal Surface Mining Reclamation Fund Advisory Committee~~  
1845 ~~continued as~~ Coal Surface Mining Reclamation Fund Advisory Board.

1846 A. The ~~Coal Surface Mining Reclamation Fund Advisory Committee is continued and~~  
1847 ~~shall hereafter be known as the~~ Coal Surface Mining Reclamation Fund Advisory Board (the  
1848 Advisory Board) is established as an advisory board in the executive branch of state

1849 government. The purpose of the Advisory Board is to formulate recommendations for the  
1850 Director concerning oversight of the general operation of the Fund.

1851 B. The ~~Reclamation Fund~~ Advisory Board shall have a total membership of eight  
1852 members that shall consist of seven nonlegislative citizen members and one ex officio  
1853 member. Nonlegislative citizen members shall be appointed by the Governor and subject to  
1854 confirmation by the General Assembly, as follows: at least four ~~of whom~~ shall represent the  
1855 coal industry, one ~~of whom~~ shall be a representative of the Director, and two ~~of whom~~ shall  
1856 represent conservation interests and ~~such any~~ other public ~~and or~~ private interests as ~~may be~~  
1857 are appropriate in accordance with Article V of the Interstate Mining Compact (§ ~~45.1-271~~  
1858 ~~45.2-xxx~~). The Director of the Division or his designee shall ~~be a continuing~~ serve ex officio  
1859 with nonvoting ~~member of the Reclamation Fund Advisory Board~~ privileges and shall serve  
1860 as Secretary ~~thereto~~ to the Advisory Board. Nonlegislative citizen members of the Advisory  
1861 Board shall be citizens of the Commonwealth.

1862 C. The ex officio member of the Advisory Board shall serve a term coincident with his  
1863 term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for  
1864 the unexpired terms. Vacancies shall be filled in the same manner as the original  
1865 appointments.

1866 B.-D. The ~~voting nonlegislative citizen~~ members of the ~~Reclamation Fund~~ Advisory  
1867 Board ~~shall initially be appointed for terms of one, two, three, four, and five years, such terms~~  
1868 ~~to be assigned by lot. Thereafter, all members~~ shall be appointed for five-year staggered  
1869 terms. No person shall serve more than two consecutive terms. The remainder of any term to  
1870 which a member is appointed to fill a vacancy shall not constitute a term in determining the  
1871 member's eligibility for reappointment.

1872 C.-E. The ~~Reclamation Fund~~ Advisory Board shall annually elect a chairman and vice-  
1873 chairman from among its membership and shall formulate rules for its organization and  
1874 procedure. A majority of the members shall constitute a quorum.

1875 ~~D. F.~~ The voting nonlegislative citizen members of the ~~Reclamation Fund~~ Advisory  
1876 Board shall serve without compensation or reimbursement for expenses incurred in the  
1877 performance of their duties.

1878 ~~E. G.~~ The Reclamation Fund Advisory Board shall meet not less than twice each year  
1879 ~~for the purpose of formulating recommendations to the Director concerning oversight of the~~  
1880 ~~general operation of the Fund,~~ with such meetings held at the call of the chairman or  
1881 whenever the majority of the members so request.

1882 H. ~~The Reclamation Fund~~ Advisory Board shall ~~report~~ have the following powers and  
1883 duties:

1884 1. Report biannually to the Director and to the Governor on the status of the Fund ~~and~~  
1885 ~~shall recommend;~~ and

1886 2. Recommend to the Director regulations or changes ~~thereto~~ to the Fund for the  
1887 administration or operation of the Fund.

1888 I. The Department shall provide staff support to the Advisory Board. All agencies of  
1889 the Commonwealth shall provide assistance to the Advisory Board, upon request.

1890 J. The Director, ~~in his discretion,~~ may adopt the recommendations of the ~~Reclamation~~  
1891 ~~Fund~~ Advisory Board through regulatory action from time to time in accordance with the  
1892 provisions of ~~Chapter 19 (§ 45.1-226 et seq.)~~ this chapter and otherwise in accordance with  
1893 law.

1894 ~~F. K.~~ The Reclamation Fund Advisory Board shall serve as the advisory body required  
1895 by Article V of the Interstate Mining Compact (§ ~~45.1-271~~ 45.2-xxx).

1896 **Drafting note: The membership and activity language for the Coal Surface**  
1897 **Mining Reclamation Fund Advisory Board is updated to reflect preferred Code style.**  
1898 **An obsolete reference to the Coal Surface Mining Reclamation Fund Advisory**  
1899 **Committee is removed. Language is updated for modern usage and technical changes**  
1900 **are made.**

1901 #