

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 47

*An Act to amend and reenact §§ 10.1-571, 45.1-234, 45.1-261.1, and 45.1-361.2 of the Code of Virginia and to repeal Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ 45.1-198 through 45.1-220.5) of Title 45.1, relating to the surface mining of coal.*

[S 1014]

Approved February 22, 2013

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 10.1-571, 45.1-234, 45.1-261.1, and 45.1-361.2 of the Code of Virginia are amended and reenacted as follows:**

**§ 10.1-571. No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.**

The provisions of this article shall not limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1; or the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.), 17 (~~§ 45.1-198 et seq.~~) and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ 45.1-361.1 et seq.).

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

A. On and after eight months from the date on which a permanent state regulatory program is approved for ~~this the~~ Commonwealth by the Secretary, no person shall engage in or carry out any coal surface mining operations without having first obtained a permit to engage in the operations issued by the Director, in accordance with the approved state regulatory program, except that a person conducting coal surface mining operations under a valid permit issued by the Director pursuant to Chapter 47 (~~§ 45.1-198 et seq.~~) of ~~this title~~ 19 (~~§ 45.1-226 et seq.~~) may conduct operations beyond the period if an application for a new permit has been filed in accordance with the provisions of this chapter, but the initial administrative decision has not yet been rendered. Operations so conducted pending an administrative decision shall be subject to the penalties and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250, and 45.1-251 and the penalty and enforcement regulations implementing those sections; ~~provided that during the continuation of a permit issued under Chapter 47 of this title, there shall be no change in the performance standards required thereunder.~~

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

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

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

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

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

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

**§ 45.1-361.2. Regulation of coal surface mining not affected by chapter.**

Nothing in this chapter shall be construed as limiting the powers of the Director relating to coal surface mining operations and reclamation. The provisions of ~~Chapters 17 (§ 45.1-198 et seq.) and~~

*Chapter 19 (§ 45.1-226 et seq.) of this title, including but not limited to requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on areas for which a coal surface mining permit is in effect and shall be in addition to the requirements for gas, oil, or geophysical operations set forth in this chapter, except that well work and the operation of pipelines on areas which that have been reclaimed by the surface mine operator or the Director shall be treated as postmining uses. The Director shall give special consideration to the development and promulgation of variances from the postmining use requirements of Chapter 19 of this title for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (§ 45.1-226 et seq.) Chapter 19.*

**2. That Chapter 785 of the Acts of Assembly of 1972, as amended and carried by reference in the Code of Virginia as Chapter 17 (§§ 45.1-198 through 45.1-220.5) of Title 45.1, is repealed.**