

# VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

## CHAPTER 387

*An Act to amend the Code of Virginia by adding in Chapter 3 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1332 and 10.1-1333, by adding in Chapter 1 of Title 33.2 a section numbered 33.2-120, by adding in Article 2 of Chapter 2 of Title 33.2 a section numbered 33.2-221.1, by adding a title numbered 45.2, containing a subtitle numbered I, consisting of chapters numbered 1 through 4, containing sections numbered 45.2-100 through 45.2-402, a subtitle numbered II, consisting of chapters numbered 5 through 10, containing sections numbered 45.2-500 through 45.2-1051, a subtitle numbered III, consisting of chapters numbered 11 through 15, containing sections numbered 45.2-1100 through 45.2-1505, a subtitle numbered IV, consisting of a chapter numbered 16, containing sections numbered 45.2-1600 through 45.2-1649, and a subtitle numbered V, consisting of chapters numbered 17 through 21, containing sections numbered 45.2-1700 through 45.2-2119, by adding sections numbered 55.1-1820.1, 55.1-1951.1, and 55.1-2133.1, and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-624, and to repeal Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, relating to administration of the Department of Mines, Minerals and Energy, coal mining, mineral mines, gas and oil, and other sources of energy and energy policy.*

[S 1453]

Approved March 24, 2021

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

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1332 and 10.1-1333, by adding in Chapter 1 of Title 33.2 a section numbered 33.2-120, by adding in Article 2 of Chapter 2 of Title 33.2 a section numbered 33.2-221.1, by adding a title numbered 45.2, containing a subtitle numbered I, consisting of chapters numbered 1 through 4, containing sections numbered 45.2-100 through 45.2-402, a subtitle numbered II, consisting of chapters numbered 5 through 10, containing sections numbered 45.2-500 through 45.2-1051, a subtitle numbered III, consisting of chapters numbered 11 through 15, containing sections numbered 45.2-1100 through 45.2-1505, a subtitle numbered IV, consisting of a chapter numbered 16, containing sections numbered 45.2-1600 through 45.2-1649, and a subtitle numbered V, consisting of chapters numbered 17 through 21, containing sections numbered 45.2-1700 through 45.2-2119, by adding sections numbered 55.1-1820.1, 55.1-1951.1, and 55.1-2133.1, and by adding in Title 56 a chapter numbered 29, consisting of sections numbered 56-614 through 56-624, as follows:**

*Article 5.*

*Clean Coal Projects.*

**§ 10.1-1332. Definitions.**

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

*"Center" means the Virginia Center for Coal and Energy Research.*

*"Clean coal project" means any project that uses any technology, including a technology applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility that (i) will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products and is not in widespread use or (ii) is otherwise defined as clean coal technology pursuant to 42 U.S.C. § 7651n.*

**§ 10.1-1333. Permitting process for clean coal projects.**

*To the extent authorized by federal law, the Board shall implement permit processes that facilitate the construction of clean coal projects in the Commonwealth by, among such other actions as it deems appropriate, giving priority to processing permit applications for clean coal projects.*

**§ 33.2-120. Efforts to increase CAFE standards.**

*A. As used in this section, unless the context requires a different meaning, "CAFE standards" means the corporate average fuel economy standards for passenger cars and light trucks manufactured for sale in the United States that have been implemented pursuant to the federal Energy Policy and Conservation Act of 1975 (P.L. 94-163), as amended.*

*B. It is the policy of the Commonwealth to support federal action that provides for:*

*1. An increase in the CAFE standards from the current standard by promoting performance-based tax credits for advanced technology, fuel-efficient vehicles to facilitate the introduction and purchase of such vehicles; and*

*2. Market incentives and education programs to build demand for high-efficiency, cleaner vehicles, including tax incentives for highly efficient vehicles.*

**§ 33.2-221.1. Use of biodiesel and other alternative fuels in vehicles providing public transportation.**

A. As used in this section, unless the context requires a different meaning, "biodiesel fuel" means a renewable, biodegradable, mono-alkyl ester combustible liquid fluid fuel from agricultural plant oils or animal fats that meets the applicable American Society for Testing and Materials (ASTM) Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.

B. The Board shall encourage the use of biodiesel fuel and other alternative fuels, to the extent practicable, in buses and other vehicles used to provide public transportation in the Commonwealth.

TITLE 45.2.

MINES, MINERALS, AND ENERGY.

SUBTITLE 1.

ADMINISTRATION.

CHAPTER 1.

ADMINISTRATION.

Article 1.

Department of Mines, Minerals and Energy.

**§ 45.2-100. Definitions.**

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

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

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

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

"State Geologist" means the Commissioner of Mineral Resources and State Geologist appointed pursuant to § 45.2-107.

**§ 45.2-101. Certified mail; subsequent mail or notices may be sent by regular mail.**

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

**§ 45.2-102. Department of Mines, Minerals and Energy; appointment of Director.**

The Department of Mines, Minerals and Energy is established in the executive branch within the Secretariat of Commerce and Trade. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with the Governor's term.

**§ 45.2-103. Powers of Department.**

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

1. To employ the personnel required to carry out the purposes of this title;
2. To make and enter into any contract or agreement necessary or incidental to the performance of its duties and the execution of its powers under this title, including reciprocal agreements with responsible officers of other states and contracts with the private sector, the United States, other state agencies, and governmental subdivisions of the Commonwealth;
3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department may comply with any condition and execute any agreement that is necessary, convenient, or desirable;
4. To adopt regulations necessary or incidental to the performance of its duties or execution of its powers under this title or any other provision of law. Such regulations shall be adopted by the Department, the Chief, or the Director, as appropriate, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; and
5. To do all acts necessary or convenient to carry out the purposes of this title.

**§ 45.2-104. Powers and duties of Director.**

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

**§ 45.2-105. Establishment of divisions; division heads.**

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Reclamation, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, a Division of Energy, and a Division of Offshore Wind. The Director may establish other divisions as he deems necessary. Except as provided in § 45.2-508 with respect to the Chief of the Division of Mines, the Director shall appoint persons to direct the various functions and programs of each division and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

**§ 45.2-106. Department to serve as lead agency for inspections undertaken subsequent to the**

**issuance of a permit.**

Following the issuance of any permit under Chapter 10 (§ 45.2-1000 *et seq.*) or 12 (§ 45.2-1200 *et seq.*), the Department shall serve as the lead agency for enforcement of the provisions of the permit. Any other agency that has reviewed and approved, or not disapproved, a permit application prior to its approval by the Director shall contact the Director or his designee prior to making any routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be made, to schedule the inspection and shall accompany any employee of any agency other than the Department during any inspection by such other agency. However, nothing in this section shall apply in the event of a blackwater discharge, a failure of a waste treatment facility, or any situation that in the judgment of the State Water Control Board requires an inspection on an emergency or expedited basis.

**Article 2.****Division of Geology and Mineral Resources.****§ 45.2-107. Division of Geology and Mineral Resources; State Geologist.**

There is established in the Department a Division of Geology and Mineral Resources. The Director shall appoint a geologist of established reputation as the Commissioner of Mineral Resources and State Geologist to serve as chief executive and head officer of the Division. As used in this article, unless the context requires a different meaning, "Division" means the Division of Geology and Mineral Resources.

**§ 45.2-108. General powers and duties of State Geologist.**

The State Geologist shall exercise those powers and perform those duties, in relation to mineral resources, geology, and geophysical matters, that are conferred or imposed upon the Director by the provisions of this title, including powers and duties delegated to him by the Director. The State Geologist may also exercise and perform such other powers and duties as are lawfully delegated to him and such powers and duties as are conferred or imposed upon him by law.

**§ 45.2-109. Using or revealing proprietary information.**

Notwithstanding any provision of law to the contrary, neither the State Geologist nor any employee or agent of the Division shall make use of or reveal any proprietary information or statistic gathered from any source for any purpose other than that of this chapter, except with the express written consent of the source of such information or statistic. The State Geologist shall not reveal such information to the Director or any other employee of the Department who is not employed within the Division.

**§ 45.2-110. Powers and duties of the Division.**

The Division has the following powers and duties:

1. Examination of the geological formations of the Commonwealth and the resources contained therein, with special reference to both economic products and energy resources, including coal, ore, clay, feldspar, lime, natural gas, oil, cement, sand and gravel, stone, materials suitable for use in building and road construction, mineral water, other mineral substances, and geothermal energy resources.
2. Examination of latent resources and waste minerals to determine the best methods of utilizing them and study of the soils and weathered residuum as related to parent rock.
3. Maintenance of repositories for representative rock and mineral materials from various wells, mines, excavations, and naturally occurring exposures.
4. Maintenance of records and statistics of the mineral industry and geological conditions of the Commonwealth.
5. Performance of chemical and physical tests, including test borings, to acquire subsurface information relative to mineral deposits masked by soils and rock overburden.
6. Examination of the physical features of the Commonwealth with reference to their practical bearing upon the occupation and well-being of the people.
7. Preparation of special geological and economic maps and displays to illustrate the resources of the Commonwealth.
8. Preparation of regular and special reports, with necessary illustrations and maps, that embrace both a general and detailed description of the geology and mineral resources of the Commonwealth.
9. Consideration of such other scientific and economic questions that in the judgment of the Director are deemed of value to the people of the Commonwealth.
10. Arrangement for the investigation and reporting of the geology of the Commonwealth with the Director or the representative of the United States Geological Survey (USGS) in regard to cooperation between the USGS and the Department in topographic and geologic work when deemed necessary and of advantage to the Commonwealth. The Director may accept or reject the work of the USGS.
11. Participation in matters requiring advice and guidance sought by state agencies and institutions concerning geological and mineral resources as related to state lands.
12. Provision of basic research and the development of methods utilized in the determination of characteristics, structure, and origin for geological formations and economic mineral deposits.

**§ 45.2-111. Publication of reports.**

The Director may direct the publication of the reports of the Division, with proper illustrations and maps, and the reports shall be distributed as the interests of the Commonwealth and of science indicate.

**§ 45.2-112. Disposition of materials that have served purpose of the Division.**

Materials collected after having served the purpose of the Division shall be distributed to the educational institutions of the Commonwealth in the manner that the Director determines to be of the greatest advantage to the educational interests of the Commonwealth.

**§ 45.2-113. Immunity from prosecution for trespass.**

No criminal action for trespass shall lie against the State Geologist or any agent or employee of the State Geologist pursuant to any lawful act done in the performance of his duties, including entry upon the lands of any person for the purpose of performing such duties.

CHAPTER 2.

INTERSTATE MINING COMPACT.

**§ 45.2-200. Governor authorized to execute Interstate Mining Compact.**

The Governor is hereby authorized to execute, on behalf of the Commonwealth, a compact that is in form substantially as provided in § 45.2-201.

**§ 45.2-201. Interstate Mining Compact.**

INTERSTATE MINING COMPACT.

ARTICLE I

FINDINGS AND PURPOSES

A. The party states find that:

1. Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

2. The effects of mining on the availability of land, water, and other resources for other uses present special problems that properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

3. Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

4. Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

5. The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

B. The purposes of this compact are to:

1. Advance the protection and restoration of land, water, and other resources affected by mining.

2. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining.

3. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states that will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

4. Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.

5. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II

DEFINITIONS

As used in this compact:

"Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use but shall not include those aspects of deep mining not having significant effect on the surface and shall not include excavation or grading when conducted solely in aid of onsite farming or construction.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III

STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. *The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.*

2. *The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water.*

3. *The institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined lands.*

4. *The prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.*

#### ARTICLE IV POWERS

*In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, the Commission shall have power to:*

1. *Study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.*

2. *Study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining.*

3. *Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.*

4. *Gather and disseminate information relating to any of the matters within the purview of this compact.*

5. *Cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact.*

6. *Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.*

7. *Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.*

8. *Study and make recommendations relating to the safeguarding of access to resources that are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.*

#### ARTICLE V THE COMMISSION

A. *There is hereby created an agency of the party states to be known as the Interstate Mining Commission (the Commission). The Commission shall be composed of one commissioner from each party state who shall be the Governor thereof. Pursuant to the laws of his party state, each Governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the Commission. In any instance where a Governor is unable to attend a meeting of the Commission or perform any other function in connection with the business of the Commission, he shall designate an alternate from among the members of the advisory body required by this subsection who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the Governor to the Commission in such manner as its bylaws may provide.*

B. *The commissioners shall be entitled to one vote each on the Commission. No action of the Commission making a recommendation pursuant to subdivision 3, 7, or 8 of Article IV or requesting, accepting, or disposing of funds, services, or other property pursuant to this subsection, subsection G or H of this article, or Article VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the Commission is cast in favor thereof. All other action shall be by a majority of those present and voting, provided that action of the Commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The Commission may establish and maintain such facilities as may be necessary for the transacting of its business. The Commission may acquire, hold, and convey real and personal property and any interest therein.*

C. *The Commission shall have a seal.*

D. *The Commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Commission shall appoint an Executive Director and fix his duties and compensation. Such Executive Director shall serve at the pleasure of the Commission. The Executive Director, the Treasurer, and such other personnel as the Commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the Commission.*

E. *Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the Executive Director with the approval of the Commission shall appoint, remove, or discharge such*

personnel as may be necessary for the performance of the Commission's functions and shall fix the duties and compensation of such personnel.

F. The Commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the Commission shall be eligible for social security coverage in respect of old age and survivor's insurance, provided that the Commission takes such steps as may be necessary pursuant to the laws of the United States to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

G. The Commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

H. The Commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the Commission pursuant to this subsection or services borrowed pursuant to subsection G of this article shall be reported in the annual report of the Commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

I. The Commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The Commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the party states.

J. The Commission annually shall make to the Governor, legislature, and advisory body required by subsection A of this article of each party state a report covering the activities of the Commission for the preceding year and embodying such recommendations as may have been made by the Commission. The Commission may make such additional reports as it may deem desirable.

#### ARTICLE VI

##### ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The Commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations that the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the Commission.

#### ARTICLE VII

##### FINANCE

A. The Commission shall submit to the Governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

B. Each of the Commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the Commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the Commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning the value of minerals, ores, and other solid matter mined.

C. The Commission shall not pledge the credit of any party state. The Commission may meet any of its obligations in whole or in part with funds available to it under subsection H of Article V, provided that the Commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the Commission makes use of funds available to it under subsection H of Article V, the Commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

D. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

E. The accounts of the Commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the Commission.

F. Nothing contained herein shall be construed to prevent Commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the

Commission.

**ARTICLE VIII  
ENTRY INTO FORCE AND WITHDRAWAL**

*A. This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.*

*B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice in writing of the withdrawal to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.*

**ARTICLE IX  
EFFECT ON OTHER LAWS**

*Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.*

**ARTICLE X  
CONSTRUCTION AND SEVERABILITY**

*This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.*

**CHAPTER 3.  
INTERSTATE COMPACT TO CONSERVE OIL AND GAS.**

**§ 45.2-300. Governor authorized to execute Interstate Compact to Conserve Oil and Gas.**

*The Governor is hereby authorized and requested to execute, on behalf of the Commonwealth with any other state legally joining therein, a compact that is in form substantially as provided in § 45.2-301.*

**§ 45.2-301. Interstate Compact to Conserve Oil and Gas.**

**INTERSTATE COMPACT TO CONSERVE OIL AND GAS.**

*Article I.*

*This agreement may become effective within any compacting state at any time as prescribed by that state and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas, and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.*

*Article II.*

*The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.*

*Article III.*

*Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted to continue the same in force, to accomplish within reasonable limits the prevention of:*

- 1. The operation of any oil well with an inefficient gas-oil ratio.*
- 2. The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.*
- 3. The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.*
- 4. The creation of unnecessary fire hazards.*
- 5. The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.*
- 6. The inefficient, excessive, or improper use of the reservoir energy in producing any well.*

*The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.*

*Article IV.*

*Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted that it will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder shall be denied access to commerce and providing for stringent penalties for the waste of either oil or gas.*

*Article V.*

*It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or to create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.*

*Article VI.*

*Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission (the Commission), the duty of which shall be to*

make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and at such intervals as the Commission deems beneficial, it shall report its findings and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of the states and to recommend measures for the maximum ultimate recovery of oil and gas. The Commission shall adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission except (i) by the affirmative vote of the majority of the whole number of the compacting states represented at any meeting and (ii) by a concurring vote of a majority in interest of the compacting states at the meeting, such interest to be determined as follows: the vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during that period.

#### Article VII.

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject that state to financial responsibility to the other states joining herein.

#### Article VIII.

This compact shall continue in effect until Congress withdraws its consent. Any state joining herein may, upon 60 days' notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original that shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party thereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

#### **§ 45.2-302. Governor to act as representative to Interstate Oil Compact Commission.**

A. The Governor is hereby designated as the official representative of the Commonwealth on the Interstate Oil Compact Commission (the Commission) provided for in the compact ratified by this chapter. The Governor shall exercise and perform for the Commonwealth all powers and duties imposed by the compact upon representatives to the Commission.

B. The Director of the Department of Mines, Minerals and Energy is hereby designated as the assistant representative and shall act as the official representative of the Commonwealth on the Commission when the authority to so act is delegated to him by the Governor.

#### CHAPTER 4.

#### PRESUMPTIONS REGARDING OWNERSHIP.

#### **§ 45.2-400. Presumption that no coal, minerals, ore, or oil exists in certain lands.**

A. Subject to the provisions of subsection B, in any case in which either (i) a claim to coal, minerals, ore, oil, or subsurface substances in, on, or under lands in the Commonwealth or (ii) the right to enter such land for the purpose of exploring, mining, boring, and sinking shafts for such coal, minerals, ore, oil, or subsurface substances is derived or reserved by any writing made 35 years or more prior to the institution of the action pursuant to § 45.2-401, it shall be prima facie presumed that no coal, minerals, ore, oil, or subsurface substances exist in, on, or under such lands, except lands lying west of the Blue Ridge Mountains.

B. The provisions of subsection A shall apply only if (i) for a period of 35 years or more, such right to explore or mine has not been exercised, the person having such claim or right has never been charged with taxes thereon, all the taxes on the land have been charged to and paid by the person holding the land subject to such right to explore or mine, and no deed of bargain and sale of such claim or reservation in such mineral rights in the lands embraced in such claim has been recorded in the clerk's office of the county wherein the lands are located or (ii) the right to explore and mine has been exercised, the coal, minerals, ore, oil, or subsurface substances in or on the land have been exhausted, and the right of mining or boring has been abandoned for a period of 35 years or more.

#### **§ 45.2-401. Actions to extinguish certain claims.**

A. The owner or owners of land subject to a claim or right pursuant to § 45.2-400 separately or jointly may bring an action requesting the extinguishment of such claim or right. The person by whom such claim by such writing was derived or reserved, or his successors in title, shall be made a defendant by name so far as known or as defendants unknown if such successors in title are unknown. The venue for such action shall be as specified in subdivision 3 of § 8.01-261.

B. The court shall allow a period of not less than six months from the time the cause is docketed and set for hearing to elapse. During such time, the defendant may explore and discover any commercial coal, mineral, ore, oil, or subsurface substance.

C. In the absence of satisfactory evidence to the contrary, it shall be presumed that no commercial



coal, mineral, ore, oil, or subsurface substance exists in or on the land, and the court shall enter an order declaring the claim or right to be a cloud on the title and releasing the land therefrom and extinguishing such claim or right. However, if the defendant or defendants prove that a commercial coal, mineral, ore, oil, or subsurface substance exists in or on the land, the court shall require such coal, mineral, ore, oil, or subsurface substance to be charged with taxes according to law.

**§ 45.2-402. Presumption regarding use of underground space.**

A. Except as otherwise provided in the deed by which the owner of minerals derives title, the owner of minerals shall be presumed to be the owner of the shell, container chamber, passage, or space opened underground for the removal of the minerals, with full right to haul and transport minerals from other lands and to pass people, materials, equipment, water, and air through such space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage, or space opened underground by the owner of minerals for any such purpose. The provisions of this subsection shall not affect any contractual obligation or agreement entered into prior to July 1, 1981.

B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate, unless expressly excepted by the instrument creating the mineral ownership or lease interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal.

1. Any such shell, container chamber, passage, space, or void opened underground that is within the boundaries of a mine permit issued under this title may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

2. Any such shell, container chamber, passage, space, or void opened underground that is located in a sealed mine for which a mining permit no longer exists may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved only with the consent of the owner of such shell, container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use. In determining whether an offer of compensation is reasonable, a court shall be guided by the compensation set forth in other leases for the use of mine voids as is customary in the area.

C. No provision of subdivision B 1 or 2 shall (i) affect any provision contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; (ii) alter any contract entered into prior to July 1, 2012, that provides for the payment of compensation from the lessee to the lessor expressly for the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; or (iii) have any bearing on or application to any determination of ownership rights in natural gas or coalbed methane.

SUBTITLE II.

COAL MINING.

PART A.

COAL MINES GENERALLY.

CHAPTER 5.

COAL MINE SAFETY ACT.

Article 1.

General Provisions.

**§ 45.2-500. Coal Mine Safety Act.**

For purposes of this title, this chapter and Chapters 7 (§ 45.2-700 et seq.), 8 (§ 45.2-800 et seq.), and 9 (§ 45.2-900 et seq.) shall be known as the Coal Mine Safety Act.

**§ 45.2-501. Definitions.**

As used in the Coal Mine Safety Act, unless the context requires a different meaning:

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use, or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank that requires emergency action in order to prevent failure or that causes individuals to evacuate an area, or failure of an impoundment, refuse pile, or culm bank; (xi) damage to hoisting equipment in a shaft or slope that endangers an individual or interferes with use of the equipment for more than 30 minutes; (xii) an event at a mine that causes death or bodily injury to any individual not at a mine at the time the event occurs; and (xiii) the unintentional fall of highwall that entraps equipment for more

than 30 minutes.

"Active area" means any place in a mine that is ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of miners in a mine.

"Approved" means, with reference to a device, apparatus, equipment, condition, method, course, or practice, approved in writing by the Chief or the Director.

"Authorized person" means a person who is assigned by the operator or agent to perform a specific type of duty or to be at a specific location in the mine and is trained and has demonstrated the ability to perform such duty safely and effectively.

"Auxiliary fan" means a supplemental underground fan installed to increase the volume of air to a specified location for the purpose of controlling dust, methane, or air quality.

"Board" means the Board of Coal Mining Examiners established pursuant to Article 3 (§ 45.2-515 et seq.).

"Cable" means (i) a stranded conductor, known as single-conductor cable, or (ii) a combination of conductors insulated from one another, known as multiple-conductor cable.

"Certified person" means a person who holds a valid certificate from the Board of Coal Mining Examiners authorizing him to perform the task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Coal mine" means a surface coal mine or an underground coal mine.

"Coal Mine Safety Act" or "the Act" means this chapter and Chapters 7 (§ 45.2-700 et seq.), 8 (§ 45.2-800 et seq.), and 9 (§ 45.2-900 et seq.) and includes any regulations adopted thereunder, where applicable.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Experienced surface miner" means a person with six months or more of experience working at a surface mine or the surface area of an underground coal mine.

"Experienced underground miner" means a person with six months or more of underground coal mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 91-173, as amended by 95-164), and regulations adopted thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or electrical equipment and earth or to some conducting body that serves in place of earth.

"Grounded" means connected to earth or to some connecting body that serves in place of earth.

"Hazardous condition" means a condition that is likely to cause death or serious personal injury to any person exposed to such condition.

"Imminent danger" means the existence of any condition or practice in a mine that could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which (a) coal or minerals have not been excavated or processed or (b) work, other than examination by a certified person or emergency work to preserve the mine, has not been performed for a period of 30 days at an underground coal mine or for a period of 60 days at a surface mine; (ii) for which a valid license is in effect; and (iii) at which reclamation activities have not been completed.

"Inexperienced underground miner" means a person with less than six months of underground coal mining experience.

"Intake air" means air that has not passed through the last active working place of the split of any working section or any worked-out area, whether pillared or nonpillared, and by analysis contains at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide and does not contain a hazardous quantity of flammable gas or a harmful quantity of poisonous gas.

"Interested persons" means members of the mine safety committee and other duly authorized representatives of the employees at a mine, MSHA employees, mine inspectors, and, to the extent required by the Act, any other person.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit and from which cross entries, room entries, or rooms are turned.

"Mine" means any underground coal mine or surface coal mine. Mines that are adjacent to each other and under the same management and that are administered as distinct units are considered separate mines. A site is not considered a mine unless the coal extracted or excavated from it is offered for sale or exchange or used for any other commercial purpose. The area in which coal is excavated under an exemption to the permitting requirements of § 45.2-1009 is not a mine.

*"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.*

*"Mine foreman" means a person who holds a valid certificate of qualification as a foreman duly issued by action of the Board of Coal Mining Examiners.*

*"Mine inspector" means a public employee assigned by the Chief or the Director to make mine inspections as required by the Act and other applicable laws.*

*"Miner" means any individual working in a mine.*

*"Mineral" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and any mineral that occurs naturally in liquid or gaseous form.*

*"Monthly" means, unless otherwise stated, occurring any time during the period of the first through the last day of a calendar month.*

*"Mine Safety and Health Administration" or "MSHA" means the federal Mine Safety and Health Administration.*

*"Operator" means any person who operates, controls, or supervises a mine or any independent contractor performing services or construction at a mine.*

*"Panel entry" means a room entry.*

*"Permissible" means a device, process, equipment, or method classified as "permissible" by MSHA, when such classification is adopted by the Chief or the Director, and includes all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by MSHA unless otherwise expressly stated in the Act.*

*"Return air" means air that has passed through (i) the last active working place on each split or (ii) worked-out areas, whether pillared or nonpillared.*

*"Room entry" means any entry or set of entries from which rooms are turned.*

*"Serious personal injury" means any injury that has a reasonable potential to cause death or any injury other than a sprain or strain that requires an admission to a hospital for 24 hours or more for medical treatment.*

*"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators, and transformers.*

*"Surface coal mine" means (i) the pit and other active and inactive areas of surface extraction of coal; (ii) on-site preparation plants, shops, tipples, and related facilities appurtenant to the extraction and processing of coal; (iii) surface areas for the transportation and storage of coal extracted at the site; (iv) impoundments, retention dams, tailing ponds, and refuse disposal areas appurtenant to the extraction of coal from the site; (v) equipment, machinery, tools, and other property used in or to be used in the extraction of coal from the site; (vi) private ways and roads appurtenant to such areas; and (vii) the areas used to prepare a site for surface coal extraction activities. A site commences being a surface coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity that does not disturb the surface and ceases to be a surface coal mine upon completion of initial reclamation activities.*

*"Travel way" means a passage, walk, or way regularly used and designated for persons to go from one place to another.*

*"Underground coal mine" means (i) the working face and other active and inactive areas of underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines, and tunnels connected to such areas; (iii) on-site preparation plants, shops, tipples, and related facilities appurtenant to the excavation and processing of coal; (iv) on-site surface areas for the transportation and storage of coal excavated at the site; (v) impoundments, retention dams, and tailing ponds appurtenant to the excavation of coal from the site; (vi) equipment, machinery, tools, and other property, on the surface and underground, used in or to be used in the excavation of coal from the site; (vii) private ways and roads appurtenant to such areas; (viii) the areas used to prepare a site for underground coal excavation activities; and (ix) areas used for the drilling of vertical ventilation holes. A site commences being an underground coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity and ceases to be an underground coal mine upon completion of initial reclamation activities.*

*"Weekly" means, unless otherwise stated, occurring any time during the period of Sunday through Saturday of a calendar week.*

*"Work area" means an area of a surface coal mine in production or being prepared for production and an area of the mine that may pose a danger to miners at such area.*

*"Worked-out area" means an area where underground coal mining has been completed, whether pillared or nonpillared, excluding developing entries, return air courses, and intake air courses.*

*"Working face" means any place in a mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle.*

*"Working place" means the area of an underground coal mine in by the last open crosscut.*

*"Working section" means all areas from the loading point of a section to and including the working faces.*

**§ 45.2-502. Safety and health.**

*In safety and health matters, all miners are to be governed by the Act, Article 4 (§ 45.2-617 et seq.) of Chapter 6, and any other sections of the Code relating to the safety and health of miners and regulations adopted by the Department.*

**§ 45.2-503. Special safety rules.**

*The operator of each mine has the right to adopt special safety rules for the safety and operation of his mine, covering the work pertaining to the mine inside and outside of such mine. Such special safety rules shall not be in conflict with the provisions of the Act and, when established, shall be posted at some conspicuous place about the mine where the rules may be seen by all miners at such mine or in lieu thereof shall be furnished by the operator as a printed copy to each of the miners.*

**§ 45.2-504. Age requirement to work in mines.**

*A. No person under 18 years of age shall be permitted to work in or around any mine.*

*B. No operator, agent, or mine foreman shall make a false statement as to the age of any person under 18 years of age applying for work in or around any mine.*

**§ 45.2-505. Prohibited acts by miners or other persons; miners to comply with law.**

*A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct any airway; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution or a warning sign or barricade; or (vi) disobey any order issued pursuant to the provisions of the Act.*

*B. Each miner at any mine shall comply fully with the provisions of the Act and other mining laws of the Commonwealth, including regulations adopted by the Department or the Board, that pertain to his duties.*

*C. Any individual shall, upon the order of the Chief, complete training that addresses the subject of any violation issued to the individual as a condition for abatement of the violation.*

**§ 45.2-506. Safety materials and supplies.**

*It is the duty of each operator or agent to keep on hand at all times at each mine, or within convenient distance of each mine, a sufficient quantity of all materials and supplies required to preserve the safety of miners, as required by the Act. If for any reason the operator or agent cannot procure the necessary materials or supplies, he shall cause all miners to withdraw from the mine, or from the affected portion of the mine, until such materials or supplies are received.*

**§ 45.2-507. Notifying miners of violations; compliance with Act.**

*A. The operator and his agent shall cooperate with the mine foreman and other officials in the discharge of their duties as required by the Act. Such operator and agent shall direct the mine foreman and all other miners employed at the mine to comply with all provisions of the Act, especially when the attention of such operator or agent is called by the Chief, the Director, or a mine inspector to any violation of the Act.*

*B. The operator of any mine or his agent shall operate each of his mines at all times in full conformity with the Act and any other mining law of the Commonwealth, including regulations adopted by the Department or the Board. This requirement shall not relieve any other person who is subject to the provisions of the Act from his duty to comply with the requirements of the Act.*

*C. Nothing in the Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.*

*D. No operator, agent, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to the Act.*

*E. The operator or his agent shall fully comply with any action plan required by the Chief to address hazardous conditions or practices.*

**Article 2.**

**Chief of the Division of Mines of the Department and Mine Inspectors.**

**§ 45.2-508. Appointment of Chief.**

*The Chief of the Division of Mines of the Department of Mines, Minerals and Energy shall be appointed by the Governor. The Chief is the head of the Division of Mines and is under the direction of and reports to the Director.*

**§ 45.2-509. Qualification of Chief.**

*The Chief shall have a thorough knowledge of the various systems of working and ventilating coal mines, the nature and properties of mine gases and methods for their detection and control, the control of mine roof, methods of rescue and recovery work in mine disasters, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in mines, and mine haulage. The Chief shall possess such experience or educational background in management as determined necessary by the Governor and shall be at least 30 years of age.*

**§ 45.2-510. Affiliations of Department personnel with labor union, coal company, etc.; interest in coal mine; inspections of mines where inspector previously employed.**

A. Neither the Chief nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating coal company, operators' association, or labor union or fail to comply with the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Neither the Chief nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any coal mine, nor shall the Chief or any other officer while in office own any stock in a corporation that owns a coal mine either directly or through a subsidiary.

B. Neither the Chief nor any mine inspector shall perform an inspection at any mine at which he was last employed for a period of two years following termination of his employment.

**§ 45.2-511. Appointment and general qualifications of mine inspectors.**

A. Each mine inspector shall be appointed by the Director. B. Each mine inspector shall (i) be at least 25 years of age, (ii) be of good moral character and temperate habits, (iii) hold a certificate as a mine foreman, and (iv) hold a certificate as a mine inspector issued by the Board.

**§ 45.2-512. Qualifications of coal mine inspectors.**

A. Each mine inspector conducting inspections of underground coal mines shall have a thorough knowledge of the various systems of working and ventilating underground coal mines; the nature and properties of mine gases and methods for their detection and control; the control of mine roof and ground control; methods of rescue and recovery work in mine disasters; the application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; methods for preventing gas and dust explosions in mines; and mine haulage.

B. Each mine inspector conducting inspections of surface coal mines shall have a thorough knowledge of the various systems of working surface coal mines, the nature and properties of mine gases and methods of their detection and control, ground control, methods of rescue and recovery work in surface mine disasters, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, methods for preventing gas and dust explosions in surface facilities on mine property, and mine haulage.

**§ 45.2-513. Duties of the Chief; penalty.**

A. The Chief shall (i) supervise execution and enforcement of all laws, including regulations adopted by the Department or the Board, pertaining to the health and safety of persons employed within or at coal mines within the Commonwealth and the protection of property used in connection therewith and (ii) perform all other duties required pursuant to the Act.

B. The Chief shall keep a record of all inspections of coal mines made by him and the mine inspectors. The Chief shall make a comprehensive report to the Director. The Chief shall also keep a permanent record of such inspections, properly indexed, and such record shall at all times be open to inspection by any citizen of the Commonwealth.

C. The Chief may compel individuals to complete training that addresses the subject of a violation issued to the individual as a condition for abatement of the violation.

D. The Chief may require operators to submit for approval action plans to address hazardous conditions or practices.

E. For the purpose of investigating (i) an accident or (ii) a willful act resulting in a notice of violation or closure order, the Chief may compel the attendance of witnesses and administer oaths or affirmations. Any person who knowingly provides any false statement, representation, or certification during such investigation is guilty of a Class 1 misdemeanor.

F. The Chief shall supervise execution and enforcement of all reciprocal agreements made with responsible officers of other states that implicate any part of the Act.

**§ 45.2-514. Technical specialists.**

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation, and other mine specialties. Each technical specialist shall have all the qualifications of a mine inspector plus the specialized knowledge required in his field. A technical specialist shall advise the Director and mine operators in the areas of his specialty and shall have the power of an inspector to issue a closure order only in a case of imminent danger.

Article 3.

Certification of Coal Mine Workers.

**§ 45.2-515. Board of Coal Mining Examiners; purpose.**

The Board of Coal Mining Examiners (the Board) is established as a policy board in the executive branch of state government. The purpose of the Board is to issue certificates authorizing the performance of certain tasks.

**§ 45.2-516. Board membership; terms; meetings.**

A. The Board of Coal Mining Examiners shall have a total membership of five members that shall consist of four nonlegislative citizen members and one ex officio member. The four nonlegislative citizen members shall be appointed by the Governor as follows: one who is a miner who holds a first-class mine foreman's certificate with at least five years of experience in underground coal mining and who is employed at an underground coal mine in the Commonwealth in a nonmanagerial, nonsupervisory

capacity at the time of appointment; one who is a miner with at least five years of experience in surface coal mining and is employed at a surface coal mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment; one who holds a first-class mine foreman's certificate with at least five years of experience in the operation of underground coal mines and is (i) an operator of an underground coal mine, (ii) an officer or director of a corporation operating an underground coal mine, (iii) a general partner of a partnership operating an underground coal mine, or (iv) an employee in a managerial or supervisory capacity of an operator of an underground coal mine in the Commonwealth at the time of appointment; and one who has at least five years of experience in the operation of surface coal mines and is (a) an operator of a surface coal mine, (b) an officer or director of a corporation operating a surface coal mine, (c) a general partner of a partnership operating a surface coal mine, or (d) an employee in a managerial or supervisory capacity of an operator of a surface coal mine in the Commonwealth at the time of appointment. Nonlegislative citizen members of the Board shall be residents of the Commonwealth. The Chief or his designee shall serve *ex officio* with voting privileges.

B. Members of the Board shall be appointed for terms of four years. The Chief shall serve a term coincident with his term of office. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term. All members may be reappointed.

C. The Chief shall serve as chairman of the Board.

D. The Board shall meet at least once a year and shall be called by the Chief to meet at such other times as he deems necessary. The Board shall meet at a place and at times as designated by the Chief and the Board shall remain in session until its work is completed, but no one session of the Board shall continue more than three days.

**§ 45.2-517. Board compensation; expenses.**

Nonlegislative citizen members of the Board of Coal Mining Examiners shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All such nonlegislative citizen members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of such members shall be provided by the Coal Mining Examiners' Fund established in § 45.2-523.

**§ 45.2-518. Records of the Board.**

The Chief shall preserve in his office a record of the meetings and transactions of the Board of Coal Mining Examiners and of all certificates issued by the Board.

**§ 45.2-519. Nominations for the Board.**

Nominations for appointments to the Board of Coal Mining Examiners may be submitted to the Governor by the Director and each organization of coal miners and coal industry interests in the Commonwealth. Nominations are to be made to the Governor by June 1 of the year in which the terms of appointments of members expire. In no case shall the Governor be bound to make any appointment from the nominations submitted.

**§ 45.2-520. Certification of certain persons employed in coal mines; powers and duties of the Board.**

A. The Board of Coal Mining Examiners may require certification of persons who work in coal mines and persons whose duties and responsibilities in relation to coal mining require competency, skill, or knowledge in order to perform in a manner consistent with the preservation of the health and safety of persons and property. Each of the following certificates shall be issued by the Board, and a person who holds such a certificate is authorized to perform the tasks that the Act or any regulation adopted by the Board or by the Department requires to be performed by such certified person:

1. First-class mine foreman;
2. First-class shaft or slope foreman;
3. Surface foreman;
4. Preparation plant foreman;
5. Electrical maintenance foreman;
6. Dock foreman;
7. Top person;
8. Underground shot firer;
9. Surface blaster;
10. Hoisting engineer;
11. Electrical repairman;
12. Automatic elevator operator;
13. Mine inspector;
14. Qualified gas detector;
15. Diesel engine mechanic;
16. Diesel engine mechanic instructor;
17. First aid instructor;
18. Advanced first aid;

19. Chief electrician; and

20. General coal miner.

B. Certification shall also be required for any additional tasks that the Board requires by regulation.

C. The Board may adopt regulations necessary or incidental to the performance of duties or the execution of powers conferred under this title. Such regulations shall be adopted in accordance with the provisions of Article 2 (§ 2.2-4006 *et seq.*) of the Administrative Process Act.

D. The Board may adopt regulations regarding on-site examinations of mine foremen conducted by mine inspectors pursuant to § 45.2-528.

**§ 45.2-521. Examinations required for Coal Mining Certifications.**

A. The Board of Coal Mining Examiners may require the examination of an applicant for certification; however, the Board shall require the examination of an applicant for the mine inspector certification. The Board may require other information from each applicant as necessary to ascertain competency and qualifications for each task. Except as specifically provided by the Act, the Board shall prescribe the qualifications for any certification. The examinations shall be conducted under regulations that the Board shall adopt. Such regulations, when adopted, shall (i) be made a part of the permanent record of the Board, (ii) be periodically published, and (iii) be of uniform application to all applicants.

B. Any certificate issued by the Board shall be valid from the date of issuance unless and until it has been suspended pursuant to § 45.2-527 or revoked by the Board pursuant to § 45.2-528.

**§ 45.2-522. Performance of certain tasks by uncertified persons; penalty.**

It is unlawful for any person to perform any task requiring certification by the Board of Coal Mining Examiners unless he has been certified. It is also unlawful for an operator or his agent to permit any uncertified person to perform such task. A violation of this section constitutes a Class 1 misdemeanor. Each day of operation without a required certification constitutes a separate offense.

**§ 45.2-523. Coal Mining Examiners' Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mining Examiners' Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to § 45.2-524, together with moneys collected pursuant to §§ 45.2-525 and 45.2-526, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of covering the costs of administering the miner certification, the cost of printing certificates and other necessary forms, and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Chief. The Chief shall keep accounts and records concerning the receipts and expenditures of the Fund as required by the Auditor of Public Accounts.

**§ 45.2-524. Examination fees.**

A reasonable fee in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of the examination. Fees collected shall be deposited in the Coal Mining Examiners' Fund created by § 45.2-523.

**§ 45.2-525. Replacement of lost or destroyed certificates.**

If any certificate issued by the Board of Coal Mining Examiners is lost or destroyed, the Chief may supply a copy such certificate to the person to whom it was issued, upon the payment of a reasonable fee in an amount set by the Board not to exceed \$10, so long as it has been established to his satisfaction that the loss or destruction actually occurred and that the person seeking such copy was the holder of such certificate.

**§ 45.2-526. Reciprocal acceptances of other certifications.**

A. In lieu of conducting an examination prescribed by law or regulation, the Board of Coal Mining Examiners may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in the Commonwealth, so long as (i) the Board finds that the requirements for certification in such state are substantially equivalent to those of the Commonwealth and (ii) holders of certificates issued by the Board are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Board and without additional testing, training, or other requirements not directly related to program administration.

B. If the issuing authority in another state has revoked or suspended a certificate of a person who holds a similar Virginia certificate issued pursuant to this section, the person shall notify the Chief of such action by the other state within 10 days of such action. The Chief shall schedule a hearing of the Board to determine whether his Virginia certificate shall be revoked or suspended.

**§ 45.2-527. Continuing education requirements.**

A. The Board of Coal Mining Examiners shall adopt regulations establishing requirements for programs of continuing education for holders of certificates. The Board shall establish (i) the content and amount of continuing education to be required for maintaining certification, (ii) parameters for the

content of continuing education programs, (iii) procedures for approving continuing education programs and sponsors, (iv) distribution to holders of certificates of appropriate information regarding continuing education requirements, (v) provisions allowing surplus hours of continuing education to be carried forward from one period to meet the requirements for the next period, (vi) procedures for determining compliance with continuing education requirements, (vii) requirements for a certificate holder to provide the Board with his current address and such further administrative information as may be reasonable, and (viii) the length of time a certificate may be suspended for failure to comply with continuing education requirements before such certificate shall be revoked. The Board may also establish by regulation a fee to recover the reasonable costs of reissuing certificates or otherwise ascertaining that the requirements of this section have been satisfied.

B. A certificate issued by the Board of Coal Mining Examiners shall be suspended if the holder fails to comply with the continuing education requirements established by the Board. The suspension shall be vacated upon compliance with the continuing education requirements. However, if the holder of a certificate does not comply with the continuing education requirements within the period of time established by the Board, the certificate shall be revoked.

**§ 45.2-528. Board action; suspend, revoke, or take other action.**

A. The Board of Coal Mining Examiners may suspend, revoke, or take other action regarding any certificate upon finding that (i) the holder has (a) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in § 45.2-527, (b) been intoxicated while on duty, (c) neglected his duties, (d) violated any provision of the Act or any other coal mining law of the Commonwealth, or (e) used any controlled substance without the prescription of a licensed prescriber or (ii) other sufficient cause exists. The Board shall also suspend, revoke, or take other action regarding the first-class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine that he is responsible for implementing when examined on-site by a mine inspector in accordance with guidelines adopted by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

B. The Board may act to suspend, revoke, or take other action regarding any certificate upon the presentation of written charges alleging prohibited conduct set forth in subsection A by (i) the Chief or the Director or his designated agent; (ii) the operator of a mine at which such person is employed; or (iii) 10 persons employed at the mine at which such person is employed, or, if fewer than 10 persons are employed at the mine, a majority of the employees at the mine. The Board may act on its own initiative to suspend, revoke, or take other action on any certificate for grounds set forth in clause (i) (a) of subsection A.

C. Any person holding a certificate issued by the Board shall report to the Chief within 30 days of any criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber. This conviction shall result in the immediate temporary suspension of all certificates held by such person pending a hearing before the Board.

D. Any miner present at any mine shall be deemed to have given consent to reasonable search, at the direction of the Chief by employees of the Department, of his person and his personal property located at the mine. Such search shall be limited to the investigation of potential violations of the Act.

E. All information regarding substance abuse test results of certified persons, written or otherwise, received by the Department or Board shall be confidential. Any hearing of the Board in which such information is presented shall be conducted as a closed session in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. An affirmative vote of a majority of members of the Board who are qualified to vote is required for any action to suspend, revoke, or take other action regarding a certificate.

G. Prior to suspending, revoking, or taking other action regarding a certificate, the Board shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing may be conducted by the Board or, in the Board's discretion, by a hearing officer as provided in Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to § 45.2-556, (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to § 45.2-565 shall be conducted within 60 days of the temporary suspension. The Board shall make every effort to hold the hearing within 40 days of the temporary suspension.

I. Any person who has been aggrieved by a decision of the Board shall be entitled to judicial review



of such decision. Appeals from such decisions shall be conducted in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

**§ 45.2-529. Reexamination.**

The holder of a certificate revoked pursuant to § 45.2-528 shall be entitled to examination by the Board of Coal Mining Examiners after three months have elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist. However, no person convicted of violating § 45.2-848 or 45.2-849, subsection A of § 45.2-856, or § 45.2-857 shall be eligible for examination for a period of not less than one year nor more than three years following such conviction, such period to be set by the Board in its discretion at the time of revocation of the certificate.

**§ 45.2-530. General coal miner certification.**

A. Every person working in a coal mine in the Commonwealth shall hold a general coal miner certificate issued by the Board of Coal Mining Examiners. The Board of Coal Mining Examiners shall issue a general coal miner certificate upon submittal of a complete application.

B. Each applicant for a general coal miner certificate who has not been employed to work in a Virginia coal mine prior to January 1, 1996, shall prove to the Board that he has knowledge of first aid practices and has a general working knowledge of the provisions of the Act, and applicable regulations, pertaining to coal mining health and safety. Each applicant shall have completed the miner training requirements of 30 C.F.R. Part 48 or submit proof of at least one year of experience in a coal mine prior to issuance of the general coal miner certificate.

**§ 45.2-531. First-class mine foreman certification.**

A. The operator of any coal mine where three or more persons work during any part of a 24-hour period shall employ a mine foreman. The operator shall employ as a mine foreman only a person holding a first-class mine foreman certificate. The holder of such certificate shall present the certificate, or a copy thereof, to the operator where he is employed. Such operator shall file the certificate or its copy in the office at the mine and make it available for inspection by interested persons.

B. The holder of a first-class mine foreman certificate shall be authorized to act as foreman for any underground coal mine.

C. An applicant for a first-class mine foreman certificate shall be at least 23 years of age and shall have had at least five years of experience in a coal mine, at least three years of which shall have been in an underground coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of practical experience required. If the applicant meets the above requirements, makes 85 percent or more on each of the subjects of the written examination, and passes required map and gas examinations, he shall be entitled to a first-class mine foreman certificate. The written examination shall address, among other relevant topics, the theory and practice of coal mining; the nature and properties of noxious, poisonous, and explosive gases and methods for their detection and control; the requirements of the coal mining laws of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners; and the responsibilities and duties of a mine foreman under state law.

D. Each candidate for certification as a first-class mine foreman shall complete the course or courses of instruction in first aid as provided in subsection A of § 45.2-579 and pass an examination relating thereto, approved by the Board of Coal Mining Examiners.

**§ 45.2-532. Surface foreman certification.**

A. An applicant for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience in a coal mine, at least three years of which shall have been in a surface coal mine. A graduate of an approved course in mining engineering at a baccalaureate institution of higher education shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of required practical experience. Each applicant shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making 85 percent or more on the written examination. In addition, each applicant shall pass the examination in gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

B. Each candidate for certification as a surface foreman shall complete, at a minimum, a 24-hour course of instruction in advanced first aid taught by a certified advanced first aid instructor in accordance with subsection A of § 45.2-579 and pass an examination relating thereto approved by the Board. No course or examination shall be required of a candidate holding a current higher level of emergency medical certification from the State Department of Health.

**§ 45.2-533. Chief electrician certification.**

Each applicant for a chief electrician certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of electricity that pertains to coal mining. In addition, each applicant shall pass the examinations in first

aid and gas detection. The holder of a chief electrician certificate issued by the Board may act as chief electrician in any coal mine.

**§ 45.2-534. Top person certification.**

Each applicant for a top person certificate shall demonstrate to the Board of Coal Mining Examiners by written and oral examination that he has a thorough knowledge of the theory and practice of shaft and slope mine construction. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a top person certificate issued by the Board may act as top person in any coal mine.

Article 4.

Licensing for Operation of Coal Mines.

**§ 45.2-535. License required for operation of a coal mine; term.**

A. No person shall engage in the operation of any coal mine within the Commonwealth without first obtaining a license for the operation of a coal mine from the Department. A license for the operation of a coal mine shall be required prior to commencement of the operation of a mine. A separate license is required for each mine operated. Licenses shall be in a form that the Director prescribes. The license shall be posted in a conspicuous place near the main entrance to the mine. The license shall not be transferable, and every change in ownership of a mine shall be reported to the Department as provided in subsection B of § 45.2-540.

B. Each license for the operation of a coal mine shall be valid for a period of no more than one year following the date of issuance. License renewal shall be obtained annually by the anniversary of the date of issuance.

C. Each application for a license for the operation of a coal mine or a renewal or transfer of a license for the operation of a coal mine shall be submitted to the Department accompanied by a fee, payable to the State Treasurer, of \$350.

**§ 45.2-536. Coal Mine Operator License Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Mine Operator License Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to the provisions of subsection C of § 45.2-535 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of purchasing or commissioning safety equipment, safety training, safety education, or any expenditure to further the safety program in the mining industry. All expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-537. Application for license for the operation of a coal mine.**

A. An application for a license for the operation of a coal mine shall be submitted by the person who will be the operator of the mine. No application for a license or a renewal thereof shall be considered complete unless it contains the following:

1. The identity of the operator of the mine.

a. If the operator is a sole proprietorship, the operator shall state (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a 20 percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record, and telephone number of the proprietorship.

b. If the operator is a partnership, the operator shall state (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a 20 percent or greater ownership interest; (v) the full names and addresses of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a 20 percent or greater ownership interest.

c. If the operator is a corporation, the operator shall state (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a 20 percent or greater ownership interest; (v) the full name, address of record, and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) the full name, address, and state of incorporation of the parent corporation if the corporation is a subsidiary corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a 20 percent

or greater ownership interest.

d. If the operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a 20 percent or greater ownership interest; (vi) the full name, address of record, and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the names and addresses of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a 20 percent or greater ownership interest;

2. The name and address of any agent of the operator with responsibility for the business operation of the mine and of any person with an ownership or leasehold interest in the coal to be mined;

3. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

4. Any information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

5. For any license renewal, the annual report required pursuant to § 45.2-540. When no change has occurred to the information required by subdivision 1, 2, or 3, the operator of the mine shall only be required to certify that such information on the current license application is accurate and complete.

B. The application shall be certified as being accurate and complete by the applicant if an individual or by the agent of a corporate applicant or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within 30 days after the occurrence of any change in the information required by subsection A, the operator shall notify the Department, in writing, of such change.

**§ 45.2-538. Denial or revocation of license for the operation of a coal mine.**

A. The Chief may revoke a license for the operation of a coal mine or deny an application for the issuance of a license for the operation of a coal mine upon determining that the applicant, the operator, or the operator's agent has committed violations of the mine safety laws of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners, that demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.2-849.

C. The Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine who has been convicted of violating subsection A of § 45.2-856 or 45.2-857.

D. Any person whose license application is denied or whose license is revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action, the court shall receive the records of the Department with respect to the determination and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant relief that the court determines appropriate.

**§ 45.2-539. Operating without license; penalty.**

A. In addition to any other power conferred by law, the Chief or his designated representative may issue an order closing any coal mine that is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.2-569.

B. Any person operating an unlicensed mine is guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mine shall constitute a separate offense.

**§ 45.2-540. Annual reports; condition to issuance of license following transfer of ownership.**

A. The operator of each mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding 12 months ending with December 31. Such report shall state (i) the names of the operator, any agent, and any officers of the mine; (ii) the amount of coal mined; and (iii) other information, not of a private nature, that from time to time is required by the Department on forms furnished or approved by the Department.

B. Whenever the owner of a mine transfers the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the tons of coal produced since the January 1 previous to the date of such sale or transfer of such mine. A license shall not be issued covering such transfer of ownership until the report is furnished.

C. The operator of each coal mine or his agent shall annually, by February 15, mail or deliver to

the Department (i) an affidavit, certified by the commissioner of the revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, 58.1-3713, and 58.1-3741 due with respect to the coal mining operations have been paid and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate, and mineral land taxes due with respect to coal mining operations have been paid.

**§ 45.2-541. Discontinuance of the working of a mine; notices to Department; resumption of mining following discontinuance.**

A. The operator or his agent shall send notice of his intent to discontinue the working of an underground coal mine for a period of 30 days or a surface mine for a period of 60 days to the Department at least 10 days prior to discontinuing the working of a mine with such intent or at any time a mine becomes an inactive mine. Unless examinations of the mine are being conducted during the period of discontinued use, all surface openings to the discontinued underground coal mine shall be secured against unauthorized entrance when the activities are discontinued for 30 days or longer. Danger signs shall be posted at each secured entrance.

B. The operator or his agent shall send to the Department 10 days' prior notice of intent to resume the working of an inactive mine. The production of coal at such mine shall not resume until a mine inspector has inspected and approved it for resumption of production activities.

C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a mine for hazardous conditions immediately before miners are permitted to work. The operator or his agent shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The operator or his agent shall send to the Department 10 days' prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The operator or his agent shall send to the Department 10 days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name of the mine, the location of the mine, the name of the operator, and the operator's mailing address and email address.

**§ 45.2-542. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.**

A. Prior to commencing mining activity, the operator of a coal mine or his agent shall make or cause to be made, unless already made and filed, an accurate map of such mine. Such map shall be submitted to the Chief prior to producing coal at the mine. All maps shall be presented on the Virginia Coordinate System of 1983, South Zone, unless otherwise approved by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the operator shall submit to the Chief copies of an up-to-date map of the entire mine in an electronic format approved by the Chief. The operator shall also submit to the Chief revisions that show directional changes whenever mine projections deviate more than 600 feet from the approved mine map. Only maps in an electronic format shall be accepted unless otherwise approved by the Chief. If there are no changes in the information required to be submitted pursuant to this section at the time an updated map is due, the operator may submit a notice that there are no changes to the map in lieu of submitting an updated map to the Department.

B. Underground coal mine maps shall show:

1. The active workings;
2. All pillared, worked out, and abandoned areas, except as provided in this section;
3. Entries and air courses with the quantity of airflow, direction of airflow indicated by arrows, and ventilation controls;
4. Contour lines of all elevations;
5. Dip of the coalbed;
6. Escapeways;
7. The locations that are known or should be known of (i) adjacent mine workings within 1,000 feet, (ii) mines above or below, and (iii) water pools above;
8. Either producing or abandoned oil and gas wells located within 500 feet of such mine and in any underground area of such mine; and
9. Other information the Chief requires.

Such map shall identify those areas of the mine that have been pillared, worked out, or abandoned that are inaccessible or that cannot be entered safely.

C. Additional information required to be shown on underground coal mine maps includes:

1. The mine name, company name, mine index number, and name of the person responsible for information on the map;
2. The scale and orientation of the map and symbols used on the map;
3. The property or boundary lines of the mine;
4. All known drill holes that penetrate the coalbed being mined;
5. All shaft, slope, drift, and tunnel openings and auger and strip mined areas of the coalbed being

mined;

6. The location of all surface mine ventilation fans. The location may be designated on the mine map by symbols;

7. The location of railroad tracks and public highways leading to the mine and mine buildings of a permanent nature with identifying names shown;

8. The location and description of a least two permanent base line points coordinated with the underground and surface mine traverses and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

9. The location and elevation of any body of water dammed or held back in any portion of the mine; however, such bodies of water may be shown on overlays or tracings attached to the mine maps used to show contour lines as provided under subdivision 12;

10. The elevations of tops and bottoms of shafts and slopes and the floor at the entrance to drift and tunnel openings;

11. The elevation of the floor at intervals of not more than 200 feet in (i) at least one entry of each working section and main and cross entries; (ii) the last line of open crosscuts of each working section, and main and cross entries before such sections and main and cross entries that are abandoned; and (iii) rooms advancing toward or adjacent to property or boundary lines or adjacent mines; and

12. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 10-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. Contour lines may be placed on overlays or tracings attached to mine maps.

D. Underground coal mine maps submitted to the Chief shall be on a scale of not less than 100 or more than 500 feet to the inch. Mapping of the underground mine works shall be completed by a closed loop survey method of traversing or other equally accurate methods of traversing. All closed loop surveys shall meet a minimum accuracy standard of one part in 5,000. Elevations shall be tied to either the United States Geological Survey or the National Geodetic Survey bench mark system. A registered engineer or licensed land surveyor shall certify that the map of the mine workings is accurate.

E. Underground coal mine maps shall be kept up to date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working face of each working place;
2. Pillars mined or other such second mining;
3. Permanent ventilation controls constructed or removed, such as seals, overcasts, undercasts, regulators, and permanent stoppings, and the direction of air currents indicated; and
4. Escapeways designated by means of symbols.

F. At underground coal mines, an accurate map of the mine showing clearly all avenues of ingress and egress in case of fire shall be posted in a place accessible to all miners.

G. Surface coal mine maps shall show:

1. The name and address of the mine;
2. The property or boundary lines of the active areas of the mine;
3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. The Chief may approve alternate means of delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;

4. The general elevation of each coalbed being mined and the general elevation of the surface;

5. Each producing or abandoned gas or oil well or gas transmission line located on the mine property;

6. The location and elevation of any body of water dammed or held back in any portion of the mine; however, such body of water may be shown on overlays or tracings attached to the mine maps;

7. Every prospect drill hole that penetrates a coalbed being mined on the mine property;

8. Every auger or surface-mined area of a coalbed being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;

9. All worked out and abandoned areas;

10. The location of railroad tracks and public highways leading to the mine and mine buildings of a permanent nature with identifying names shown;

11. Underground coal mine workings underlying and within 1,000 feet of any active area of the mine;

12. The location and description of at least two permanent baseline points and the location and description of at least two permanent elevation bench marks used in connection with establishing or referencing mine elevation surveys;

13. The scale of the map; and

14. Other information required by the Chief.

H. Surface coal mine maps shall be kept up to date by temporary notations and revised and supplemented at intervals not to exceed six months based on a survey made and certified by a registered engineer or licensed land surveyor who has exercised complete direction and control over the work to which it is affixed. Temporary notations shall include:

1. The location of each working pit;
2. Auger or highwall miner workings; and
3. Other information that might affect the safety of miners, including updates of gas well or gas line locations.

I. Each surface survey shall originate from at least two permanent survey monuments on the mine property located with a minimum accuracy standard of one part in 10,000. The monuments shall be clearly referenced on the mine map. Elevations shall be tied to either the United States Geological Survey or the National Geodetic Survey bench mark system.

J. The original map, or a true copy thereof, shall be left by the operator at the active mine, open at all reasonable times for the examination and use of the mine inspector.

K. Such maps may be used by the Department for the evaluation of the coal resources of the Commonwealth.

L. The map shall be filed and preserved among the records of the Department and copies of such maps shall be made available at a reasonable cost.

M. Any person who has conducted mining operations or prepared mine maps and who has a map or surveying data of any worked out or abandoned underground coal mine shall on request make such map or data available to the Department to copy or reproduce.

**§ 45.2-543. When the Chief may cause maps to be made; payment by operator.**

A. If the operator of any mine or his agent neglects or fails to furnish to the Chief a copy of any map or extension thereof, as provided in § 45.2-542, the Chief may cause a correct survey and map of such mine, or extension of the map, to be made at the expense of the operator of the mine, the cost of which shall be recovered from the operator as other debts are recoverable by a civil action at law.

B. If at any time the Chief has reason to believe that a map or extension thereof furnished pursuant to § 45.2-542 is substantially incorrect or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made or corrected. The expense of making such survey and map or extension thereof shall be paid by the operator. The expense shall be recovered from the operator, as other debts are recoverable by a civil action at law. However, if the map filed by the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

**§ 45.2-544. Making false statements; penalty.**

A. It is unlawful for any person charged with the making of maps or other data to be furnished as provided in the Act to fail to correctly show, within the limits of error, the data required.

B. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act is guilty of a Class 1 misdemeanor.

Article 5.

Mine Rescue Teams.

**§ 45.2-545. Mine rescue and first aid stations.**

The Director may purchase, equip, and operate for the use of the Department mine rescue and first aid stations as he determines necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

**§ 45.2-546. Mine rescue teams.**

The Director may have trained and employed at the mine rescue and first aid stations operated by the Department mine rescue teams as he determines necessary. Each member of a mine rescue team shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such team members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such team members have performed the required service. Upon such certification, the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any team member at any time.

**§ 45.2-547. Duty to train teams.**

It is the duty and responsibility of the Department to see that every team is properly trained by a qualified instructor of the Department or other person who has a certificate of training from the Department or MSHA.

**§ 45.2-548. Qualification for team membership; direction of teams.**

A. To qualify for membership in a mine rescue team, an applicant shall be an experienced miner and shall pass a physical examination by a licensed physician, physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the team member and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by mine rescue teams shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of MSHA, and representatives of the miners and all shall be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Chief in his discretion may take full responsibility in directing such work. Procedures for use of apparatus or equipment shall be guided by the manuals for the mine rescue apparatus or auxiliary equipment.

**§ 45.2-549. Team members to be considered employees of the mine where emergency exists; compensation; workers' compensation.**

When engaged in rescue or recovery work during an emergency at a mine, all team members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the operator at the rate established in the area for such work. In no event shall the rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all team members shall be deemed to be within the employment of the operator of the mine for the purpose of workers' compensation coverage.

**§ 45.2-550. Requirements of recovery work.**

A. During recovery work and prior to entering any mine, every mine rescue team conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue team performing rescue or recovery work with breathing apparatus shall be provided with a backup team of equal strength stationed at each fresh air base.

C. For every two teams performing work underground, one six-member team shall be stationed at the mine portal.

D. Two-way communication, life lines, or their equivalent shall be provided by the fresh air base to each team, and no team member shall be permitted to advance beyond such communication system.

E. A mine rescue team shall immediately return to the fresh air base if any team member's breathing apparatus malfunctions or the low-oxygen alarm activates.

F. The Director may also assign rescue and recovery work to inspectors, instructors, or other qualified employees of the Department as the Director determines desirable.

**§ 45.2-551. State-designated mine rescue teams.**

The Director may, upon the request of an operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team that is certified as a mine rescue team by MSHA under 30 C.F.R. Part 49 shall be eligible to be a state-designated mine rescue team. Following the designation of any such teams, the Director shall, upon the payment to the Department of an annual fee set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated mine rescue teams to the operator. An operator who has paid the rescue fee is entitled to the rescue services of a state-designated mine rescue team at no additional charge.

**§ 45.2-552. Mine Rescue Fund.**

The Mine Rescue Fund, referred to in this section as "the Fund," is hereby created as a special nonreverting fund in the state treasury. The Fund shall be established on the books of the Comptroller. All moneys collected from operators pursuant to agreements entered into by the Director shall be paid into the state treasury and credited to the Fund. Moneys in the Fund shall be used only for mine rescue services under such agreements. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

**§ 45.2-553. Inspections; Mine Rescue Coordinator.**

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times each year; (ii) ensure that all rescue stations are adequately equipped; and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned to him by the Director.

**§ 45.2-554. Workers' compensation; liability.**

A. For the purpose of workers' compensation coverage, during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article or during any training exercise for a state-designated mine rescue team, members of the state-designated team shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is conducted. Additionally, for purposes of workers' compensation coverage, travel by members of a state-designated mine rescue team to and from the mine disaster or training exercise shall be deemed to be within the employment of the operator of the mine at which the disaster occurred or the training exercise is conducted.

B. No member of a state-designated mine rescue team engaging in rescue work at a mine shall be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. No operator providing personnel to a state-designated mine rescue team to engage in rescue work

at a mine not owned or operated by the operator shall be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

Article 6.

*Mine Explosions; Mine Fires; Accidents.*

**§ 45.2-555. Reports of explosions and mine fires; procedure.**

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. All facilities of the mine shall be made available for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting shall be attempted unless authorized by the Department.

C. If an explosion occurs in an underground coal mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on any person who may have survived the explosion and is still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Chief shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire, or other accident warrant.

E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Chief shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any coal mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plan shall be reviewed annually. Any changes in the plan shall be published promptly and made available to all operators of mines.

**§ 45.2-556. Operators' reports of accidents; investigations; reports by Department.**

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident. The scene of the accident shall not be disturbed pending an investigation, except to the extent necessary to rescue or recover a person, prevent or eliminate an imminent danger, prevent destruction of mining equipment, or prevent suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. In a case in which reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any changes are made.

B. The Chief shall go personally or dispatch one or more mine inspectors to the scene of such a coal mine accident, investigate causes, and issue such orders as may be needed to ensure safety of other persons.

C. Representatives of the operator shall render assistance as needed and act in a consulting capacity in the investigation. An employee, if so designated by the employees of the mine, shall be notified and as many as three employees, if so designated as representatives of the employees, may be present at the investigation in a consulting capacity.

D. The Chief shall require substance abuse testing as part of an inspection or complaint investigation if there is reasonable cause to suspect a miner's impairment, due to the presence of intoxicants or any controlled substance not used in accordance with the prescription of a licensed prescriber, has been a contributing factor to any accident in which a serious personal injury or death has occurred at a mine. The Chief shall require substance abuse testing of any miner killed or seriously injured and of any other person who might have contributed to the accident. Any substance abuse testing required by the Chief shall be paid for by the Department. Refusal by any miner to submit to substance abuse testing, or the failure to pass such a test, shall result in the immediate temporary suspension of all certificates held by the miner, pending a hearing before the Board of Coal Mining Examiners.

E. The Department shall render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department shall furnish one copy of the report to the operator and one copy to an employee representative if one was present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines and provide further dissemination as ordered by the Director in an effort to prevent mine accidents.

**§ 45.2-557. Reports of other accidents and injuries.**

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident, including any accident that does not result in a lost-time injury. Copies of an accident report shall be given to the person injured or to his designated representative to review such report and verify its accuracy prior to filing it for review by state or federal mine inspectors.

**§ 45.2-558. Duties of mine inspectors.**

Each mine inspector shall:

1. Report to his supervisor immediately by the quickest available means any mine fire or explosion or any accident that results in loss of life or serious personal injury;



2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury and to the scene of any mine fire or explosion regardless of whether there is loss of life or serious personal injury;

3. Make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees and make a complete report to his supervisor as soon as practicable;

4. Provide assistance to mine rescue and recovery operations whenever a mine fire or explosion or any accident that results in loss of life or serious personal injury occurs; and

5. Monitor the reopening of every mine or section thereof that has been sealed or abandoned on account of mine fire or explosion, serious accident, or any other cause in accordance with a plan approved by the Chief.

#### Article 7.

#### Mine Inspections.

##### **§ 45.2-559. Frequency of mine inspections.**

The Chief shall conduct a complete inspection of each underground coal mine at least every 180 days and of each surface coal mine at least once per year. Additional inspections of coal mines shall be made when deemed appropriate by the Chief based on an evaluation of risks at each mine or if requested by miners employed at a mine or the operator of a mine.

##### **§ 45.2-560. Evaluation of risks at mines.**

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made at least annually, of the comparative risks at each underground coal mine and surface coal mine. The Department shall prepare its procedural policy with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables that shall be included in the risk assessment measures include: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth, including regulations adopted by the Department or the Board of Coal Mining Examiners, at the mine; and (iii) the frequency rates for nonserious accidents or nonfatal days lost.

B. The Chief shall schedule additional inspections at underground coal mines and surface coal mines based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines pursuant to the assessment described in subsection A.

##### **§ 45.2-561. Review of inspection reports and records.**

Prior to commencing an inspection of a coal mine, a mine inspector shall review the most recent available report of inspection by MSHA. During the course of a complete inspection of a coal mine, the mine inspector shall comprehensively review the records for the 30-day period preceding the inspection of pre-shift examinations, on-shift exams, daily inspections, and weekly examinations that are required to be maintained pursuant to the Act. The mine inspector may review the records for such additional period as he deems prudent. During the course of the inspection, the inspector shall review other records relating to safety and health conditions in the mine that are required to be maintained pursuant to the Act.

##### **§ 45.2-562. Advance notice of inspections; confidentiality of trade secrets.**

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Chief or the Director.

B. All information reported to or otherwise obtained by the Chief or the Director or his authorized representative in connection with any inspection or proceeding under this title that contains or might reveal a trade secret referred to in 18 U.S.C. § 1905 shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Chief or the Director or his authorized representative concerned with carrying out any provisions of this title or any proceeding hereunder. In any such proceeding, the court, the Chief, or the Director shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

##### **§ 45.2-563. Scheduling of mine inspections.**

A. The Chief and the Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by MSHA.

B. The Chief, the Director, and each mine inspector, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

##### **§ 45.2-564. Denial of entry.**

No person shall deny the Chief, the Director, or any mine inspector entry upon or through (i) a mine for the purpose of conducting an inspection or (ii) any office at the site where maps or records relating to the mine are located, in accordance with the Act.

##### **§ 45.2-565. Duties of operator.**

A. The operator or his agent of each mine shall furnish the Chief and any mine inspector proper

facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector or the Chief.

B. The operator of an underground coal mine or his agent shall provide a mine inspector or the Chief adequate means for transportation to the active working areas of the mine within a reasonable period of time following the mine inspector's arrival at the mine.

C. The operator or his agent shall, when ordered to do so by a mine inspector or the Chief during the course of his inspection, promptly clear the mine or a section thereof of all persons.

D. The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include:

1. A pre-employment, 10-panel urine test for the following and any other substances as set out in regulation adopted by the Board of Coal Mining Examiners:

- a. Amphetamines;
- b. Cannabinoids/THC;
- c. Cocaine;
- d. Opiates;
- e. Phencyclidine (PCP);
- f. Benzodiazepines;
- g. Propoxyphene;
- h. Methadone;
- i. Barbiturates; and
- j. Synthetic narcotics.

Samples shall be collected by providers who are certified as complying with standards and procedures set out in the U.S. Department of Transportation's rule, 49 C.F.R. Part 40. Collected samples shall be tested by laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services for collection and testing. The mine operator may implement a more stringent substance abuse screening policy and program; and

2. The review of the substance abuse screening program with each miner at the time of employment and annually thereafter.

E. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of any failure of a pre-employment substance abuse screening test and shall provide a record of the test showing such failure or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending a hearing before the Board of Coal Mining Examiners.

F. The operator or his agent shall notify the Chief, on a form prescribed by the Chief, within seven days of (i) discharging a miner due to violation of the company's substance or alcohol abuse policies, (ii) a miner testing positive for intoxication while on duty status, or (iii) a miner testing positive as using any controlled substance without the prescription of a licensed prescriber. An operator that has a substance abuse program shall not be required to notify the Chief under clause (iii) unless the miner having tested positive fails to complete the operator's substance abuse program. The notification shall be accompanied by a record of the test showing such positive results or violation. Notice shall result in the immediate temporary suspension of all certificates held by the applicant, pending a hearing before the Board of Coal Mining Examiners.

G. The provisions of this chapter shall not be construed to preclude an employer from developing or maintaining a substance and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.

#### **§ 45.2-566. Duties of inspectors.**

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to inaccessible worked-out areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions might exist; electric installations and equipment; haulage facilities; first aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice, or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place that he is required to inspect in an underground coal mine. In a mine operating more than one shift in a 24-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

B. The inspector shall make a personal examination of the interior of the mine and of the outside of the mine where any danger may exist to the miners.

#### **§ 45.2-567. Inspection reports.**

A. Upon completing a mine inspection, a mine inspector shall complete a report regarding such

inspection. The inspection report shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of the Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as are useful and proper.

B. The mine inspector shall (i) deliver one copy of the inspection report to the operator, agent, or mine foreman and one copy to the employees' safety committee, where applicable, and (ii) post one copy at a prominent place on the premises of the mine where it can be read conveniently by the miners.

C. With respect to coal mines, the Department shall provide access to inspection reports to MSHA.

Article 8.

Enforcement and Penalties; Reports of Violations.

**§ 45.2-568. Notices of violations.**

A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person responsible for the violation. Each notice of violation shall be in writing, shall describe with particularity the nature of the violation, including a reference to the provision of the Act or the appropriate regulation violated, and shall include an order of abatement and set a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the operator or his agent or the mine foreman.

C. Upon a finding by the mine inspector of the completion of the action required to abate such violation, the Director, the Chief, or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed the final order of the Department and shall not be subject to review by any court or agency unless within 20 days following its issuance the person to whom the notice of violation was issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Chief, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding is waived, or if it fails to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of such decision is entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

E. If it is finally determined that a notice of violation was not issued in accordance with the provisions of this section, the notice of violation shall be vacated and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

**§ 45.2-569. Closure orders.**

A. The Director, the Chief, or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine by all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of the Act has occurred that creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license in violation of § 45.2-535; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.2-568.

B. A technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

C. One copy of a closure order shall be delivered to the operator of the mine or his agent or the mine foreman.

D. Upon a finding by the mine inspector of abatement of the violation creating the hazardous condition pursuant to which a closure order has been issued as provided in clause (i) of subsection A; cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A; the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A; or abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director, the Chief, or a mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection C.

E. The issuance of a closure order shall constitute a final order of the Department, and the owner or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within 10 days

following the issuance of the order, bring a civil action in the circuit court of the county or city in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action, the court shall receive the records of the Department with respect to the issuance of the order and any additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department.

F. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

G. If it is finally determined that a closure order was issued not in accordance with the provisions of this section, the closure order shall be vacated and the improperly issued closure order shall not be used to the detriment of the owner or operator of the mine for which it was issued.

**§ 45.2-570. Tolling of time for abating violations.**

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until (i) the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or (ii) the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court and if such appeal pursuant to clause (i) or (ii) was undertaken in good faith and not solely for delay or avoidance of penalties.

**§ 45.2-571. Injunctive relief.**

A. Any person violating or failing, neglecting, or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey such order and to comply with such order by injunction or other appropriate relief.

B. Any person failing to abate any violation of the Act that has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance at the mine operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of the Act or (ii) a history of the issuance of closure orders for the mine operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of the Act.

**§ 45.2-572. Violations; penalty.**

Any person who willfully violates any provision of the Act or any regulation adopted pursuant to the Act, unless otherwise specified in the Act, is guilty of a Class 1 misdemeanor.

**§ 45.2-573. Prosecution of violations.**

A. It is the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of the Act or on his own initiative to cause proceedings to be prosecuted in such case.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such case, the Director or the Chief may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth; however, such action shall not preclude the Director or the Chief from pursuing any other applicable statutory procedure. Upon receiving such a request from the Director or the Chief, the Attorney General may institute actions and proceedings for violations described in the request.

**§ 45.2-574. Fees and costs.**

No fees or costs shall be charged to the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

**§ 45.2-575. Reports of violations.**

A. The operator of each mine or his agent shall deliver a copy of the Act to each miner upon the commencement of his employment at the mine, unless the miner is already in possession of a copy.

B. Any person aware of a violation of the Act may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department, or at the mine inspector's residence.

C. The operator of each mine or his agent shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site a notice containing the office addresses and office and home telephone numbers of mine inspectors and other Department personnel for the purpose of reporting any violation of the Act.

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of the Act that is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report and that of any individual

identified in the alleged violation being omitted or deleted, to the operator of the mine or his agent. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent or to any other person or entity. Information regarding the identity of the person reporting the violation shall be exempt from disclosure under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Article 9.

Virginia Coal Mine Safety Board.

**§ 45.2-576. Virginia Coal Mine Safety Board; purpose.**

The Virginia Coal Mine Safety Board (the Board) is established as an advisory board in the executive branch of state government. The purpose of the Board is to advise the Chief on matters relating to the health and safety of persons working in the coal industry in the Commonwealth.

**§ 45.2-577. Membership; terms; compensation; quorum; meetings.**

A. The Virginia Coal Mine Safety Board shall have a total membership of 10 members that shall consist of nine nonlegislative citizen members appointed by the Governor, subject to confirmation by the General Assembly, and one *ex officio* member. Nonlegislative citizen members shall be appointed as follows: three to be appointed from a list of individuals nominated by the Metallurgical Coal Producers Association; three to be appointed from a list of individuals nominated by the United Mine Workers of America; and three to be appointed from the Commonwealth at large. Nonlegislative citizen members of the Board shall serve at the pleasure of the Governor and be residents of the Commonwealth.

B. The members of the Board shall elect its chairman. Members shall serve for terms of four years and their successors shall be appointed for terms of the same length, but vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Any member may be reappointed for successive terms. Members shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

C. The Board shall hold meetings at times and places designated by the chairman. The chairman may call a meeting of the Board at any time and shall call a meeting of the Board within 20 days of receipt by the chairman of a written request for a meeting by another member of the Board. Notification of each meeting of the Board shall be given in writing to each member by the chairman at least five days in advance of the meeting. The chairman and any four or more members of the Board shall constitute a quorum for the transaction of any business of the Board.

**§ 45.2-578. Powers and duties of the Virginia Coal Mine Safety Board.**

The Virginia Coal Mine Safety Board has the power to advise and make recommendations to the Chief on matters relating to the health and safety of persons working in the Virginia coal industry. The Board shall serve as the regulatory work committee for the Department on all coal mine health and safety regulations not under the jurisdiction of the Board of Coal Mining Examiners.

Article 10.

Miner Training.

**§ 45.2-579. First aid training of coal miners.**

A. The Chief shall establish specifications for first aid and refresher training programs for miners at coal mines. Such specifications shall be no less than, but may exceed, the minimum requirements of the training programs that underground and surface coal mine operators are required to provide to their employees pursuant to the federal mine safety law. The Chief may utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of operators in making such programs available to their employees.

B. Each operator of a coal mine, upon request, shall make available to every miner employed in such mine the course of first aid training, including refresher training, as is required pursuant to subsection A.

**§ 45.2-580. Training programs.**

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Board of Coal Mining Examiners. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge persons attending the training programs reasonable fees to cover the costs of administering such programs. The Director may exempt certain persons from any required fees for refresher training programs, based on the person's employment status or such other criteria as the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this article. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

**§ 45.2-581. Additional coal mining training programs.**

*The Chief may implement a voluntary on-site safety awareness training program for coal miners. Such training may be conducted by a mine inspector in conjunction with his inspection of a coal mine or by other Department personnel. Safety awareness training for coal miners may include such methods as job safety analysis and topical talks on safety issues intended to reduce accidents.*

**CHAPTER 6.**

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

**Article 1.**

*Rights of Owners of Land Adjacent to Coal Mines.*

**§ 45.2-600. Consent required before working mine near land of another.**

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

**§ 45.2-601. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.**

*A. The owner, tenant, or occupant of any land or coal on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense if such person has reason to believe his property is being trespassed upon. The purpose of such survey shall be to ascertain whether a violation of § 45.2-600 has occurred. However, such person is not entitled to enter the property more often than once a month. Every owner, tenant, occupant, or agent who refuses such permission, exploration, or survey shall forfeit \$20 for each refusal to the person so refused.*

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

**Article 2.**

*Trusts for Coal Interests.*

**§ 45.2-602. Petition to establish a trust for missing coal owners.**

*A. Any coal owner or lessee who (i) has more than a 50 percent interest in the coal on a particular tract and (ii) seeks to impress a trust upon unknown or missing owners of such tract of coal may petition the circuit court in the county or city containing the majority of the tract of coal to establish a trust to protect the interests of all coal owners and lessees.*

*B. The petition shall:*

- 1. Describe the particular tract of coal at issue;*
- 2. List all known, missing, and unknown owners of interests in such tract of coal and set forth the efforts to locate and identify the missing or unknown owners of the interests and provide any other information known to the petitioner that could be helpful in identifying or locating every present owner thereof; and*
- 3. Include the proposed terms of a lease to be offered to the trust. Such lease shall be typical of other arm's-length leases in the area.*

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

**§ 45.2-603. Advertisement upon filing of petition.**

*Immediately upon filing the petition pursuant to § 45.2-602, the petitioner shall advertise a notice of the pending action, including a statement that the action is brought for the purpose of impressing a trust authorizing the execution of a valid and present coal lease for the development of a tract of coal described in the petition pursuant to the provisions of subsection B of § 45.2-602. Such notice shall appear in a local newspaper of general circulation at least once a week for two consecutive weeks.*

**§ 45.2-604. Court may declare trust; trustee sale of lease.**

*A. If, upon presentation of a petition pursuant to § 45.2-602 to the circuit court in the county or city containing the majority of the tract of coal, it appears to the court that development of the interests in such tract of coal will be advantageous to the unknown or missing owners, the court shall declare a trust in the coal interests and appoint a trustee for such interests. The court shall authorize the trustee to execute a lease covering the coal interests in the identified tract of coal. The order of the court shall provide for all the terms and provisions of the lease that the trustee is authorized to make.*

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

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

**§ 45.2-605. Duty of trustee; sale of lease; distribution of funds.**

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

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

**§ 45.2-606. Payment of attorney fees, expenses, and court costs.**

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

**§ 45.2-607. Production of coal by majority interest owner; petition to establish trust for known coal owners.**

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

B. The petition shall:

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

C. The petitioner shall establish to the satisfaction of the court that a diligent effort has been made to obtain the consent of each minority owner to lease his interest in the coal. The petitioner shall demonstrate to the court that (i) the production of the coal by the petitioner's lessee is of economic benefit to all parties; (ii) if the coal is not produced, the economic value of the coal is lost and the economic benefit of owning the coal is decreased; and (iii) there is no practical method for dividing such coal among the owners without extracting the coal.

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

E. The court may appoint a trustee and authorize the trustee to execute a lease pursuant to § 45.2-604.

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

Article 3.

*Emergency Seizure of Coal Property by the Commonwealth.*

**§ 45.2-608. "Public uses" defined; mining, etc., of coal essential business; subject to seizure by Commonwealth.**

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

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

**§ 45.2-609. Interruption of public uses; proclamation of emergency; seizure.**

When in the judgment of the Governor there exists a substantial interruption or an imminent threat of a substantial interruption of public uses, he shall proclaim that an emergency exists in the Commonwealth that endangers the health, safety, and welfare of its people and the enjoyment of the public and private property within its borders. It shall then be the duty of the Governor to seize and operate the property of any person used in the mining, production, or marketing of coal that the Governor deems essential for the protection of the health, safety, and welfare of the people of the Commonwealth.

**§ 45.2-610. Additional powers of Governor to operate seized properties.**

*The Governor may exercise the powers and authority to possess and operate for public uses any person's property used in the mining, production, or marketing of coal in the manner provided in this article.*

**§ 45.2-611. Virginia Fuel Commission; purpose; membership; compensation; staff; powers and duties; report.**

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

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

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

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

E. *The Commission, subject to the approval of the Governor, shall have, in addition to the powers and duties incident to this article that the Governor delegates to it, the power and duty to:*

1. *Adopt such regulations and issue such orders as are, in the judgment of the Commission, necessary to accomplish in full the purposes of this article. Such regulations and orders shall have the force and effect of law, and the violation thereof is punishable as a Class 1 misdemeanor;*

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

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

4. *Operate, manage, and control any property so acquired; purchase coal, coke, or other fuel and sell such fuel, either at retail or at wholesale; enter into contracts; allocate and provide for the distribution of coal and other fuels so as to ensure a distribution deemed most likely to promote the health, safety, and welfare of the people of the Commonwealth; and do any and all things necessary and incidental to the mining, production, or marketing of coal; and*

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

**§ 45.2-612. Negotiating purchase or lease of coal properties.**

*Whenever the Governor proclaims that an emergency exists under this article and appoints the Virginia Fuel Commission pursuant to § 45.2-611, the Commission shall make a bona fide attempt to negotiate the purchase or lease of the coal property of any person engaged in the mining, production, or marketing of coal as the Commission deems necessary to accomplish the purposes of this article. However, where such negotiations cannot be promptly made due to the incapacity of the owner of the property, or for any other reason, the Commission is not required to attempt to negotiate for the acquisition of such property.*

**§ 45.2-613. Proceedings for condemnation.**

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

B. *The proceedings for condemnation shall be by petition to the circuit court of the county or city in which the land, property, or property right, or the major portion thereof sought to be temporarily acquired, is located. The petition shall set forth with reasonable particularity a description and designation of the interest, right, or property intended to be temporarily taken, the name of the owner of the interest, right, or property that is to be taken or affected and such other facts as the Commission*



deems necessary to give adequate information to the court and all persons in interest. The petition shall be verified by oath by a member of the Commission.

C. Upon (i) the filing of the petition described in subsection B in the office of the clerk of the circuit court to which it is addressed, together with as many copies thereof as there are defendants upon which it is to be served, and (ii) the depositing with the clerk for the custody of the court, and for the benefit of the owners of the property taken or affected, an amount of money that the Commission estimates to be just compensation for the property temporarily taken and any damage done, the Commission shall thereupon seize and take possession, custody, and control of the property. The amount of money deposited pursuant to clause (ii) shall not limit the amount of just compensation to be allowed to the owner of the property. The service of such petition upon the defendant shall be made in the manner prescribed by the Rules of the Supreme Court of Virginia with respect to Practice and Procedure in Civil Actions in effect at the time the petition is filed.

**§ 45.2-614. Expense of acquiring and operating coal property; funds derived from operation.**

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

**§ 45.2-615. Restoration of property to owner or operator.**

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

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

**§ 45.2-616. Article subject to provisions of general law.**

The provisions of this article are subject to all of the provisions of general law applicable to coal mining operations.

Article 4.

Coal Mine Refuse Impoundments and Retaining Dams.

**§ 45.2-617. Definitions.**

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

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

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

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

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

"Operator" means any person who operates, controls, or supervises a retaining dam or a mine refuse impoundment.

"Retaining dam" means an artificial barrier or obstruction that is designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure and has a storage volume of 20 acre-feet or more or (ii) to an elevation of 20 feet or more measured at the open

channel spillway or from the crest of the dam in a closed system, regardless of storage volume.

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

"Water" means liquid or slurry resulting from the processing of coal in mining operations.

**§ 45.2-618. Design and construction of retaining dam or mine refuse impoundment; designs and other data to be submitted to Chief.**

A. Any new retaining dam or mine refuse impoundment, or the modification of an existing retaining dam or mine refuse impoundment, shall be designed and constructed by or under the direction of a licensed professional engineer. Such requirement shall only apply to a mine refuse impoundment if it is designed to impound water, coal slurry, or silt (i) to an elevation of five feet or more above the upstream toe of the structure and has a storage volume of 20 acre-feet or more or (ii) to an elevation of 20 feet or more measured at the open channel spillway or from the crest of the dam in a closed system, regardless of storage volume. The design, construction specifications, and other related data, including final abandonment plans for such retaining dam or mine refuse impoundment, shall be certified by the licensed professional engineer.

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

**§ 45.2-619. Examination of retaining dam or mine refuse impoundment; potentially hazardous condition; plans to be submitted by operators.**

A. Each retaining dam or mine refuse impoundment shall be examined by an authorized person, as defined in § 45.2-501, at least every seven days or as otherwise approved by the Chief. Each such retaining dam or mine refuse impoundment shall be examined for compliance with approved design and maintenance requirements, visible structural weakness, volume overload, and other hazards.

B. After each examination, the authorized person, as defined in § 45.2-501, shall promptly record the results of the examination in a book that shall be available at the retaining dam or mine refuse impoundment, or other designated location, for inspection by the Chief or his authorized representative. Each examination record shall include a description of any potentially hazardous condition found and any action taken to abate such potentially hazardous condition. Each record shall be countersigned by the supervisor of the authorized person creating the record. If such record discloses a potentially hazardous condition, the countersigning of the record shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination was completed, and the person countersigning shall ensure that actions to eliminate or control the potentially hazardous condition have been taken. The operator of the retaining dam or mine refuse impoundment may authorize a person who possesses authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the record and ensure that action is taken to eliminate the potentially hazardous condition disclosed in the record.

C. When rising water, coal slurry, or silt reaches 80 percent by volume of the safe design capacity of a retaining dam or mine refuse impoundment, the examination required by subsection A shall be made more often as required by the Chief or his authorized representative.

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

1. Remove all persons from the area that can reasonably be expected to be affected by the potentially hazardous condition;
2. Eliminate the potentially hazardous condition; and
3. Notify the Chief and other governing agencies by the quickest available means following the protocol established in the site's emergency notification and evacuation plan pursuant to § 45.2-620.

E. The operator of each coal site on which a retaining dam or mine refuse impoundment is located shall submit a plan for carrying out the requirements of § 45.2-618 and subsections A through D for approval by the Chief. The plan shall include:

1. The designs, construction specifications, and other related data required pursuant to § 45.2-618;
2. A schedule and procedures for inspection of the retaining dam or mine refuse impoundment by a qualified person under normal conditions and under conditions that could cause flooding;
3. Procedures for evaluating a potentially hazardous condition;
4. Procedures for removing all persons from the area that can reasonably be expected to be affected by the potentially hazardous condition;
5. Procedures for eliminating the potentially hazardous condition;
6. Procedures for notifying the Chief and other governing agencies; and
7. Any additional information that may be required by the Chief.

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

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

thereto and his required amendments.

**§ 45.2-620. Emergency notification and evacuation plan.**

A. On or before July 1 of each year, the operator of any retaining dam or mine refuse impoundment that meets the criteria of subsection A of § 45.2-618 shall submit to the Chief an emergency notification and evacuation plan. If there are no changes to a plan at the time the updated plan is due, the operator may submit a notice that there are no changes to the plan in lieu of submitting an updated plan to the Chief.

B. The plan and attendant maps, appropriate for the level of hazard of the retaining dam or mine refuse impoundment, shall describe the retaining dam or mine refuse impoundment and shall include:

1. The name and address of the operator owning, operating, or controlling the structure;
2. The identification numbers of the structure as assigned by the Chief, MSHA, and the Office of Surface Mining;
3. The location of the structure indicated on (i) a current United States Geological Survey 7.5-minute or 15-minute topographic quadrangle map, (ii) an equivalent digital map, or (iii) a topographic map of a scale approved by the Chief;
4. The name and size in acres of the watershed in which the structure is located;
5. A description of the physical and engineering properties of the foundation materials on which the structure is to be or was constructed;
6. The location of existing or proposed instrumentation;
7. A statement of the runoff attributable to the probable maximum precipitation of six-hour duration and the calculations used in determining such runoff;
8. A statement of the runoff attributable to the storm for which the structure is designed and the calculations used in determining such runoff;
9. The location of any surface or underground coal mine, including the depth and extent of such workings, under and within 1,000 feet around the perimeter of the retaining dam or mine refuse impoundment, and the area of impounded material, shown at a scale not to exceed one inch equals 1,000 feet;
10. A map depicting the impoundment area and downstream and adjacent drainways, streambeds, roads, structures, and other public areas that could be affected if an accident were to occur at the impoundment. The map shall be at a scale not to exceed one inch equals 1,000 feet;
11. The names of persons who are familiar with the plan protocols and can take actions necessary to eliminate the hazard and minimize the impact to miners, the community, and the environment;
12. A location where a command and communication center could be established for the company team and emergency response personnel to report during an impoundment event;
13. The location of potential evacuation centers where affected parties could take shelter during an impoundment event;
14. An emergency contact list for agencies that would respond to an impoundment event; and
15. A list of miners employed at the site and businesses, community buildings, residences, and other occupied buildings within the impact zone that could be affected by an impoundment event, or other effective means of identifying such impact zone.

**PART B.**

**UNDERGROUND COAL MINES.**

**CHAPTER 7.**

**REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; MINE CONSTRUCTION.**

**Article 1.**

**General Provisions.**

**§ 45.2-700. Scope of chapter.**

The provisions of this chapter and Chapter 8 (§ 45.2-800 et seq.) shall apply to the operation of any underground coal mine in the Commonwealth and shall supplement the provisions of Chapter 5 (§ 45.2-500 et seq.).

**§ 45.2-701. Regulations governing conditions and practices at underground coal mines.**

A. The Chief may, after consultation with the Virginia Coal Mine Safety Board, created by Article 9 (§ 45.2-576 et seq.) of Chapter 5, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, adopt regulations necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth. Such regulations governing underground coal mines shall relate to:

1. The maintenance, operation, storage, and transportation of any mechanical or electrical equipment, device, or machinery used for any purpose in the underground mining of coal;
2. Safety and health standards for the protection of the life, health, and property of, and the prevention of injuries to, any person involved in or likely to be affected by any underground coal mining operation. Such standards shall include the control of dust concentration levels; the use of respiratory equipment and ventilating systems; the development and maintenance of roof control systems; the handling of combustible materials and rock dusting; the installation, maintenance, and use of electrical devices, equipment, cables, and wires; fire protection, including equipment, emergency evacuation plans,

emergency shelters, and communication facilities; the use and storage of explosives; and the establishment and maintenance of barriers in underground coal mines around gas and oil wells. The Chief may adopt regulations setting forth specific occupations and conditions under which a miner is prohibited from working alone underground; and

3. The storage or disposal of any matter or materials (i) extracted or disturbed as the result of an underground coal mining operation or (ii) used in the mining operation or for the refinement or preparation of the materials extracted from the coal mining operation, so that such matter or material does not threaten the health or safety of the miners or the general public.

B. The Chief shall not adopt any regulation establishing any requirement for the operation of, or conditions at, an underground coal mine that is inconsistent with requirements established by the Act.

**§ 45.2-702. Standards for regulations.**

In adopting regulations pursuant to § 45.2-701, the Chief shall consider:

1. Standards utilized and generally recognized by the coal mining industry;
2. Standards established by recognized professional coal mining organizations and groups;
3. The federal mine safety law;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under the Act and other mine safety laws; and

5. Such other criteria as are necessary for the protection of the safety and health of miners and other persons or property likely to be endangered by underground coal mines or related operations.

Article 2.

*Additional Duties of Certified Persons and Other Miners.*

**§ 45.2-703. Duties of mine foreman.**

A. The mine foreman shall see that the requirements of the Act that pertain to his duties and to the health and safety of the miners are fully complied with at all times.

B. The mine foreman shall see that every miner employed to work in such mine, before beginning work therein, is aware of all hazardous conditions incident to his work in such mine. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

**§ 45.2-704. Employment and duties of top persons; plan for excavation of shaft or slope.**

A. During the construction or modification of any shaft or slope mine, the person engaged in the actual construction or modification of such mine shall employ one or more top persons certified pursuant to § 45.2-534. It is the duty of such top person to examine for proper and safe practices and materials used during the construction or modification of a shaft or slope mine. Such duties shall at all times be performed in the immediate vicinity of the shaft or slope under construction.

B. Prior to commencing the excavation of any shaft or slope, the operator shall submit to the Department a copy of the plan that includes the following: (i) the name and location of the mine and shaft or slope; (ii) a description of the work and methods to be used in the construction of the shaft or slope; (iii) a description of the methods to be used to ensure wall and roof stability; (iv) a description of the system of ventilation to be used, including procedures for evacuation of the shaft or slope if a fan stoppage occurs; (v) details of hoisting equipment to be used; and (vi) such other information as the Chief requires. The excavation of such shaft or slope shall not begin until the plan is approved by the Chief.

**§ 45.2-705. Employment of inexperienced underground miners.**

A. An inexperienced underground miner shall be required to work with an experienced underground miner for a total of at least six months following the start of underground employment. However, an experienced surface miner shall only be required to work with an experienced underground miner for a total of at least 60 days following the start of underground employment.

B. No inexperienced underground miner shall be assigned, allowed, or required to perform work alone in any area where there is a potential danger to his safety unless he can communicate with others or be heard or seen.

**§ 45.2-706. Employment of authorized persons.**

No miner shall be placed in charge of a cutting, loading, drilling, continuous miner, or timbering machine in any mine if such miner is not an authorized person capable of determining the safety of the roof and ribs of a working place. Such miner shall also be capable of detecting the presence of explosive gas and shall undergo examination by a mine inspector or other instructor certified by the Board of Coal Mining Examiners and authorized by the Chief to determine the miner's fitness to detect explosive gas before being permitted to have charge of a machine in such mine.

Article 3.

*Proximity of Mining to Gas or Oil Wells or Abandoned Areas.*

**§ 45.2-707. Mining in proximity to gas or oil wells.**

A. Except as provided in subsection D, an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine within 500 feet of any gas or oil well already drilled into the

projected mine workings or in the process of being drilled into the projected mine workings shall file with the Chief a notice that such mining is taking place or will take place. The notice shall include a copy of parts of the maps and plans required under § 45.2-542 that show the mine workings or projected mine workings that are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to § 45.2-1604. Each notice shall contain a certification made by the operator that he has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A, the operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Chief, he shall not remove any coal, drive any entry, or extend any workings in any mine within 200 feet of any gas or oil well already drilled or in the process of being drilled into the projected mine workings.

C. The Chief shall adopt regulations that prescribe the procedure to be followed by mine operators in petitioning the Chief for approval to conduct such activities within 200 feet of a gas or oil well or a vertical ventilation hole drilled or in the process of being drilled into the projected mine workings. Each operator who files such a petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the operator of the gas or oil well or vertical ventilation hole shall have standing to object to any petition filed under this section. Such objection shall be filed within 10 days following the date such petition is filed.

D. Procedures for safely mining in proximity to or through a coalbed methane well or a vertical ventilation hole developed for methane drainage in a mine shall be addressed in the bleeder system plan for that mine required by § 45.2-837.

**§ 45.2-708. Mining in proximity to an abandoned area.**

A. The mine foreman shall ensure that boreholes are drilled in each advancing working place that is (i) within 50 feet of an abandoned area in the mine as shown by a survey made and certified by a registered engineer or surveyor, (ii) within 200 feet of an abandoned area in the mine that has not been certified as surveyed, or (iii) within 200 feet of any mine workings of an adjacent mine located in the same coal bed unless the adjacent area of the mine has been pre-shift examined pursuant to § 45.2-826. Each borehole shall be at least 20 feet in depth, shall always be maintained not less than 10 feet in advance of the face, and shall be not more than eight feet from an adjacent borehole unless approved by the Chief. One borehole shall also be drilled for each cut on any side of the active workings that is being driven toward and in proximity to an abandoned mine or part of a mine that might contain explosive or hazardous gas or that is filled with water.

B. Sufficient holes shall be drilled through to accurately determine whether hazardous quantities of methane, carbon dioxide, or other gases or water are present in an abandoned area. Materials shall be available to plug such holes to prevent an inundation of hazardous quantities of gases or water if detected.

C. Mining shall not advance into any abandoned area penetrated by a borehole drilled in accordance with subsection A until a plan has been submitted and approved by the Chief. The plan shall include at a minimum (i) procedures for testing the atmosphere at the back of any borehole drilled into the abandoned area; (ii) the method of ventilation, the ventilation controls, and the air quantities and velocities in the affected working section and working place; (iii) procedures for penetrating an abandoned area when hazardous quantities of methane, carbon dioxide, or other hazardous gases cannot be removed; (iv) dewatering procedures to be used if a penetrated area contains hazardous water accumulation; and (v) procedures and precautions to be followed during a penetration operation. A copy of the plan shall be made available near the site of the penetration operation and the operator shall review the plan with all miners involved in the operation. Failure to comply with the approved plan shall constitute a violation of this section.

D. Any operator, agent of such operator, mine foreman, or miner engaged in drilling or mining into an inaccessible abandoned area shall have upon his person a self-contained self-rescuer.

E. Whenever a mine or section of a mine advances under any body of water that is sufficiently large or in close proximity as to constitute a hazard to miners, the operator shall submit to the Chief a plan meeting the requirements of 30 C.F.R. § 75.1716. The operator shall obtain approval from the Chief for the submitted plan prior to advancing the mine or any section of the mine under the body of water.

F. Prior to penetrating any portion of an active mine with a borehole, ventilation hole, or other hole drilled from the surface or from an overlying or underlying mine, or prior to drilling into any portion of the same active mine, the operator shall submit a plan to the Chief addressing (i) the purpose of the hole, (ii) information about any abandoned mine that the hole might penetrate, (iii) procedures for withdrawing or limiting the number of miners from the mine or affected area during penetration, (iv) casing details and procedures for preventing water inflow and air transfer from the hole into the active mine, (v) procedures for grouting or sealing the hole when it is no longer used, and (vi) such other information as the Chief may require. The drilling of such hole shall not begin until the plan is approved by the Chief.

G. The provisions of this section shall not apply to a gas well, coalbed methane well, or vertical ventilation hole.

Article 4.

Roof, Face, and Rib Control.

**§ 45.2-709. Roof, face, and ribs to be secure.**

A. All underground active workings and travel ways shall be secured and controlled to protect miners from a fall of roof, face, or ribs. Loose roof and any loose or overhanging ribs or face shall be taken down or supported.

B. The mining method that the mine operator follows shall not expose any miner to a hazardous condition caused by the excessive width of a room or entry, a faulty pillar-recovery method, or any other hazardous mining method or working condition.

**§ 45.2-710. Roof control plans.**

A. Each underground coal mine shall have a roof control plan approved by the Chief. Each plan shall include (i) a minimum standard for adequately controlling the roof, face, and ribs; (ii) a description of mining methods used; (iii) a listing and specification of roof and rib support materials; (iv) instruction for the installation of temporary and permanent roof supports; (v) a description of any pillar recovery methods; (vi) applicable drawings that demonstrate the width of each opening, each roof support installation sequence, and each pillar recovery sequence; and (vii) any additional requirements deemed necessary by the Chief. The initial submission of any roof control plan shall include maps of mine projections, overlying and underlying mine workings, coal contours, and surface contours. If changes are to be made in the mining system that necessitate any change in the roof control plan, the plan shall be revised and approved by the Chief prior to implementing the new mining system.

B. The Chief shall, where he deems necessary, prescribe adequate minimum standards for systematic support of mine roof, suitable to the roof conditions and mining system of each mine. Such standards shall be incorporated into an approved roof control plan for the mine.

C. Failure to comply with the approved roof control plan for the mine shall constitute a violation of this section.

D. The approved roof control plan shall be posted conspicuously at the mine and a copy shall be available at each working section of the mine.

E. The minimum standards and plan shall provide for temporary support at all active workings, without regard to natural condition.

F. If the minimum standards do not afford adequate protection, such additional supports shall be installed as necessary. Such additional supports shall be described in the plan.

G. This section shall not apply to any roof control system installed prior to January 27, 1988, so long as the support system continues to effectively control the roof, face, and ribs.

**§ 45.2-711. Instruction of miners.**

The operator or his agent shall instruct all miners in the removal and installation of temporary and permanent roof supports as may be required by the roof control plan.

**§ 45.2-712. Copies of plan.**

The operator or his agent shall, upon request, furnish a copy of the roof control plan to any miner engaged in removing or installing a temporary or permanent roof support.

**§ 45.2-713. Automated temporary roof support systems.**

The Chief shall adopt regulations requiring automated temporary roof support systems for the installation of roof bolts.

**§ 45.2-714. Supplies of materials for supports.**

A. The operator or his agent shall provide at or near each working place an ample supply of suitable materials of proper size with which to secure the roof, face, and ribs of such working place in a safe manner. Suitable supply materials shall be provided for variations in seam height. If the operator or his agent fails to provide such suitable materials, the mine foreman shall cause all miners to withdraw from the mine, or the portion thereof affected, until such materials or supplies are received.

B. Safety posts, jacks, or temporary crossbars shall be set close to the face before other operations are begun and as needed thereafter if any miner goes in by the last permanent roof support.

C. Unless an automated temporary roof support system is used, safety posts or jacks shall be used to protect miners during removal of roof material, installation of crossbars, drilling of roof bolt holes, installation of roof bolts, or performance of any other work that would reasonably require roof support to protect the miners involved.

D. The operator or his agent shall make immediately available for emergency use at each mine site at least two lifting devices with a combined total of at least 80 tons lifting capacity. Each individual lifting device shall have 20 tons or greater lifting capacity.

**§ 45.2-715. Examination and testing of roof, face, and ribs.**

A. The operator or his agent shall instruct every miner on how to visually examine and conduct sound and vibration testing of roof, face, and ribs.

B. Any miner exposed to danger from a fall of roof, face, or ribs shall visually examine and, if conditions permit, test the roof, face, and ribs by sounding the roof before starting work or before

starting a machine and as needed thereafter to ensure safety. If hazardous conditions are found, the miner discovering such conditions shall either (i) correct the conditions immediately by taking down the loose material, installing proper timbering, or installing proper roof support before work is continued or any other work is done or (ii) cause all miners to vacate the place.

C. At least once each shift, or more often if necessary, the mine foreman or other certified person shall examine and test the roof, face, and ribs of each active working section where coal is being produced while one or more miners are working in such section. Any place in which a hazardous condition is found by the mine foreman shall be made safe in his presence or under his direction or all miners shall be withdrawn from such place. Such hazardous condition and corrective actions taken shall be recorded in the on-shift record book at the mine.

**§ 45.2-716. Mapping of roof falls.**

Any unplanned roof fall that is required to be reported in accordance with § 45.2-556 shall be marked on a map maintained at the mine to indicate the specific location of the fall.

**§ 45.2-717. Unsafe conditions.**

A. No person shall work or travel under unsupported roof except to install temporary supports in accordance with the approved roof control plan. Any area inby the breaker line where second mining has been or is being conducted shall be considered unsupported.

B. If roof, face, or rib conditions are found to be unsafe, no person shall start any other work in the area where such conditions exist until the conditions have been corrected by taking down loose material or securely supporting the roof, face, or ribs pursuant to subsection B of § 45.2-715.

C. A bar of proper length shall be used to pull down any loose material discovered.

**§ 45.2-718. Removal of supports.**

A. No person shall deliberately remove any support in an active area unless equivalent protection is provided.

B. Any person who accidentally knocks out or dislodges a support shall promptly replace the support.

Article 5.

Explosives and Blasting.

**§ 45.2-719. Surface storage of explosives and detonators.**

A. Two or more surface magazines shall be provided for the storage of explosives and the separate storage of detonators.

B. Every surface magazine for storing and distributing explosives in an amount exceeding 150 pounds shall be:

1. Reasonably bullet-resistant and constructed of incombustible material or covered with fire-resistant material. The roof of a magazine that is located in such a way as to make it impossible to fire a bullet directly through the roof from the ground need not be bullet-resistant. Where it is possible to fire a bullet directly through a roof from the ground, such roof shall be made bullet-resistant by material construction, by the use of a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by another method;

2. Provided with doors that are constructed of three-eighth-inch steel plate. Such doors shall be lined with a two-inch thickness of wood or the equivalent;

3. Provided with dry floors that are made of wood or other nonsparking material and have no metal exposed inside the magazine;

4. Provided with suitable warning signs located so that a bullet passing directly through the face of a sign will not strike the magazine;

5. Provided with properly screened ventilators;

6. Equipped with no openings except for entrance and ventilation openings;

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded if constructed of metal.

C. A surface magazine for storing detonators need not be bullet-resistant, but it shall comply with the other provisions of subsection B regarding the storage of explosives.

D. Explosives weighing a total of no more than 150 pounds, or detonators numbering 5,000 or fewer, shall be stored (i) in accordance with the standards set forth in subsection A, B, or C or (ii) in a separate locked box-type magazine. A box-type magazine may also be used as a distributing magazine when the weight of the explosives or the number of detonators does not exceed the limits set forth in this subsection. Every box-type magazine shall be strongly constructed of two-inch hardwood or the equivalent. Every metal magazine shall be lined with nonsparking material. No magazine shall be placed (a) in a building containing oil, grease, gasoline, wastepaper, or other highly flammable material or (b) within 20 feet of a stove, furnace, open fire, or flame.

E. No magazine shall be placed less than 300 feet from any mine opening. However, if a magazine cannot be practicably located at such distance, it may be located less than 300 feet from a mine opening if it is sufficiently barricaded and is approved by the Chief. Unless approved by the Chief, no magazine shall be located closer to an occupied building, public road, or passenger railway than the distance recommended in the "American Table of Distances for Storage of Explosive Materials"

published by the Institute of Makers of Explosives.

F. The supply kept in a distribution magazine shall be limited to approximately a 48-hour supply, and supplies of explosives and detonators may be distributed from the same magazine if they are separated by a substantially fastened hardwood partition at least four inches thick or the equivalent.

G. The area surrounding any magazine shall be kept free of rubbish, dry grass, or other materials of a combustible nature for at least 25 feet in every direction.

H. If an explosives magazine is illuminated electrically, each lamp shall be vapor-proof and installed and wired so as to minimize any fire or contact hazard.

I. Only nonmetallic tools shall be used for opening any wooden explosives container. Extraneous materials shall not be stored with explosives or detonators in an explosives magazine.

J. Smoking or carrying smokers' articles or open flames is prohibited in or near any magazine.

**§ 45.2-720. Underground transportation of explosives and detonators.**

A. Any explosives or detonators carried anywhere underground by any miner shall be in individual containers. Such containers shall be constructed substantially of nonconductive material, maintained in good condition, and kept closed.

B. Any explosives or detonators transported underground in a car that is moved by means of a locomotive or rope, or in a shuttle car, shall be in a substantially covered car or in a special substantially covered container used specifically for transporting explosives or detonators and only under the following conditions:

1. The body and cover of each such car and each such container shall be constructed or lined with nonconductive material;

2. If explosives and detonators are hauled in the same special explosives car or in the same special container, they shall be separated by a substantially fastened hardwood partition at least four inches thick or the equivalent barrier;

3. No explosives, detonators, or other blasting devices shall be transported on the same trip with any miner;

4. If explosives or detonators are transported in a special explosives car or a container in a car, they shall be hauled in a trip specifically for this purpose and not connected to any other trip; however, this provision shall not prohibit the use of such additional cars as needed to lower a rope trip or to haul supplies, including timbers. No materials so transported shall project above the top of the car. In no case shall flammable materials such as oil or grease be hauled on the same trip with explosives; and

5. No explosives or detonators shall be hauled into or out of a mine within five minutes preceding or following a mantrip or any other trip. If traveling against the air current, the mantrip shall precede the explosives trip; if traveling with the air current, the mantrip shall follow the explosives trip.

C. In a low coal seam where it is impractical to comply with the provisions of subsection B, explosives may be transported in the original and unopened case, or in suitable individual containers, to the underground distribution magazine.

D. Explosives and detonators shall be transported underground by belt under the following conditions only:

1. Each shall be transported in the original and unopened case, in a special closed case constructed of nonconductive material, or in a suitable individual container;

2. Clearance requirements shall be the same as those for transporting miners on belts;

3. Suitable loading and unloading stations with stop controls shall be provided; and

4. An authorized person shall supervise the loading and unloading of explosives or detonators.

E. No explosives or detonators shall be transported on a flight or shaking conveyor, scraper, mechanical loading machine, locomotive, cutting machine, or drill truck or on any self-propelled mobile equipment; however, this provision shall not prohibit the transportation of explosives or detonators in special closed containers in a shuttle car or in equipment designed specifically to transport such explosives or detonators.

**§ 45.2-721. Underground storage of explosives and detonators.**

A. If a supply of explosives or detonators for use in one or more sections is stored underground, it shall be kept in a section box or magazine of substantial construction with no metal exposed on the inside. Such box or magazine shall be located at least 25 feet from any roadway or power wire and in a reasonably dry, well rock-dusted location protected from falls of roof. In a pitching bed, where it is not possible to comply with such location requirement, such box shall be placed in a niche cut into the solid coal or rock.

B. If explosives and detonators are both stored in the section, they shall be kept in separate boxes or magazines not less than 12 feet apart if feasible; if kept in the same box or magazine, they shall be separated by a substantially fastened hardwood partition at least four inches thick or the equivalent. Not more than a 48-hour supply of explosives or detonators shall be stored underground in such box or magazine.

C. If explosives and detonators are kept near the face for the use of miners, they shall be kept in separate individual closed containers, in niches in the ribs, not less than 12 feet apart, and at least 50 feet from the working place and out of the line of blast. Each such container shall be constructed of



substantial material and maintained electrically nonconductive. Where it is physically impracticable to comply with such distance requirements, the explosives and detonator containers shall be stored in the safest available places not less than 15 feet from any pipe, rail, conveyor, haulage road, or power line, not less than 12 feet apart, and at least 50 feet from the working face and out of the line of blast.

D. Explosives and detonators shall be kept in their containers pursuant to subsection C until immediately before use at a working face.

**§ 45.2-722. Blasting practices; penalty.**

A. All explosives shall be of the permissible type except where addressed in the plan for shaft and slope development required by subsection B of § 45.2-704.

B. All explosives shall be used as follows:

1. Explosives shall be fired only with electric detonators of proper strength;
2. Explosives shall be fired with permissible shot-firing units, unless firing is done from the surface when all persons are out of the mine, or in accordance with a plan approved by the Chief;
3. Where the coal is cut, no borehole in coal shall be drilled beyond the limits of the cut or into the roof or floor;
4. Every borehole shall be cleaned and checked to ensure that it is placed properly and is of the correct depth in relation to the cut before being charged;
5. Every blasting charge in coal shall have a burden of at least 18 inches in every direction if the height of the coal permits;
6. Every borehole shall be stemmed with at least 24 inches of incombustible material, or at least one-half of the length of the hole shall be stemmed if the hole is less than four feet in depth. The Chief may approve the use of other stemming devices;
7. An examination for gas shall be made immediately before firing each shot or group of shots and after blasting is completed;
8. No shot shall be fired in any place where a methane level of one percent or greater can be detected with a permissible methane detector as directed by the Chief;
9. Without approval, no charge of greater than one and one-half pounds shall be used unless (i) each borehole is six feet or more in depth; (ii) the explosives are charged in a continuous train, with no cartridges deliberately deformed or crushed; (iii) all cartridges are in contact with each other, with the end cartridges touching the back of the hole and the stemming, respectively; and (iv) explosives permissible pursuant to this article are used. No charge exceeding three pounds shall be used; however, such three-pound limit shall not apply to solid rock work;
10. Any solid shooting shall be done in compliance with conditions prescribed by the Chief;
11. Any shot shall be fired by a certified underground shot firer;
12. No borehole shall be charged while any other work is being done at the face, and any shot shall be fired before any other work is done in the zone of danger from blasting except that which is necessary to safeguard the miners;
13. Only nonmetallic tamping bars, including a nonmetallic tamping bar with a nonsparking metallic scraper on one end, shall be used for charging and tamping boreholes;
14. The leg wires of every electric detonator shall be kept shunted until ready to connect to the firing cable;
15. The roof and faces of each working place shall be tested before and after firing each shot or group of shots;
16. Ample warning shall be given before any shot is fired, and care shall be taken to ascertain that all miners are in the clear;
17. Every miner shall be removed to a distance of at least 100 feet from the working place and any immediately adjoining working place and shall be accounted for before any shot is fired;
18. No mixed types or brands of explosives shall be charged or fired in any borehole;
19. No adobe, mudcap, or other open, unconfined shot shall be fired in any mine except a type approved by MSHA and the Chief;
20. Any power wire or cable that could contact any blasting cable or leg wire shall be de-energized during charging and firing;
21. Firing a shot from a properly installed and protected blasting circuit may be permitted by the Chief;
22. No miner shall return or be allowed to return to the working place after the firing of any shot until the smoke has reasonably cleared away;
23. Before any miner returns to work and begins to load coal, slate, or refuse, such miner shall make a careful examination of the condition of the roof and do what is necessary to make the working place safe; and
24. An examination for fire shall be made of the working area after any blasting.

C. It is unlawful for an operator, his agent, or a mine foreman to cause or permit any solid shooting to be done without first obtaining a written permit from the Chief. It is unlawful for any miner to shoot coal from the solid without first obtaining permission to do so from the operator, his agent, or a mine foreman. A violation of this subsection is a Class 1 misdemeanor.

**§ 45.2-723. Blasting cables.**

Each blasting cable shall be:

1. Well insulated and as long as necessary to allow the shot firer to move to a safe place around a corner;
2. Short-circuited at the battery end until it is ready to attach to the blasting unit;
3. Staggered as to length, or shall have its ends kept well separated when attached to the detonator leg wires; and
4. Kept clear of power wires and all other possible sources of active or stray electric currents.

**§ 45.2-724. Misfires.**

A. Where a misfire occurs with an electric detonator, a waiting period of at least 15 minutes is required before any miner is allowed to return to the shot area. After such failure, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before electric connections are examined.

B. Explosives shall be removed by (i) firing a separate charge at least two feet away from, and parallel to, the misfired charge; (ii) washing the stemming and the charge from the borehole with water; or (iii) inserting and firing a new primer after the stemming has been washed out.

C. A careful search of the working place and, if necessary, of the coal after it reaches the tippel shall be made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall occur under the direct supervision of the mine foreman or a certified person designated by him.

**§ 45.2-725. Explosives and blasting practices in shaft and slope operations.**

A. Every blasting area in a shaft or slope operation shall be covered with mats or materials when the excavations are too shallow to retain the blasted material.

B. If explosives are in the shaft or slope when an electrical storm approaches, every miner shall be removed from the working place until the storm has passed.

## Article 6.

## Mine Openings and Escapeways.

**§ 45.2-726. Mine openings.**

A. Except as provided in § 45.2-728, there shall be at least two travel ways, entries, or openings to the surface from each section of a mine worked. Each longwall panel shall be developed with at least three entries; however, if new technology becomes available pursuant to which a two-entry system can be safely developed, such technology may be used, with the approval of the Chief.

B. One of the required travel ways may be the haulage road.

C. The first opening shall not be made through an adjoining mine. The second opening may be made through an adjoining mine.

D. One of the required travel ways shall be designated as the primary escapeway and shall be in an intake airway.

E. Any surface structure where miners congregate or where the mine map or other official records are kept at the mine shall be offset at least 15 feet from the nearest side of any mine opening or otherwise located to be out of the zone of danger if an explosion occurs, unless otherwise approved by the Chief.

**§ 45.2-727. Separation of openings.**

A. In a drift or slope mine, openings shall be separated by at least 50 feet of natural strata, unless specifically approved in the roof control plan. All connections between openings not used for the coursing of air, travel, or haulage shall be closed with stoppings of fireproof material.

B. In a shaft mine, openings shall be separated by at least 200 feet of natural strata.

**§ 45.2-728. Number of miners in openings.**

Until the two travel ways are made as required by § 45.2-726, no more than 20 miners shall work underground in the mine at one time. No additional development shall be permitted until the connection is made to the second opening. In a mine in which final pillar removal operations necessitate closing the second opening, no more than 20 miners shall be permitted to work in the mine.

**§ 45.2-729. Maintenance of mine openings.**

Every mine opening that is used for entering and leaving the mine and every other required travel way shall be kept in good condition and shall at all times be maintained in a safe condition.

**§ 45.2-730. Signs, life lines, and equipment.**

A. Direction signs shall be posted conspicuously at all points where a travel way to the mine opening, escapeway, or escapement shaft is intercepted by another travel way. The signs shall indicate the direction of the place of exit and any manway or escapeway.

B. Continuous life lines shall be installed and maintained in accordance with the approved emergency response plan pursuant to subsection A of § 45.2-820.

C. Every escapeway shall be equipped with all necessary stairways, ladders, cleated walkways, or other equipment approved by the Chief. All equipment shall be installed in such a manner that a person using it in an emergency may do so quickly and without undue hazard.

**§ 45.2-731. Examination of escapeways.**

The mine foreman shall examine every escapeway for hazardous conditions at least weekly. The mine foreman shall mark his initials and the date at each place examined, and if a hazardous condition is found, it shall be reported promptly. A record of such examinations and tests shall be kept at the mine.

**§ 45.2-732. Longwall escape routes and plan.**

A. The operator of any mine that uses longwalls as a method of mining shall maintain an accessible travel route off the tailgate end of the longwall working face. The operator shall familiarize all miners working on the longwall section with the procedures to follow for escape from the section and, when the travel route is impassible, the operator shall inform such miners of such fact.

B. The operator shall develop a plan for use of longwalls if the travel route becomes impassable. The plan shall address (i) the notification to miners of the fact that the travel way is blocked and of the method and timetable for reestablishment of the travel way, (ii) the re-instruction of miners regarding escapeways and escape procedures in the event of an emergency, (iii) the re-instruction of miners on the availability and use of self-contained self-rescuers, (iv) the monitoring and evaluation of the air entering the longwall section, (v) the location and effectiveness of the two-way communication systems, and (vi) a means of transportation from the longwall section to the main line. The plan provisions shall remain in effect until a travel way is reestablished on the tailgate side of a longwall section. Such an operation shall include provisions for such protective devices as fire extinguishers and respirators for miners working on the longwall section.

**§ 45.2-733. Fire protection.**

A. Every shaft, and every partition therein, shall be as nearly fireproof as is practicable.

B. Where there is danger of fire entering the mine, every opening shall have adequate protection against a surface fire or a hazardous volume of smoke entering the mine.

**§ 45.2-734. Unused openings.**

Every unused or abandoned surface opening shall be effectively closed or fenced against unauthorized entrance.

Article 7.

Hoisting.

**§ 45.2-735. Hoisting equipment.**

A. Every hoist used for handling miners shall be equipped with overspeed, overwind, and automatic stop controls.

B. Every suspended work deck or platform shall (i) operate automatically, (ii) be equipped with guardrails capable of protecting miners and materials from accidental overturning, and (iii) be equipped with safety belts and such other protective devices as the Chief shall require by regulation.

C. Every platform or work deck that is used for transporting miners or materials shall be equipped with leveling indicators, and such conveyance shall be maintained and operated in a reasonably level position at all times.

D. Every shaft, slope, or surface incline hoist shall be equipped with brakes capable of stopping and holding the fully loaded unbalanced cage or trip at any point in the shaft or slope or on the surface incline.

E. An accurate and reliable indicator showing the position of the cage or trip shall be placed so as to be in clear view of the hoisting engineer, unless the position of the cage or trip is clearly visible at all times to the hoisting engineer or other person operating the equipment.

F. Any conveyance that is used to haul miners or materials within a shaft or slope shall be (i) designed to prevent materials from falling back into the shaft or slope and (ii) equipped with a retaining edge of at least six inches to prevent objects from falling into the shaft or slope.

**§ 45.2-736. Hoisting ropes.**

A. The hoisting rope on any cage or trip shall be adequate in size to handle the load. A rope that is used to hoist or lower coal and other materials shall have a factor of safety of at least five to one. A rope that is used to hoist or lower miners shall have a factor of safety of at least 10 to one.

B. Each hoisting rope shall have at least three full turns remaining on the drum when extended to its maximum working length. The rope shall make at least one full turn on the drum shaft, or around the spoke of the drum in the case of a free drum, and be fastened securely by means of clamps.

C. Each hoisting rope shall be fastened to its load by (i) a spelter-filled socket or (ii) a thimble and an adequate number of clamps that are properly spaced and installed.

D. Any cage, mancar, or trip used for hoisting or lowering miners with a single rope shall be provided with two bridle chains or wire ropes connected securely to the rope at least three feet above the socket or thimble and clamps and to the crosspiece of the cage or to the mancar or trip. Multiple hoisting ropes installed pursuant to subsection C may be used in lieu of two bridle chains.

E. If equipment or supplies are being hoisted or lowered in the slope, safety chains or wire ropes shall be provided and connected securely to the hoist rope. In addition, visible or audible warning devices shall be installed in the slope where they may be seen or heard by any miner approaching the slope track entry from any access.

**§ 45.2-737. Hoisting cages.**

A. Any cage used for hoisting miners shall be of substantial construction and have (i) adequate steel

bonnets, with enclosed sides; (ii) gates, safety chains, or bars across the ends of the cage when miners are being hoisted or lowered; and (iii) sufficient handholds or chains for all miners on the cage to maintain their balance. A locking device to prevent tilting of the cage shall be used on all self-dumping cages when transporting miners.

B. The floor of each cage shall be constructed so that it is (i) adequate to carry the load and (ii) impossible for a miner's foot or body to enter any opening in the bottom of the cage.

C. Each cage used for hoisting miners shall be equipped with safety catches that act quickly and effectively in case of an emergency. The provisions of this subsection shall not apply to a capsule or bucket that is used for emergency escape or during shaft or slope sinking.

**§ 45.2-738. Shaft and slope conditions.**

A. Every shaft shall be equipped with safety gates at the top and at each landing. Safety gates shall be kept closed except when the cage is being loaded or unloaded.

B. At the bottom of each hoisting shaft and at each intermediate landing, a runaround shall be provided for safe passage from one side of the shaft to the other. This passageway shall be at least five feet in height and three feet in width.

C. Ice shall not be permitted to accumulate excessively in any shaft where miners are hoisted or lowered.

D. Positive-acting stopblocks or derails shall be installed near the top and at intermediate landings of slopes and surface inclines and at the approaches to all shaft landings.

E. Positive-acting stopblocks or derails shall be installed on the haulage track in the slope near the top of the slope. The stopblocks or derails shall be in a position to hold or stop any load to be lowered into the mine, including heavy mining equipment, until such time as the equipment is to be lowered into the mine by the hoist.

**§ 45.2-739. Signaling; signal code.**

A. Two independent means of signaling shall be provided between the top, bottom, and every intermediate landing of each shaft, slope, or surface incline and the hoisting station. At least one of these means of signaling shall be audible to the hoisting engineer or other person operating the equipment. Bell cords shall be installed in each shaft in such a manner as to prevent unnecessary movement of such cords within the shaft.

B. A uniform signal code approved by the Chief shall be in use at each mine and shall be kept at the cage station designated by the mine foreman.

**§ 45.2-740. Inspections of hoisting equipment.**

A. Before hoisting or lowering any miner in a shaft, the hoisting engineer shall operate an empty cage up and down each shaft for at least one round trip, both at the beginning of each shift and after the hoist has been idle for one hour or more.

B. Before hoisting or lowering any miner by slope or surface incline hoisting, the hoisting engineer shall operate an empty cage for at least one round trip, both at the beginning of each shift and after the hoist has been idle for one hour or more.

C. The hoisting engineer, at the time the inspections required by subsection A or B are performed, shall (i) inspect all cable or rope fastenings on every cage, bucket, or slope car; (ii) inspect hammer locks and pins, thimbles, and clamps; (iii) inspect safety chains on every cage, bucket, or slope car; (iv) inspect each braking system for malfunctions; (v) clean all excess oil and extraneous materials from the hoist housing construction; (vi) inspect the overwind, overtravel, and lilly switch or control from stopping at the collar and within 100 feet of the work deck; and (vii) check communications between the top house, work deck, and work deck tugger house.

D. The hoisting engineer shall inspect the hoisting rope on every cage or trip at the beginning of each shift.

E. A test of safety catches on every cage shall be made by an authorized person designated by the operator at least once each month. A written record shall be kept of such tests, and such record shall be available for inspection by interested persons.

F. An authorized person designated by the operator shall inspect daily the hoisting equipment, including the headgear, cages, ropes, connections, links and chains, shaft guides, shaft walls, and other facilities. Such person shall also inspect every bull wheel and lighting system on the head frame. Such person shall report immediately to the operator or his agent any defect found, and all such defects shall be corrected promptly. The person making such examination shall make a daily permanent record of such inspection, which shall be available for inspection by interested persons. If a hoist is used only during a weekly examination of an escapeway, then the inspection required by this subsection shall only be required to be completed weekly before the examination occurs.

G. Subsections A, B, C, and D shall not apply to automatically operated elevators.

**§ 45.2-741. Hoisting engineers.**

A. If miners are transported into or out of an underground area of a mine by a hoist or on a surface incline, a certified hoisting engineer shall be either on duty continuously or available within a reasonable time, as determined by the Chief, to provide immediate transportation while any person is underground.

B. When any miner is being hoisted or lowered in a shaft or on a slope or surface incline, the loading and unloading of any miner and the movement of the cage, car, or trip shall be under the direction of an authorized person.

C. Subsections A and B shall not apply to automatically operated elevators that can be safely operated by any miner; however, a person qualified as an automatic elevator operator shall be available at any such elevator within a reasonable time, as determined by the Chief.

D. An operator or agent of such operator of any mine worked by shaft, slope, or surface incline shall place a competent and sober hoisting engineer in charge of any engine or drum used for lowering or hoisting miners. No hoisting engineer in charge of such machinery shall allow any person, except a person who is designated for such purpose by the operator or his agent, to interfere with any part of the machinery. No person shall interfere with or intimidate a hoisting engineer or automatic elevator operator who is engaged in the discharge of his duties.

**§ 45.2-742. Operations of hoisting equipment.**

A. The speed of the cage, car, or trip in a shaft or slope or on a surface incline shall not exceed 1,000 feet per minute when a miner is being hoisted or lowered.

B. When moving the platform or work deck, every miner traveling thereon shall have a safety belt secured.

C. No miner shall ride on a loaded cage.

D. The number of miners riding in any cage or car at one time shall not exceed the maximum prescribed by the manufacturer. The Chief may prescribe a lesser number when necessary to ensure the safety of miners being transported.

E. Any conveyance being lowered into a shaft in which a miner is working shall be stopped at least 20 feet above the area where such miner is working.

F. If any miner is working at the bottom of a shaft, there shall be an adjustable ladder or chain ladder attached to the work deck to provide an additional means of escape. Such ladder shall be at least 20 feet in length.

G. Every choker or sling used to transport materials within a shaft or slope shall meet specifications established by the American National Standards Institute.

**§ 45.2-743. Maintenance of hoisting equipment.**

Every hoist, rope, cage, and other component of any piece of hoisting equipment shall be maintained in a safe operating condition, as directed by the Chief. A hoisting rope shall be replaced as soon as there is evidence of possible failure.

Article 8.  
Transportation.

**§ 45.2-744. Haulage roads.**

A. The roadbed, rails, joints, switches, frogs, and other elements of the track of each haulage road shall be constructed, installed, and maintained in a manner that ensures the safe operation of the haulage road. In determining its safety, consideration shall be given to the speed of equipment and the type of haulage operations conducted on the haulage road.

B. Haulage tracks shall be kept free of accumulations of coal spillage and debris, and water shall not be allowed to accumulate over the top of the rail.

C. Every off-track haulage equipment operator shall observe the haulage road for hazardous conditions during the course of travel and shall promptly correct or report to the mine foreman any hazardous condition observed.

D. Each off-track haulage road shall be maintained reasonably free of bottom irregularities, excess spillage, debris, wet or muddy conditions that make controlling off-track haulage equipment difficult, and any accumulation of water over such an area of the haulage road and in such a depth as to allow water to enter an electrical panel and create a potentially hazardous condition.

E. No uninsulated trolley lines shall be used or installed in any underground coal mine without approval of the Chief.

**§ 45.2-745. Track switches and rails.**

A. Every track switch shall be provided with a properly installed throw and properly installed latches and bridle bars.

B. Every track switch, other than a switch in a room or entry development, shall be equipped with properly installed guardrails.

C. Every switch throw and stand shall be installed on the side of the track where clearance is provided.

D. Every rail shall be secured at all joints by plates or welds.

**§ 45.2-746. Clearance on haulage roads.**

A. Every track haulage road in an entry, room, or crosscut shall have a continuous clearance on one side of at least two feet from the farthest projection of moving traffic. The clearance shall be kept free of any obstruction to a height permitted by the height of the coal seam. When it is not possible to maintain such clearance, signs indicating close clearance shall be posted inby and outby the affected area.

B. Every track haulage road in an entry, room, or crosscut shall have a continuous clearance on the side opposite the clearance required by subsection A of at least six inches from the farthest projection of moving traffic. When it is not possible to maintain such clearance, signs indicating close clearance shall be posted inby and outby the affected area.

C. Each track haulage road where trolley lines are used shall have the clearance required by subsection A on the side of the track opposite the trolley lines. This requirement shall not apply if the trolley lines are at least 6.5 feet above the rail.

D. The clearance space on each track haulage road shall be kept free of loose rock, loose coal, loose supplies, and other loose materials. If the clearance space exceeds two feet, at least two feet of the clearance space shall be kept free of such materials.

E. Every parallel track shall be installed so as to provide a clearance of at least two feet between the outermost projections of passing traffic.

F. Ample clearance shall be provided (i) at each conveyor loading head, (ii) at each conveyor control panel, and (iii) along each conveyor line.

G. Every belt conveyor shall be equipped with a control switch to automatically stop the driving motor in the event that the belt is stopped by slipping on the driving pulley as a result of breakage or other accident.

**§ 45.2-747. Conveyor crossings.**

Suitable facilities for crossing a conveyor belt shall be provided where it is necessary for miners to cross such conveyor belt regularly.

**§ 45.2-748. Shelter holes.**

A. Every haulage road shall have shelter holes at intervals not to exceed the interval permitted by the roof control plan for crosscuts. Except at a point where more than six feet of side clearance, measured from the rail, is maintained, or at a room switch, a shelter hole shall be provided at each manually operated door and at each switch throw.

B. Except for shelter holes at an underground slope landing where miners pass and cars are handled, each shelter hole shall have (i) a depth of at least five feet; (ii) a width of at most four feet, unless a room neck or crosscut width exceeding four feet is used as a shelter hole; and (iii) a height of at least six feet or, if the height of the traveling space is less than six feet, a height equivalent to that of the traveling space.

C. Every shelter hole at an underground slope landing where miners pass and cars are handled shall be at least (i) 10 feet in depth, (ii) four feet in width, and (iii) six feet in height.

D. Every shelter hole shall be kept free of refuse, loose roof, and other obstructions.

**§ 45.2-749. Refuge from moving traffic.**

Upon the approach of moving traffic, any miner not engaged in haulage operations shall take refuge in a shelter hole or other place of safety.

**§ 45.2-750. Inspection of underground equipment.**

Once per week, or more often if necessary, the mine foreman or a certified person shall inspect electrical and diesel transportation equipment to ensure its safe operating condition. Such equipment located on the surface shall be inspected once per month, or more often if necessary. Such person shall correct any defect found during the inspection. A record of such examinations shall be maintained.

**§ 45.2-751. Maintenance of equipment.**

Every locomotive, mine car, shuttle car, supply car, conveyor, piece of self-propelled mobile equipment, and other piece of equipment shall be maintained in a safe operating condition.

**§ 45.2-752. Self-propelled equipment.**

A. Every piece of self-propelled mobile transportation or haulage equipment for use underground shall be equipped with safe seating facilities for the person operating the equipment unless it is equipped for remote control operation. Where seating facilities are provided on a piece of self-propelled mobile equipment, the person operating such equipment shall be seated before the equipment is put into motion.

B. Every piece of track-mounted equipment shall be equipped with proper lifting devices for the rereiling of such equipment.

C. An audible warning device and headlights shall be provided on each locomotive, shuttle car, or other piece of self-propelled mobile transportation or haulage equipment.

D. A trip light capable of being seen for at least 300 feet underground shall be used on the rear of any trip that is pulled and on the front of any pushed trip or trip that is lowered on a slope; however, a trip light need not be used if a locomotive is used on each end of a trip.

E. Effective measures, including use of a trailing locomotive, slides, skids, or drags, shall be taken during track haulage to ensure that safe control is maintained when a grade creates a potential hazard.

F. Where block signals are used, procedures to safely control traffic movement within the system shall be established in writing and posted and reviewed with all miners.

**§ 45.2-753. Pushing cars.**

Pushing any car on a main haulage road is prohibited except (i) where it is necessary to push a car from a sidetrack that is located near the working section to the producing entry or room; (ii) where it is

necessary to clear a switch or sidetrack; and (iii) on the approach to a cage, slope, or surface incline. However, where a rail transportation system is utilized and it becomes necessary to routinely push cars, the operator shall develop procedures for coordination and control of rail traffic, such as the provision of effective trip lights or other warning devices, and other safety precautions specific to the mine. Such procedures shall be subject to approval of the Chief.

**§ 45.2-754. Transportation of material.**

A. Any equipment, material, or supplies being transported shall be loaded in a manner that protects the operator and other personnel from sliding equipment, material, or supplies.

B. Any equipment, material, or supplies that are not necessary for the operation of a piece of self-propelled mobile equipment shall not be transported on such equipment, except for when the mobile equipment is designed to carry such materials or supplies and no hazard is created. Only small hand tools and materials or supplies that do not create hazards may be transported in the same compartment of a mantrip where any miner is seated.

**§ 45.2-755. Securing cars.**

A. A standing car on any track, unless it is held effectively by brakes, shall be properly blocked to prevent movement.

B. Positive-acting stopblocks or derails shall be used when necessary to protect miners from the hazard of runaway rail equipment. Derails shall be located where a grade at the entrance or any other location in the mine creates a potential collision hazard.

C. Safety chains, steel ropes, or other effective devices capable of holding the load shall be used to prevent a runaway mantrip or other supply car.

**§ 45.2-756. Riding on cars.**

A. No person other than the motorman and the trip rider shall ride on a locomotive unless authorized by the mine foreman.

B. No person shall ride on a loaded car or between cars of any trip.

C. No person shall get on or off a moving locomotive or a car that is being moved by a locomotive.

D. No person shall be allowed to ride on top of a piece of self-propelled mobile equipment.

**§ 45.2-757. Back-poling.**

Back-poling shall be prohibited except (i) at a place where the trolley pole cannot be reversed or (ii) when going up an extremely steep grade. In such circumstances, back-poling shall occur only at very slow speed.

**§ 45.2-758. Operation of equipment.**

A. Every operator of self-propelled mobile haulage equipment shall face in the direction of travel except when the equipment is being loaded and is under the boom of the loading equipment.

B. Every track haulage car that requires coupling and uncoupling shall be equipped with automatic couplers or devices designed to allow coupling and uncoupling without exposing miners between such equipment. Specialty cars designed with safe clearance when connecting to other cars are excluded from the provisions of this subsection.

C. Every person operating self-propelled haulage equipment shall sound a warning before starting such equipment and on approaching any curve, sidetrack, door, curtain, manway crossing, or other place where a miner is or is likely to be.

D. All rail equipment shall be operated at speeds that are safe for the condition of any rail installation, grade, or clearance encountered. When rail equipment is being operated at a normal safe speed, a distance of 300 feet shall be maintained from the rear of other rail equipment in operation, except for a trailing locomotive that is an integral part of the trip.

E. All persons shall stand in the clear during any switching operation.

F. No two pieces of self-propelled mobile mining equipment traveling in opposite directions inside a coal mine shall be allowed to pass each other while both are in motion on the same haulage road unless a distance of at least two feet is maintained between the vehicles.

**§ 45.2-759. Dispatchers.**

Where a dispatcher is employed to control trips at a mine, traffic under his jurisdiction shall be moved only at his direction. The dispatcher shall be stationed on the surface at the mine.

**§ 45.2-760. Availability of mantrips.**

The operator or his agent shall maintain a mantrip or other equipment suitable for providing reasonable access within a reasonable time to any area of the mine where miners are working and where transportation is ordinarily provided. The suitability of the equipment and the reasonableness of the time required to reach such an area of the mine shall be determined by the Chief.

**§ 45.2-761. Mantrips.**

A. Each mantrip that is operated by means of a locomotive shall be pulled and operated at a safe speed that is consistent with the condition of the road and the type of equipment used and shall be so controlled that it can be stopped within the limits of the operator's visibility.

B. Each mantrip shall be under the charge of an authorized person and operated independently of any loaded trip.

C. Each mantrip shall be maintained in safe operating condition. Mantrips shall be provided in

sufficient number to prevent any mantrip from becoming overloaded.

D. No person shall ride under a trolley wire other than in a suitably covered mantrip. A covered mantrip shall not be required under trolley wires that are guarded or positioned in accordance with subsection F of § 45.2-808.

E. Other than small hand tools carried on the person, no supplies, tools, or materials shall be transported in the same car or cage with miners on any mantrip, except in a special compartment in the car designed for such purpose.

F. No miner shall board or leave a moving mantrip car. Each miner shall remain seated while in a moving car and shall proceed in an orderly manner to and from a mantrip.

**§ 45.2-762. Mantrip loading and unloading areas.**

A. Any area used regularly for loading or unloading mantrips shall be kept clear and free of obstructions and have ample clearance for moving equipment. Each miner shall remain in such area until the mantrip is ready to load.

B. Trolley and power wires shall be guarded effectively at any area where persons regularly load or unload from mantrips or cages and where there is a possibility that a person could come into contact with energized electric wiring while boarding or disembarking the mantrip or cage.

**§ 45.2-763. Transporting miners by conveyor belt.**

A. If a conveyor belt is used for transporting miners, such belt shall be free of loose materials and shall maintain a minimum clearance of at least 18 inches between the belt and the overhead roof or crossbars, projecting equipment, cap pieces, overhead cables, wiring, and other objects. Each conveyor belt that is used for transporting miners shall be equipped with emergency stop cords for its entire length.

B. The conveyor belt speed while miners are being transported shall not exceed (i) 250 feet per minute if the overhead clearance maintained pursuant to subsection A is more than 18 inches but less than 24 inches and (ii) 300 feet per minute if the overhead clearance is 24 inches or more. Such conveyor belt shall be stopped while miners are boarding or disembarking.

C. The space between miners riding on a conveyor belt line shall be at least five feet.

D. Adequate clearance and proper illumination shall be provided where miners board or disembark a conveyor belt.

Article 9.  
Surface Areas.

**§ 45.2-764. Housekeeping; noxious fumes.**

A. Good housekeeping shall be practiced in and around every building, shaft, slope, yard, or other area of a mine. Such practice includes cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and possible falling and rolling materials.

B. Painting or conducting any operation that creates noxious fumes shall be performed only in a well-ventilated atmosphere.

C. Every surface mine structure, enclosure, or other facility shall be maintained in good repair.

**§ 45.2-765. Lighting.**

A. Lights shall be provided as needed in or on a surface mine structure, enclosure, or other facility.

B. Each road, path, or walk outside of a structure, enclosure, or other facility shall be kept free from obstructions and shall be well-illuminated if it is used at night.

**§ 45.2-766. Flammable or combustible materials.**

A. Oil, grease, and any similar flammable or combustible material shall be kept in a closed container, separate from other materials, so as to prevent any fire hazard to nearby buildings or mines. If oil, grease, or any similar flammable material is stored in a building, the building or room in which it is stored shall be of fireproof construction and well-ventilated.

B. Any oily rag, oily waste, or wastepaper shall be kept in a closed metal container until removed for disposal.

C. The area within 100 feet of each mine opening shall be kept free of flammable or combustible material; however, this provision shall not apply to the temporary storage of not more than a one-day's supply of such material.

D. Every oxygen or acetylene bottle shall be (i) secured when not in use and (ii) stored with its cap in place in a rack constructed and designated for the storage of such bottles. Smoking shall be prohibited in any place where such materials are stored. Signs indicating that smoking is prohibited in the area shall be posted.

**§ 45.2-767. Hazardous crane operations.**

A crane operator shall at all times during any hazardous crane operation maintain visual or auditory communication with all persons involved in such crane operation.

**§ 45.2-768. Controlling dust at the surface.**

A. In each surface structure, enclosure, or facility at any excessively dusty mine, every electric motor, switch, lighting fixture, and control shall be protected by dust-tight construction.

B. Each surface structure and piece of equipment shall be kept free of coal dust accumulations.



C. If mining operations raise an excessive amount of dust into the air, such dust shall be allayed at its sources by the use of water, water with a wetting agent added to it, or another effective method.

**§ 45.2-769. Scaffolding and overhead protection.**

Proper scaffolding or proper overhead protection shall be provided (i) where repairs are being made to a facility or (ii) where equipment or material is being used or transported overhead.

**§ 45.2-770. Welding and cutting.**

No welding or cutting with arc or flame shall be done in an excessively dusty atmosphere or dusty location. Firefighting apparatus shall be readily available when such welding or cutting is performed.

**§ 45.2-771. Fire prevention and fire control.**

The provisions of Article 5 (§ 45.2-912 et seq.) of Chapter 9 shall apply with respect to any requirement for firefighting equipment, duties in the event of a fire, or fire precautions at any surface area of an underground coal mine.

**§ 45.2-772. Surface equipment.**

The provisions of Article 6 (§ 45.2-915 et seq.) of Chapter 9 shall apply with respect to equipment at any surface area of an underground coal mine.

**§ 45.2-773. Travel ways and loading and haulage areas.**

The provisions of Article 7 (§ 45.2-922 et seq.) of Chapter 9 shall apply with respect to any travel way, loading area, or haulage area at the surface of an underground coal mine.

**§ 45.2-774. Electricity.**

The provisions of Article 9 (§ 45.2-926 et seq.) of Chapter 9 shall apply with respect to any power line, circuit, transformer, or other electrical equipment at any surface area of an underground coal mine.

**§ 45.2-775. Surface blasting.**

The provisions of Article 10 (§ 45.2-931 et seq.) of Chapter 9 shall apply with respect to explosives or blasting at any surface area of an underground coal mine.

**§ 45.2-776. Ground control.**

The provisions of Article 11 (§ 45.2-934) of Chapter 9 shall apply with respect to any pit, highwall, wall, bank, or bench associated with any coal mining activity conducted at any surface area of an underground coal mine.

CHAPTER 8.

REQUIREMENTS APPLICABLE TO UNDERGROUND COAL MINES; ELECTRICITY, SAFETY, ETC.

Article 1.

Mechanical Equipment.

**§ 45.2-800. Face and other equipment.**

A. The cutter chains of any mining machine shall be locked securely by mechanical means or an electrical interlock while such machine is parked or being trammed.

B. Drilling in rock shall be conducted wet or other means of dust control shall be used.

C. Each electric drill or other electrically operated rotating tool intended to be held in the hand shall have the electric switch constructed so as to break the circuit when the hand releases the switch or shall be equipped with a properly adjusted friction or safety clutch.

D. While equipment is in operation or is being trammed, no miner shall position himself or be placed in a pinch point between such equipment and the face or any rib of the mine or another piece of equipment in the mine.

E. Each piece of equipment that is raised for repairs or other work shall be securely blocked prior to any person positioning himself where the falling of such equipment could create a hazardous condition.

**§ 45.2-801. Shop and other equipment.**

A. The following items of shop and other equipment shall be guarded and maintained adequately:

1. Any gear, sprocket, pulley, fan blade or propeller, or friction device or coupling that has a protruding bolt or nut;

2. Shafting or any projecting shaft end that is within seven feet of the floor or platform level;

3. Any belt, chain, or rope drive that is within seven feet of the floor or platform;

4. Any fly wheel. A fly wheel extending more than seven feet above the floor shall be guarded to a height of at least seven feet;

5. Any circular or band saw or planer;

6. Any repair pit, including when the pit is not in use;

7. Any counterweight; and

8. Any mine fan, including the approach to any mine fan.

B. No machinery shall be repaired or serviced while the machinery is in motion; however, this prohibition shall not apply where a safe remote device is used.

C. Any guard or safety device that has been removed from any machine shall be replaced before the machine is put in operation.

D. Each mechanically operated grinding wheel shall be equipped with (i) safety washers and tool rests; (ii) substantial retaining hoods, the hood opening of which shall not expose more than a

90-degree sector of the wheel; and (iii) eyeshields, unless goggles are worn by the miners. Each retaining hood shall include either a device to control and collect excess rock, metal, or dust particles or a device providing equivalent protection to the miner operating such machinery.

E. The operator or his agent shall develop procedures for examining for potential hazards, completing proper maintenance, and properly operating each type of centrifugal pump. Such procedures shall, at a minimum, address the manufacturer's recommendations for start-up and shutdown of the pump, proper actions to be taken when a pump is suspected of overheating, the safe location of start and stop switches, and actions to be taken when a sign of structural metal fatigue, such as a crack in the frame, a damaged cover mounting bracket, or a missing bolt or other component is detected. Every miner who repairs, maintains, or operates any type of centrifugal pump shall be trained in these procedures.

**§ 45.2-802. Hydraulic hoses.**

Every hydraulic hose used on equipment purchased after January 1, 1986, shall be clearly stamped or labeled by the hydraulic hose manufacturer to indicate the manufacturer's rated pressure in pounds per square inch (psi) Every hose purchased after January 1, 1989, shall have the rated pressure permanently affixed on the outer surface of the hose and repeated at least every two feet. Every hose purchased and installed on an automatic displacement hydraulic system shall either (i) have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system, such as a relief valve, or (ii) meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

Article 2.  
Electricity.

**§ 45.2-803. Surface electrical installations.**

A. Any overhead high-potential power line shall be (i) placed at least 15 feet above the ground and 20 feet above any driveway, (ii) installed on insulators, and (iii) supported and guarded to prevent contact with other circuits.

B. Any surface transmission line, including a trolley circuit, shall be protected against short circuits and lightning. Each power circuit that leads underground shall be equipped with lightning arrestors within 100 feet of the location at which the circuit enters the mine.

C. Electric wiring in any surface building shall be installed so as to prevent fire and contact hazards.

**§ 45.2-804. Surface transformers.**

A. Any surface transformer that is not isolated by being elevated at least eight feet above the ground shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is of metal, it shall be grounded effectively. The door to the enclosure or the gate to the fence shall be kept locked at all times unless a person who is authorized to enter the gate or enclosure is present.

B. Any surface transformer that contains flammable oil and is installed near a mine opening, in or near a combustible building, or at any other place where such transformer presents a fire hazard shall be provided with a means to drain or to confine the oil in the event of a rupture of the transformer casing.

**§ 45.2-805. Underground transformers.**

Every transformer that is used underground shall be air-cooled or filled with nonflammable liquid or inert gas.

**§ 45.2-806. Stations and substations.**

A. Suitable warning signs shall be posted conspicuously at every transformer station.

B. Every transformer station, substation, battery-charging station, pump station, and compressor station shall be kept free of nonessential combustible material and refuse.

C. Reverse-current protection shall be provided at each storage-battery-charging station to prevent the storage batteries from energizing a power circuit in the event of power failure.

**§ 45.2-807. Power circuits.**

A. All underground power wires and cables shall (i) have adequate current-carrying capacity, (ii) be guarded from mechanical injury, and (iii) be installed in a permanent manner.

B. Wires and cables that are not encased in armor shall be supported by well-installed insulators and shall not touch any roof, rib, or combustible material; however, this prohibition shall not apply to ground wires, grounded power conductors, or trailing cables.

C. Power wires or cables that are installed in a belt-haulage slope shall be insulated adequately and buried in a trench at least one foot below any combustible material, unless such wires or cables are encased in armor or otherwise fully protected against mechanical injury.

D. Any splice or repair in a power cable shall:

1. Be mechanically strong and have adequate electrical conductivity;
2. Be effectively insulated and sealed so as to exclude moisture;

3. If the cable has metallic armor, possess mechanical protection and electrical conductivity equivalent to that of the original armor; and

4. If the cable has metallic shielding around each conductor, possess new shielding that is equivalent to the original shielding.

E. Every underground high-voltage transmission cable shall be:

1. Installed only in a regularly inspected airway;

2. Covered, buried, or placed on insulators so as to afford protection against damage by derailed equipment if it is installed along a haulage road;

3. Guarded if miners regularly work or pass under such cable, unless it is at least 6.5 feet above the floor or rail;

4. Securely anchored, properly insulated, and guarded at its ends; and

5. Covered, insulated, or placed to prevent contact with any trolley circuit or other low-voltage circuit.

F. Any new high-voltage disconnect that is installed on underground electrical equipment shall automatically ground all three power leads when in the open position. Every high-voltage disconnect that is rebuilt or remanufactured after July 1, 2011, shall meet this standard.

G. Every power wire or cable shall be insulated adequately where it passes into or out of an electrical compartment and where it passes through a door or stopping.

H. Where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet;

2. At least one rail on any secondary track-haulage road shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet; and

3. Track switches on entries shall be well bonded.

**§ 45.2-808. Trolley wires and feeder wires.**

A. Trolley wires and trolley feeder wires shall be installed on the side of the entry opposite the clearance space and any shelter hole, except where the wires are guarded or are installed at least 6.5 feet above the top of the rail.

B. Trolley-wire hangers shall be so spaced that the wire may become detached from any one hanger without creating a shock hazard.

C. Trolley wires shall be aligned properly and installed on insulated hangers at least six inches outside the rail.

D. Trolley wires and trolley feeder wires shall be provided with cut-out switches at intervals of not more than 1,500 feet and near the beginning of each branch line.

E. Trolley wires and trolley feeder wires shall be kept taut and shall not be permitted to touch the roof or any rib, timber, or combustible material.

F. Trolley wires and trolley feeder wires shall be guarded adequately at both sides of any door and at every place where miners work or pass under them, unless they are at least 6.5 feet above the top of the rail.

G. No trolley wires or trolley feeder wires shall extend beyond any open crosscut between an intake and a return airway. All such wires shall be kept at least 150 feet from any active, open pillar workings.

H. Trolley wires and trolley feeder wires shall be guarded, anchored securely, and insulated properly at the ends.

I. Trolley wires and trolley feeder wires shall be installed only in an intake airway.

J. No trolley wires or other exposed conductors shall carry more than 300 volts.

**§ 45.2-809. Grounding.**

A. Every metallic sheath, armor, or conduit that encloses a power conductor shall be electrically continuous throughout and shall be grounded effectively.

B. Every metallic frame, casing, or other enclosure of stationary electrical equipment that can become electrified through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. Any three-phase alternating current circuit that is used underground shall contain either a direct or derived neutral that shall be grounded through a suitable resistor at the power center. A grounding circuit that originates at the grounded side of the grounding resistor shall extend with the power conductors and serve as the grounding conductor for the frame of every piece of electrical equipment that is supplied with power from that circuit. A grounding resistor that is manufactured to meet the extended time rating as set forth in American National standard IEEE C57.32-2015 is deemed to meet the requirements of this section. High-voltage circuits extending underground shall be supplied with a grounding resistor of a proper Ohmic value located on the surface to limit the voltage drop in the grounding circuit external to the resistor to not more than 100 volts under fault conditions. Such grounding resistor shall be rated for maximum fault current continuously and insulated from ground for

a voltage equal to the phase-to-phase voltage of the system. Every resistance-grounded alternating circuit used underground shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to ensure the continuity of the ground conductor.

**§ 45.2-810. Circuit breakers and switches.**

A. Automatic circuit breaking devices or fuses of the correct type and capacity shall be installed so as to protect each piece of electrical equipment and each power circuit against excessive overload; however, this requirement shall not apply to any locomotive that is operated regularly on a grade that exceeds five percent. Wire or other conducting material shall not be used as a substitute for a properly designed fuse, and every circuit breaking device shall be maintained in safe operating condition.

B. An automatic circuit breaker of the correct type and capacity shall be installed on each resistance-grounded circuit used underground. Such circuit breaker shall be located at the power source and equipped with devices to provide protection against under-voltage, grounded phase, short circuit, and overcurrent.

C. Operating controls such as switches, starters, and switch buttons shall be installed so that they are readily accessible and can be operated without danger of contact with moving or electrified parts.

D. A disconnecting switch shall be installed underground in each main power circuit within approximately 500 feet of the bottom of each shaft or borehole and at any other place at which a main power circuit enters the mine.

E. Each piece of electrical equipment and each circuit shall be provided with switches or other controls of safe design, construction, and installation.

F. Insulating mats or other electrically nonconductive material shall be kept in place at each power-control switch and at any piece of stationary machinery at which a shock hazard exists.

G. Each circuit breaker, disconnecting device, and switch shall be marked for identification.

**§ 45.2-811. Communication systems.**

A. Telephone service or equivalent two-way communication facilities shall be provided between the top and each landing of each main shaft or slope. A telephone or equivalent two-way communication facility shall be located on the surface within 500 feet of each main portal and installed in either a building or a box-like structure that is designed to protect the facility from damage by inclement weather. At least one of these communication facilities shall be at a location where an authorized person who is always on duty when miners are underground can see or hear the facility and respond immediately in the event of an emergency.

B. Telephone lines, other than cables, shall be carried on insulators, installed on the opposite side from power or trolley wires, and insulated adequately where they cross power or trolley wires.

C. Lightning arrestors shall be provided at each point where a telephone circuit enters the mine and at each telephone on the surface. Where the telephone circuit enters a building or structure, a lightning arrestor is required only at the point at which the circuit enters such building or structure.

D. If a communication system other than telephones is used and its operation depends entirely upon power from the mine electric system, a means shall be provided to permit continued communication in the event the mine electric power fails or is cut off.

E. Communication systems equipped with audible and visual signals that become operative when telephone communication is being established between the phones of the communication station on the surface and the underground working sections shall be provided.

F. The Chief shall adopt regulations governing any disruption of communication in a mine.

**§ 45.2-812. Electrical equipment.**

A. Electrical equipment that is taken into or used in by the last open crosscut or in other than an intake airway constitutes permissible equipment.

B. Permissible equipment that is used in an area specified in subsection A shall be maintained in permissible condition.

C. No electrical equipment shall be taken into or operated in any place where a methane level of one percent or more is detected.

D. Voltage limitations for underground installations of electrical equipment using direct or alternating current shall conform to the voltages provided in 30 C.F.R. § 18.47.

E. Electrical equipment shall be classified as permissible and shall be maintained in a permissible condition when such equipment is located within 150 feet of any pillar workings or longwall face.

F. Any electrical conductors and cables installed in or in by the last open crosscut, or within 150 feet of any pillar workings or longwall face, shall be:

1. Shielded high-voltage cables supplying power to permissible longwall equipment or other equipment;

2. Interconnecting conductors and cables of permissible longwall equipment;

3. Conductors and cables of intrinsically safe circuits; or

4. Cables and conductors supplying power to low-voltage or medium-voltage permissible equipment.

G. Electrical equipment shall be maintained in safe operating condition at all times while it is being used, and any unsafe condition shall be corrected promptly or the equipment shall be removed from service.

**§ 45.2-813. Trailing cables.**

- A. Trailing cables that are used underground shall be flame-resistant.
- B. Trailing cables shall be provided with suitable short-circuit protection and some means of disconnecting power from the cable. Any power connection that is made in other than an intake airway shall be by means of a permissible connector.
- C. Any temporary splice in a trailing cable shall be made in a workmanlike manner and shall be mechanically strong and well insulated.
- D. No more than one temporary, unvulcanized splice shall be allowed in any trailing cable.
- E. Any permanent splice or repair in a trailing cable shall:
1. Be mechanically strong, with adequate electrical conductivity and flexibility;
  2. Be effectively insulated and sealed so as to exclude moisture;
  3. Be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket; and
  4. If the cable has metallic shielding around each conductor, possess new shielding that is equivalent to the original shielding.
- F. Trailing cables shall be protected against mechanical damage. A trailing cable that is damaged in a manner that exposes the insulated inner power conductors shall be repaired promptly or removed from service.

**§ 45.2-814. Inspection of electrical equipment and wiring; checking and testing methane monitors.**

- A. Electrical equipment and wiring shall be inspected by a certified person at least weekly if it is located underground and at least monthly if it is located on the surface. Such equipment and wiring shall be inspected more often if doing so is necessary to ensure safe operating conditions. Any hazardous condition that is found shall be promptly corrected or the equipment or wiring shall be removed from service. Records of such inspections shall be maintained at the mine for a period of one year.
- B. A functional check of methane monitors on electrical face equipment shall be conducted to determine whether such monitors are de-energizing the electrical face equipment properly. Such check shall be (i) made on each production shift, (ii) conducted by the equipment operator in the presence of a mine foreman, and (iii) recorded in the on-shift report of the mine foreman.
- C. To determine the accuracy and operation of methane monitors on electrical face equipment, weekly calibration tests of such monitors shall be conducted with a known mixture of methane at the flow rate recommended by the methane monitor manufacturer. A record of the results shall be maintained.
- D. Required methane monitors shall be maintained in permissible and proper operating condition.

**§ 45.2-815. Repairs to circuits and electric equipment.**

- A. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution circuit or equipment except by a certified person or a person who is trained to perform electrical work and to maintain electrical equipment and is working under the direct supervision of a certified person. Every high-voltage circuit shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the person who performs electrical or mechanical work on such a circuit or piece of equipment connected to such a circuit, except that where locking out is not possible, such devices shall be opened and suitably tagged by such person. Locks and tags shall be removed only by the person who installed them or, if such person is unavailable, by a certified person authorized by the operator or his agent.
- B. A miner may, where necessary, repair energized trolley wires if he wears insulated shoes and lineman's gloves.
- C. This section does not prohibit a certified electrical repairman from making checks on or troubleshooting energized circuits or an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

**§ 45.2-816. Underground illumination.**

- A. Electric-light wires shall be supported by suitable insulators or installed in conduit, shall be fastened securely to the power conductors, and shall not contact any combustible material.
- B. Every electric light shall be guarded and installed so that it does not contact any combustible material.

**§ 45.2-817. Inspection of electric illumination equipment.**

Every lamp, extension light, and permissible form of portable illumination, such as a cap lamp or flashlight, that is used for personal illumination underground shall be inspected by an authorized person at least once per week, and more often if necessary, to ensure safe operating conditions. When such equipment is located at the surface, it shall be inspected by an authorized person at least once per month, and more often if necessary, to ensure safe operating conditions. Any defect found shall be corrected.

**§ 45.2-818. Firefighting equipment; fire prevention.**

A. Each mine shall be provided with suitable firefighting equipment that is adequate for the size of the mine.

B. The following equipment, at a minimum, shall be immediately available at each mine:

1. A water car filled with water and provided with hose and pump, or waterlines and necessary hoses;

2. At least three 20-pound dry chemical fire extinguishers;

3. Ten 50-pound bags of rock dust, which shall be made available at doors or other strategic places;

4. Bolt cutters that can be used to cut trolley wire in an emergency;

5. One pair of rubber gloves that shall be used with each pair of bolt cutters when cutting trolley wire;

6. Two sledge hammers; and

7. Five hundred square feet of brattice cloth, nails, and a hammer.

C. Clean, dry sand, rock dust, or fire extinguishers that are suitable from a toxic and shock standpoint shall be placed at each electrical station, including each substation, transformer station, and permanent pump station, so as to be out of the smoke in case of a fire in the station.

D. Suitable fire extinguishers shall be provided at each (i) electrical station, including each substation, transformer station, and permanent pump station; (ii) piece of self-propelled mobile equipment; (iii) belt head and at the inby end of each belt; (iv) area used for the storage of flammable materials; (v) fueling station; and (vi) any other area that may constitute a fire hazard, so as to be on the fresh air side in case of a fire.

E. All firefighting equipment and each fire sensor system shall be maintained in a usable and operative condition. Each chemical extinguisher shall be examined every six months and the date of the examination shall be indicated on a tag attached to each extinguisher.

F. A sufficient number of approved one-hour, self-contained, self-rescuers shall be readily available, not more than 100 feet away, for the persons involved in the moving or transporting of any piece of off-track mining equipment.

**§ 45.2-819. Duties in case of fire.**

A. In case of a fire, the next inby permanent stopping into the return air course shall be opened as soon as possible in order to short circuit the air and permit close access to the fire for extinguishment.

B. When a fire that could endanger persons underground cannot be extinguished immediately, such persons shall be withdrawn promptly from the mine.

C. If a fire occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it.

**§ 45.2-820. Emergency response plans; list of next of kin.**

A. Each operator shall develop an emergency response plan for each mine. The plan shall include (i) a mine emergency communication plan, (ii) an evacuation procedure, (iii) the identification of waterlines, (iv) the number system of brattice, (v) the location of each escapeway, and (vi) such other information as the Chief reasonably requires.

B. The emergency response plan shall be subject to approval by the Chief or mine inspector. The Chief may require periodic updates to an operator's emergency response plan. Such operator shall comply with the requirements of the approved plan.

C. The emergency response plan shall be posted in a conspicuous manner and location readily accessible to all miners, both underground and at the surface of the mine.

D. The operator shall train miners in the implementation of the emergency response plan and shall conduct practice drills. Records of dates and times of practice drills shall be maintained in the emergency response plan.

E. Each miner employed by the operator who goes underground, and each visitor authorized by the operator to enter the mine, shall have available an adequate supply of self-rescue devices, each of which provides at least one hour of protection and is approved by MSHA. The training related to self-rescue devices shall be included in the emergency response plan approved by the Chief.

F. The operator shall maintain a list of the next of kin of all miners employed at the mine. The list shall be kept at the mine site or at a central facility readily accessible to the mine.

**§ 45.2-821. Reporting fires; response.**

In case of any unplanned fire at a mine that is not extinguished within 30 minutes of discovery, the operator shall report the fire to the Chief by the quickest available means, giving all information known to the operator. The Chief, based on such information, shall promptly go in person or dispatch a mine inspector to the scene of the fire for consultation and assistance in the extinguishment of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or the mine inspector shall be final. The decision of the Chief regarding measures to extinguish the fire and protect persons shall have the force of an order issued pursuant to § 45.2-569 if it is delivered to the operator in writing.

**§ 45.2-822. Fire prevention in transportation of mining equipment.**

A. Prior to moving or transporting any piece of off-track mining equipment in any area of the active

workings where energized trolley wires or trolley feeder wires are present, (i) the piece of equipment shall be examined by a certified person to ensure that accumulations of coal dust, float coal dust, loose coal, oil, grease, and other combustible materials have been removed from such piece of equipment and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

B. A record shall be kept of the examinations required pursuant to subsection A and shall be made available, upon request, to the Chief or his authorized representative.

C. Off-track mining equipment shall not be moved or transported in any area of the active workings where energized trolley wires or trolley feeder wires are present unless under the direct supervision of a certified person who is physically present at all times during the moving or transporting of such equipment.

D. The frame of any unit of off-track mining equipment that is being moved or transported shall be covered on the top and on the trolley wire side with fire-resistant material.

E. Electrical contact shall be maintained between the mine track and the frame of any piece of off-track mining equipment that is being moved in a track and trolley entry. However, rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

F. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or, if necessary, the assemblage shall be removed if the clearance to the power lines is six inches or less.

G. Sufficient prior notice shall be given to the Department so that a mine inspector, if he deems it necessary, can travel the route of the move before the actual move is made.

H. A minimum vertical clearance of one foot shall be maintained between the farthest projection of the piece of equipment that is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the coal seam does not permit one foot of vertical clearance to be so maintained, the following additional precautions shall be taken:

1. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the piece of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, such power may be supplied from inby such equipment if a miner who has the means to cut off the power is in direct communication with the persons actually engaged in the moving or transporting operation and is stationed outby the equipment being moved;

2. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

3. At all times when the piece of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be (i) in direct communication with the persons actually engaged in the moving or transporting operation and (ii) capable of communicating with the authorized person on the surface who is required to be on duty;

4. Where trolley phones are utilized to satisfy the requirements of subdivision 3, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by (i) the miner who is stationed at the first automatic circuit breaker outby the equipment being moved and (ii) by a miner who is actually engaged in the moving or transporting operation; and

5. No person shall be permitted to be inby the piece of equipment being moved or transported, or in the ventilating current of air that is passing over such equipment, except a person who is directly engaged in moving such equipment.

I. The provisions of subsection H shall not apply to a piece of mining equipment that is transported in a mine car if no part of the equipment extends above or over the sides of the mine car.

**§ 45.2-823. Storage and use of flammable fluids and materials.**

A. Each underground storage place for oil, grease, or flammable hydraulic fluid shall be of fireproof construction.

B. Oil, grease, and flammable hydraulic fluid that is kept underground for current use shall be kept in a closed metal container.

C. Provisions shall be made to prevent an accumulation of spilled oil or grease at any such storage place or at any location at which such material is used.

D. Oily rags, oily waste, and wastepaper shall be kept in closed metal containers until it is removed for disposal.

E. No gasoline, benzene, kerosene, or other flammable oil shall be used underground in powering machinery.

F. Every oxygen or acetylene bottle that is used underground shall be secured while in use. When stored underground, each oxygen or acetylene bottle shall be placed in a safe location, protected from

physical damage, stored with its cap in place where such storage is provided for on the tank, and secured upright or elevated, whichever mine heights allow.

**§ 45.2-824. Diesel-powered equipment.**

Diesel-powered equipment may be utilized underground with the written approval of the Chief. The Chief shall adopt regulations necessary to carry out the provisions of this section. Such regulations shall require that the air in each travel way in which diesel equipment is used, and in any active workings connected thereto, be of a quality necessary for a safe, healthful working environment. The minimum quantity of ventilating air that shall be supplied for a permissible diesel machine in a given time shall conform to the quantity shown on the approval plate attached to the machine. Every diesel machine or piece of equipment shall be maintained in such manner that the exhaust emissions meet the standards to which the machine or equipment was manufactured.

**§ 45.2-825. Arcs, sparks, and flames.**

A. The intentional creation of any open arc, open spark, or open flame, except as provided in subsection B, is prohibited.

B. Any underground (i) welding or cutting with arc or flame or (ii) soldering, unless conducted in a fireproof enclosure that is ventilated with intake air, shall be done by or under the direct instruction of a certified foreman or repairman. A person certified in gas detection shall test for methane before and during such welding, cutting, or soldering operation in an underground coal mine and shall make a diligent search for fire after such an operation in all parts of the mine where such operation occurred. Rock dust or a suitable fire extinguisher shall be immediately available during such welding or cutting. Any welding operation shall be performed only in a well-ventilated area.

Article 4.

Ventilation, Mine Gases, and Other Hazardous Conditions.

**§ 45.2-826. Pre-shift examinations.**

A. The operator or his agent shall establish eight-hour intervals of time, each of which shall be subject to a required pre-shift examination. Within three hours preceding the beginning of any such eight-hour interval during which any person is scheduled to work or travel underground, a mine foreman shall make a pre-shift examination. No person scheduled to enter the mine during the eight-hour interval, other than the mine foreman who is conducting the examination, shall enter any underground area unless a pre-shift examination has been completed for such established eight-hour interval.

B. During the pre-shift examination, the mine foreman shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split, at each of the following underground locations:

1. Every track entry or other area where persons are scheduled to work or travel during the oncoming shift;

2. Every belt conveyor that will be used to transport persons during the oncoming shift and the entry in which each such belt conveyor is located;

3. Any working section or area where mechanized mining equipment is being installed or removed if a person is scheduled to work on the section or in the area during the oncoming shift. Such a working section or area includes each working place and each approach to a worked-out area, and ventilation controls on each such section or in each such area;

4. Each approach to a worked-out area along an intake air course if intake air passes by such worked-out area to ventilate any working section where a person is scheduled to work during the oncoming shift;

5. Every seal along an intake air course where intake air passes by such seal to ventilate any working section where a person is scheduled to work during the oncoming shift;

6. Where intake air passes through or by an entry or room to any working section where a person is scheduled to work during the oncoming shift, each such entry or room that is driven (i) more than 20 feet off an intake air course without a crosscut or permanent ventilation controls or (ii) more than two crosscuts off an intake air course without permanent ventilation controls; and

7. Where unattended diesel equipment is expected to operate or an area in which trolley wires or trolley feeder wires are to be or will remain energized during the oncoming shift.

C. During the pre-shift examination, the mine foreman shall determine the volume of air entering each of the following areas if a miner is scheduled to work in such area during the oncoming shift:

1. In the last open crosscut of each set of entries or rooms on each working section or any area in which mechanized mining equipment is being installed or removed;

2. On each longwall or shortwall in each intake entry at the intake end of the longwall or shortwall face immediately outby the face. The mine foreman shall also determine the velocity of air at each end of the face at the locations specified in the approved ventilation plan required by the federal mine safety law; and

3. At the intake end of any pillar line (i) in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is



used or (ii) in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A mine foreman shall make a pre-shift examination of the surface areas of an underground coal mine in accordance with the requirements for pre-shift examinations at surface coal mines as provided in § 45.2-903.

E. The Chief may require the mine foreman to examine other areas of the mine or to examine for other hazards during the pre-shift examination.

F. Any area of the mine where hazardous conditions are found shall be posted with a conspicuous danger sign located where anyone entering the area would pass. Only a person designated by the operator or his agent to correct or evaluate the condition shall enter such posted area.

G. At each working place examined, the mine foreman shall certify by initials, date, and time that the examination was made. In any area to be examined outby a working section, the mine foreman shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

H. Each idle or worked-out area underground shall be inspected for gas and other hazardous conditions by a mine foreman immediately before miners are permitted to enter or work in such place. A certified person shall supervise the correction of any condition that creates an imminent danger. The mine operator or his agent shall not pass beyond the danger sign except in cases of necessity.

I. If no person has been working underground before an established eight-hour interval, no person other than a mine foreman conducting a pre-shift examination shall enter the mine until the examination has been completed and the mine foreman reports that the mine is clear of danger; however, miners may enter under the direction of a mine foreman for the purpose of making the mine safe. The Chief may, in certain mines, authorize mantrips to proceed to a designated station underground, from which no mantrip shall leave until a mine foreman reports that the remainder of the areas of the mine are clear of danger.

J. Miners who are regularly employed on a shift during which a pre-shift examination is being conducted shall be permitted to leave or enter the mine in the performance of their duties.

K. In a multiple-shift operation, certified persons may be used to make the pre-shift examination for the next or succeeding shift.

L. Immediately before any miner is permitted to enter an area of an inactive underground coal mine in order to take emergency actions to preserve the mine, a mine foreman shall examine such area for gas and other hazardous conditions.

M. In the performance of his duties under this section, the mine foreman shall have no superior officer, and every miner shall be subordinate to him.

**§ 45.2-827. On-shift examinations.**

A. At least once during each shift, and more often if necessary, a certified person shall examine each underground section where coal is produced and any other area where mechanized mining equipment is being installed or removed during the shift. The certified person shall (i) examine for hazardous conditions, (ii) test for methane and oxygen deficiency with a suitable permissible device, and (iii) determine whether the air is traveling in its regular course and in sufficient volume in each split. Any hazardous condition shall be corrected immediately or the miners shall be withdrawn and the affected area plainly marked with danger signs.

B. During each shift in which coal is produced, a certified person shall examine for hazardous conditions along each underground belt conveyor entry where a belt conveyor is operated. Such examination may be conducted at the same time as the pre-shift examination of the belt conveyors and the belt conveyor entries, if the examination is conducted within three hours before the established eight-hour interval. The person conducting the examination shall certify by initials, date, and time at enough locations to show that the entire area has been examined.

C. A person conducting an on-shift examination shall determine at the following underground locations:

1. The volume of air in the last open crosscut of each set of entries or rooms on each working section and in any area in which mechanized mining equipment is being installed or removed;

2. The volume of air on a longwall or shortwall, including any area where longwall or shortwall equipment is being installed or removed, in the intake entry or entries at the intake end of the longwall or shortwall;

3. The velocity of air at each end of the longwall or shortwall face at each location specified in the approved ventilation plan required pursuant to the federal mine safety law; and

4. The volume of air at the intake end of any pillar line (i) in the intake entry furthest from the return air course, immediately outby the first open crosscut outby the line of pillars being mined, if a single split of air is used or (ii) in the intake entries of each split, immediately inby the split point, if a split system is used.

D. A test shall be made for methane before (i) any electrically powered equipment is taken inby the last open crosscut, (ii) any blasting takes place, and (iii) work is resumed after blasting. When a longwall or shortwall mining system is used, such methane test shall be made from under permanent roof support at the shearer, the plow, or the cutting head. Such methane test shall be made at least

once every 20 minutes or more often as necessary for safety while such equipment is in operation. When mining has been stopped for more than 20 minutes, a methane test shall be conducted prior to the start-up of equipment.

E. Each idle or worked-out area underground, including any section belt that has been idle for a period of 24 hours or more, shall be examined by a certified person immediately before miners are permitted to enter or work in such area. The person conducting the examination shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

F. Daily and on-shift examinations of surface areas of underground coal mines shall be made in accordance with the requirements for daily and on-shift examinations at surface coal mines as provided in § 45.2-903.

**§ 45.2-828. Weekly examinations.**

A. At least once every seven days, a mine foreman shall examine each unsealed worked-out area where no pillars have been recovered.

B. At least once every seven days, a mine foreman shall evaluate the effectiveness of each bleeder system used pursuant to § 45.2-837.

C. At least once every seven days, a mine foreman shall examine each of the following locations for hazardous conditions:

1. At least one entry of each intake air course, in its entirety, so that the entire air course is traveled.

2. At least one entry of each return air course, in its entirety, so that the entire air course is traveled.

3. Each longwall or shortwall travel way, in its entirety, so that the entire travel way is traveled.

4. Each seal along each return or bleeder air course and each seal along each intake air course not examined pursuant to § 45.2-826.

5. Each escapeway, in its entirety, so that the entire escapeway is traveled.

6. Each working section not examined pursuant to § 45.2-826 during the previous seven days.

D. At least once every seven days, a certified person shall:

1. Determine the volume of air entering each main intake and each intake split;

2. Determine the volume of air and test for methane in the last open crosscut in any pair or set of developing entries or rooms. Such determination and test shall be conducted in the return of each split of air immediately before it enters the main returns and where the air leaves the main returns; and

3. Test for methane in the return entry nearest each set of seals immediately after the air passes the seals.

E. Any hazardous condition shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons necessary to correct the hazardous condition shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected.

F. No weekly examination is required during any seven-day period in which no person enters any underground area of a mine. If a mine is idled or is in a nonproducing status with entry only for maintenance of the mine, weekly examinations may be conducted in accordance with a plan approved by the Chief.

G. Except for certified persons required to make examinations, no person shall enter any underground area of a coal mine if no weekly examination has been completed within the preceding seven days. The weekly examination may be conducted at the same time as the pre-shift examination.

H. A person making a weekly examination shall certify completion of the examination by initials, date, and time at enough locations to show that the entire area has been examined.

I. Any examination of surface areas of underground coal mines shall be made in accordance with the requirements for weekly examinations at surface coal mines pursuant to § 45.2-903.

**§ 45.2-829. Examinations of fans.**

A. An authorized person shall conduct a daily inspection of each main fan and of the machinery connected with such fan. The person making the examination shall record such examination in a book prescribed for this purpose or by other adequate means provided to permanently record the performance of the main fan and to give warning of an interruption to a fan. No such daily examination is required on any day in which no person goes underground, except that the examination shall be completed prior to any person entering the mine if no examination was made on the previous day.

B. Any place ventilated by means of a blower fan shall be examined for methane by a certified person before the fan is started at the beginning of the shift and after any interruption of fan operation that lasts for five minutes or more during the shift.

C. Each blower fan and its tubing shall be inspected at least twice during each working shift by a certified person.

**§ 45.2-830. Record of examinations.**

A. Any hazardous condition found by the mine foreman or another certified person designated by the operator for the purpose of conducting examinations under this article shall be (i) corrected immediately or (ii) posted with conspicuous danger signs until the condition is corrected. If the hazardous condition

creates an imminent danger, all persons except those required to perform work to correct the imminent danger shall be withdrawn from the affected area. The hazardous condition and the corrective actions taken shall be recorded in a book maintained for such purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found.

B. Upon completing the pre-shift examination, the mine foreman shall return to the surface or a designated station underground and report in person to an authorized person before any other miner enters the mine. Immediately upon reaching the surface, the mine foreman shall record in ink or indelible pencil the result of his inspection in a book maintained for such purpose on the surface at the mine.

C. At the completion of any shift during which a portion of a weekly examination is made, a record of each hazardous condition, its location, the corrective action taken, and the result and location of each air and methane measurement shall be made. Such record shall be made by the mine foreman making the examination or another certified person designated by the operator. If the record is made by a person other than the one making the examination, the person making the examination shall verify the record by initials and date.

D. The actual level of methane detected in any examination shall be recorded in the book.

E. A mine foreman or other certified person conducting a required examination shall record the results of his examination in ink or indelible pencil in a book maintained for such purpose on the surface at the mine. Similar records may be kept at designated stations or offices underground.

F. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose a hazardous condition, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control each hazardous condition have been taken. Where such records disclose no hazardous condition, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person who possesses authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate each hazardous condition disclosed in the records.

G. All records of examination shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.

**§ 45.2-831. Notice of hazardous conditions.**

The mine foreman shall give prompt attention to the removal of each hazardous condition reported to him by any person working in the mine. If it is impracticable to remove a hazardous condition at once, the mine foreman shall notify every person whose safety is threatened by such hazardous condition to remain away from the portion of the mine where the hazardous condition exists.

**§ 45.2-832. Notice of monitor tampering prohibition.**

The operator or agent shall display, in bold-faced type, on a sign placed at the mine office, at the bath house, and on a bulletin board at the mine site, the following notice:

**NOTICE: IT IS UNLAWFUL TO DISTURB, DISCONNECT, BYPASS, IMPAIR, OR OTHERWISE TAMPER WITH METHANE MONITORS OR OTHER DEVICES CAPABLE OF DETECTING THE PRESENCE OF EXPLOSIVE GASES IN AN UNDERGROUND COAL MINE. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY.**

**§ 45.2-833. Main fans.**

A. The active workings of a mine shall be ventilated by means of main fans.

B. Unless otherwise approved by the Chief, each fan shall be (i) provided with pressure-recording gauges, (ii) installed on the surface in a fireproof housing, and (iii) equipped with fireproof air ducts.

C. In addition to the requirements of subsection B, each main fan shall either:

1. Be equipped with ample means of pressure relief and be offset not less than 15 feet from the nearest side of the mine opening; or

2. Be directly in front of, or over, the mine opening; however, such opening shall not be in direct line with forces coming out of the mine if an explosion were to occur. There shall be another opening, equipped with a weak-wall stopping or with explosion doors, that is located not less than 15 feet or more than 100 feet from the fan opening and in direct line with the forces coming out of the mine if an explosion were to occur; and

3. In a mine ventilated by multiple main mine fans, incombustible doors shall be installed so that if any main mine fan stops and air reversals through the fan are possible, the doors on the affected fan automatically close.

D. Each main mine fan shall be provided with an automatic device to give alarm when the fan slows down or stops. Unless otherwise approved by the Chief, such device shall be placed so that it will be seen or heard by an authorized person.

E. Each main fan shall be on a separate power circuit, independent of the mine circuit.

F. The area surrounding a main fan installation shall be kept free of combustible material for at least 100 feet in every direction where physical conditions permit.

G. Each mine fan shall be operated continuously except when no miner is underground and such mine fan is intentionally stopped for necessary testing, adjustment, maintenance, or repairs, or as otherwise approved by the Chief. If the main fan is intentionally stopped for testing, adjustment, maintenance, or repairs, the mine operator shall comply with the requirements set forth in the approved fan stoppage plan for that mine. If the main fan is stopped after all miners are out of the mine, the fan shall be operated for a period specified in the approved fan stoppage plan for that mine, prepared pursuant to § 45.2-834, before any miner is allowed underground.

H. Where electric power is available, no main mine fan shall be powered by means of an internal combustion engine. However, if electric power is not available or the fan is employed for emergency use, a main mine fan may be powered with an internal combustion engine. Unless otherwise approved by the Chief, such fan shall be operated exhausting and the engine operating such fan shall be offset at least 10 feet from the fan and housed in a separate fireproof structure.

**§ 45.2-834. Fan stoppage plan.**

A fan stoppage plan shall be prepared for each mine. Such plan shall be subject to approval by the Chief or his designated representative. Failure to comply with any requirement set forth in the approved plan is a violation of this section. Each fan stoppage plan shall require the following:

1. When the main fan fails or stops, the power shall be cut off from the mine and miners shall be withdrawn from all face areas.

2. Miners shall be withdrawn from the underground areas if the ventilation is not restored within a reasonable time determined by the Chief, not to exceed 15 minutes. In determining such reasonable time period, the Chief shall consider, among other factors, the size and number of fans and the methane liberation rate of the mine.

3. If ventilation is restored within the time period established in the plan, each face area and any other area in which methane is likely to accumulate shall be examined by a certified person, and if all areas are found to be free of explosive or harmful gases, power may be restored and work resumed.

4. If ventilation is not restored within the time period established in the plan and the miners are evacuated from the mine, the main fan shall be operated for a period of time specified in the plan. Such period of time shall not be less than 15 minutes. Thereafter, the mine shall be examined by a certified person before any miner is permitted underground or any power circuit is energized.

**§ 45.2-835. Auxiliary fans.**

A. The installation or use of an auxiliary fan in any mine is prohibited without the prior written approval of the Chief.

B. A machine-mounted scrubber and spray fan system may be used for control of coal dust and enhancement of ventilation. Such an installation is not considered an auxiliary fan.

**§ 45.2-836. Quantity of air.**

A. The quantity of air passing through the last open crosscut shall be at least 9,000 cubic feet per minute. However, the quantity of air reaching the last open crosscut in a pillar-recovery section may be less than 9,000 cubic feet per minute if at least 9,000 cubic feet of air per minute is being delivered to the intake end of the pillar line.

B. The air current at a working face shall, under all conditions, have a sufficient volume and velocity to readily dilute and carry away smoke from blasting and any flammable or harmful gases and dust.

C. In a longwall or shortwall mining system:

1. The quantity of air shall be at least 30,000 cubic feet per minute reaching the working face, unless otherwise approved by the Chief; and

2. The velocity of air provided to control dust at designated locations on the longwall or shortwall face shall be maintained in accordance with the provisions of the mine ventilation plan approved by MSHA.

D. Ventilation shall be maintained during the installation or removal of mechanized mining equipment.

**§ 45.2-837. Bleeder systems.**

A. Every mine shall have a system, approved by the Chief, of bleeder openings of air courses designed to provide positive movement of air through or around worked-out areas. Such system shall be sufficient to prevent a hazardous accumulation of gas in any such area and to minimize the effect of variations in atmospheric pressure. Each operator shall submit a bleeder system plan that complies with requirements developed by the Chief.

B. The system requirements developed by the Chief shall, at a minimum, address standards for (i) supplemental roof supports, (ii) water accumulation, (iii) continuous movement of gases from gob areas, (iv) methane content, (v) the use and operation of degasification systems, (vi) air flow direction and content, and (vii) ventilation controls. The Chief shall not approve a plan that provides for a methane content exceeding 4.5 percent in bleeder air courses.

C. This section shall not prohibit the sealing of worked-out areas in accordance with § 45.2-845. The mine map requirements of § 45.2-542 may be used to depict bleeder system standards specified in this section.

*D. Failure to comply with an approved plan is a violation of this section.*

**§ 45.2-838. Coursing of air.**

*A. The main intake and return air currents of a drift or slope mine shall not be in a single partitioned opening.*

*B. Every entry driven in coal shall be in a set of two or more entries.*

*C. Every transformer station, battery-charging station, substation, rectifier, and water pump shall be housed in an incombustible structure or area or be equipped with an approved fire suppression system. Each such installation shall be ventilated with intake air that is coursed into a return air course or to the surface and that is not used to ventilate any working place. This requirement does not apply to any (i) rectifier, battery-charging station, or power center with transformers that are of the dry type or contain nonflammable liquid, if such rectifier, battery-charging station, or power center is located at or near the working section and is moved as the working section advances or retreats; (ii) submersible pump; (iii) permissible pump and associated permissible switch gear; (iv) pump located at or near the working section that is moved as the working section advances or retreats; or (v) small portable pump. Such equipment shall be installed and operated only in a well-ventilated location.*

*D. Any change in ventilation that materially affects the main air current or any split thereof shall be made when the mine is not in operation and there are no miners in the mine other than those engaged in changing the ventilation.*

*E. Each section in a mine shall be ventilated by a separate split of air.*

*F. Air used to ventilate a belt haulage entry shall not be used to ventilate any working place unless approved by the Chief.*

**§ 45.2-839. Actions for excessive methane.**

*A. Tests for methane concentration under this section shall be made by certified or qualified persons trained in the use of an approved detecting device that is properly maintained and calibrated. Tests shall be made at least one foot from the roof, face, ribs, and floor.*

*B. If a methane concentration of one percent or more is present in a working place; an intake air course, including an air course in which a belt conveyor is located; or an area where mining equipment is being installed or removed, work shall cease and electrically powered equipment shall be de-energized in the affected working place, except for any intrinsically safe atmospheric monitoring system (AMS), which need not be de-energized. Changes or adjustments shall be made to such ventilation system to reduce the methane concentration to below one percent. Only work to reduce the methane concentration to below one percent is permitted. Such limitation does not apply to any other face in the entry or slope in which work can be safely continued.*

*C. If a methane concentration of 1.5 percent or more is present in a working place; an intake air course, including an air course in which a belt conveyor is located; or an area where mining equipment is being installed or removed, only work necessary to reduce the methane concentration to less than 1.5 percent is permitted, and all miners except those required to perform such necessary work shall be withdrawn from the affected area. Electrically powered equipment in the affected area shall be de-energized and other mechanized equipment in the affected area shall be shut off, except for any intrinsically safe AMS.*

*D. If a methane concentration of one percent or more is present in a return or split between the last working place on a working section and the location at which such split of air meets another split of air, or the location at which such split is used to ventilate a seal or worked-out area, changes or adjustments shall be made to the ventilation system to reduce the methane concentration in the return air to less than one percent.*

*E. If a methane concentration of 1.5 percent or more is present in a return air split between the last working place on a working section and the location at which such split of air meets another split of air, or the location at which such split is used to ventilate a seal or worked-out area, all miners except those required to perform necessary work to correct the problem shall be withdrawn from the affected area. Other than an intrinsically safe AMS, all equipment in the affected area shall be de-energized at the source. No other work is permitted in the affected area until the methane concentration in the return air is less than one percent.*

*F. An alternative methane concentration of as much as 1.5 percent is allowed in a return air split if the following conditions are met: (i) the quantity of air in the split ventilating the active workings is at least 27,000 cubic feet per minute in the last open crosscut; (ii) the methane concentration in the split is continuously monitored during mining operations by an intrinsically safe AMS that gives a visual and audible signal on the working section when the methane concentration in the return air reaches 1.5 percent; and (iii) rock dust is continuously applied with a mechanical duster to the return air course during coal production at a location in the air course that is immediately outby the most inby monitoring point or inby such point if the mechanical duster is maintained in a permissible condition and does not adversely affect the AMS. If a methane concentration of 1.5 percent or more is present at the location at which a return air alternative is applied, all persons shall be withdrawn, except those necessary to improve ventilation, and changes or adjustments shall be made to reduce the methane concentration in the return air to below 1.5 percent as set forth in subsection E.*

G. The methane concentration in a bleeder split of air immediately before the air in such split joins another split of air, or in a return air course other than described in subsections D and E, shall not exceed two percent.

**§ 45.2-840. Crosscuts.**

A. Crosscuts shall be made between entries and between rooms as provided in the approved roof control plan.

B. Every crosscut between an intake and a return air course shall be closed, except the one nearest the face. A crosscut between rooms shall be closed where necessary to provide adequate ventilation at the working face.

C. Where practicable, a crosscut shall be provided at or near the face of each entry or room before the place is abandoned.

D. No entry or room shall be started off an entry beyond the last open crosscut.

**§ 45.2-841. Permanent stoppings.**

A. Permanent stoppings shall be built and maintained:

1. Between each intake and return air course, except that temporary controls may be used in any room that is located 600 feet or less from the centerline of the entry from which the room was developed. Unless otherwise approved by the Chief, such stoppings shall be maintained to and inclusive of the third connecting crosscut outby the working face.

2. To separate each belt conveyor haulage entry from any return air course, except where a belt entry is used as a return air course.

3. To separate the primary escapeway from any belt or trolley haulage entry, unless otherwise approved by the Chief.

4. In each return air course to direct air into adjacent worked-out areas.

B. Permanent stoppings shall be built of substantial, incombustible material such as concrete, concrete block, brick, tile, or other approved material; however, where physical conditions prohibit the use of such materials, timbers laid longitudinally "skin to skin" may be used.

C. The use of an air lock in the permanent intake stopping line near the section loading point is permitted to access the belt and transport supplies.

D. Stoppings shall be maintained to serve the purpose for which they were built and shall be reasonably airtight.

**§ 45.2-842. Ventilation controls.**

A. Ventilation shall be so arranged by means of air locks, overcasts, or undercasts that the passage of a haulage trip or person along the entries will cause no interruption of the air current. Each air lock shall be ventilated sufficiently to prevent an accumulation of methane therein.

B. Air lock doors that are used in lieu of permanent stoppings or to control ventilation within an air course shall be (i) made of incombustible material or coated on all accessible surfaces with flame-retardant material having a flame spread index of 25 or less as tested under ASTM E162 and (ii) of sufficient strength to serve their intended purpose of maintaining separation and permitting travel between or within air courses or entries.

C. To provide easy access between the return, belt, and intake escapeway entries, substantially constructed man-doors that are properly marked so as to be readily detected shall be installed in at least every fifth crosscut in the stopping line separating such entries.

D. Doors shall be kept closed except when a miner or piece of equipment is passing through the doorway. Any motor crew or other miner who opens such doors shall see that they are closed before leaving them.

E. Overcasts, undercasts, and regulators shall be well-constructed; of incombustible material, such as masonry, concrete, concrete block, or prefabricated metal; and (i) of sufficient strength to withstand possible falls from the roof, (ii) of ample area to pass the required quantity of air, and (iii) kept clear of obstructions.

**§ 45.2-843. Line brattice.**

A. Substantially constructed line brattice shall be used from the last open crosscut of an entry or room when necessary to provide adequate ventilation for the miners and to remove gases. Any line brattice that is damaged by a fall or otherwise shall be repaired promptly.

B. The space between the line brattice and the rib shall be large enough to permit the flow of a sufficient volume of air to keep the working face clear of flammable and noxious gases.

C. Brattice cloth that is used underground shall be of flame-resistant material.

D. An accumulation of methane shall be moved only by means of properly installed line brattice or other approved method.

**§ 45.2-844. Ventilation with air from certain areas.**

Active face workings shall not be ventilated with air that has passed through a worked-out area or has been used to ventilate a pillar line. This section shall not apply to air that is being used to ventilate an active pillar line or a room that is necessary to establish and maintain such pillar line.

**§ 45.2-845. Worked-out areas.**

A. Every worked-out area shall be either sealed or ventilated.

B. Where the practice is to seal worked-out areas, the sealing shall be done in accordance with sealing provisions of the approved bleeder plan.

**§ 45.2-846. Air quality.**

A. All active workings shall be ventilated by a current of air containing at least 19.5 percent by volume of oxygen and no harmful amount of any noxious or poisonous gas.

B. The volume and velocity of the current of air in all active workings shall be sufficient to dilute, render harmless, and carry away flammable, explosive, noxious, and harmful gases, dust, smoke, and explosive fumes.

**§ 45.2-847. Examination of mine for explosive gas and other hazardous conditions.**

A. Every certified person whose regular duties require him to inspect working places in any mine for hazardous conditions shall have in his possession and shall use, when underground, a permissible methane detector or other permissible device capable of detecting methane and oxygen deficiency.

B. A sufficient number of permissible methane detectors or other permissible devices capable of detecting methane shall be kept at each mine in by the last open crosscut. Every miner shall be trained in the operation of such devices. Every miner working in by the last open crosscut shall be certified by the Board of Coal Mining Examiners pursuant to § 45.2-520 to conduct gas testing.

C. Every methane detector shall be maintained in permissible condition. Every methane detector shall be calibrated at least monthly in accordance with the manufacturer's recommendations. A record of such calibration shall be made in a book for this purpose kept at a surface location at the mine and maintained for one year.

**§ 45.2-848. Tampering with methane monitoring devices prohibited; penalty.**

A. No person shall intentionally disturb, disconnect, bypass, impair, or otherwise tamper with any methane monitor or other device that is capable of detecting the presence of explosive gas and is used in an underground coal mine. If such methane monitor or device is installed on a face cutting machine, a continuous miner, longwall face equipment, a loading machine, or other mechanized equipment used to extract or load coal, as required pursuant to 30 C.F.R. Part 75.342, and such monitor, device, or equipment malfunctions, it may be disconnected or bypassed for the purpose of removing it or the equipment in order to make necessary repairs to it or the equipment. Any methane monitor or device not otherwise required by law may be disconnected, bypassed, or removed.

B. Violation of this section is a Class 6 felony.

**§ 45.2-849. Allowing persons to work in mine where methane monitoring equipment disconnected; penalty.**

No operator, agent, or mine foreman shall knowingly permit any miner to work in any area of an underground coal mine where such operator, agent, or mine foreman has knowledge that a methane monitor or other device capable of detecting the presence of explosive gas has been impaired, disturbed, disconnected, or bypassed in violation of § 45.2-848. Violation of this section is a Class 6 felony.

**§ 45.2-850. Intentionally bypassing a safety device; prohibition.**

A. No person shall intentionally bypass, bridge, or otherwise impair an electrical or hydraulic circuit that affects the safe operation of electrical or mechanical equipment.

B. The provisions of subsection A shall not prohibit (i) a certified electrical repairman from bypassing an energized circuit for troubleshooting; (ii) an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustment or to move the equipment to a safe location; (iii) an authorized person from bypassing a hydraulic circuit for the purpose of troubleshooting or moving equipment to a safe location in order to make necessary repairs or take such equipment out of service; or (iv) an authorized person from activating an override feature that is designed by the machine manufacturer to allow such machine to be moved to a safe location in order to undergo necessary repairs or be taken out of service.

**§ 45.2-851. Control of coal dust.**

A. Coal dust shall not be permitted to accumulate excessively in any part of the active areas, including any active workings that are soon to be worked-out.

B. Where an underground mining operation creates or raises an excessive amount of coal dust into the air, any coal dust on the ribs, roof, or floor shall undergo an application of water or water with a wetting agent added to it or another effective method, approved by the Chief or his authorized representative, of controlling dust to reduce dispersibility and minimize the risk of explosion. Such application or method shall occur within 40 feet of any active workings or such other area as the Chief or his authorized representative requires.

**§ 45.2-852. Rock dusting.**

A. Every underground area of a mine, except an area in which the coal dust is too wet or too high in incombustible content to propagate an explosion, shall be rock-dusted to within 40 feet of every working face, unless such area is inaccessible or unsafe to enter or unless the Chief or his authorized representative permits an exception upon his finding that such exception does not pose a hazard to any miner. Every crosscut that is less than 40 feet from a working face shall also be rock-dusted.

B. Every other area of a mine shall be rock-dusted if conditions are found by a proper inspection to

be so dusty as to constitute a hazard. If such conditions are found to exist, the Chief or his authorized representative shall require the necessary rock dusting to make every such area of the mine safe.

C. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible material, shall be cleaned up and shall not be permitted to accumulate excessively in active workings or on electric equipment therein.

Article 5.

Personal Safety; Smoking.

**§ 45.2-853. Checking system; tracking system.**

A. Each mine shall have a personnel checking system that includes the following requirements:

1. Every person underground shall have on his person a means of positive identification bearing a number recorded by the operator; and

2. An accurate record of the persons in the mine shall be kept on the surface in a place that will not be affected by an explosion. Such record shall consist of a written record, check board, lamp check, or time-clock record and shall bear a number identical to that carried by the person underground.

B. Any mine-wide tracking system shall be maintained in usable and operative condition.

**§ 45.2-854. Protective clothing.**

A. Every miner shall wear a protective hat while underground and while in any area on the surface where there is a danger of injury from falling objects.

B. Every person assigned to or performing duties on the surface of an underground coal mine, or any person entering the underground portion of such mine, shall wear reflective materials adequate to make him visible from all sides. Such reflective material shall be placed on a hard hat and at least one other item of outer clothing such as a belt, suspenders, jacket, coat, coveralls, shirt, pants, or vest.

C. Protective footwear shall be worn by each miner while on duty in or around a mine where falling objects may cause injury.

D. Every employee inside or outside of a mine shall wear an approved type of goggles or shields where there is a hazard from flying particles.

E. Every welder and helper shall use proper goggles or shields to protect his eyes.

F. Any miner engaged in haulage operations or employed around moving equipment on the surface or underground shall wear snug-fitting clothing.

G. Every employee shall wear gloves when handling material that may injure the hands or when handling energized cables. No gloves with gauntlet cuffs shall be worn around moving equipment.

H. Any miner who may be exposed for short periods to hazards from inhalation of gas, dust, fumes, or mist shall wear approved respiratory equipment. When the exposure is for a prolonged period, adequate approved measures to protect such miner or to reduce the hazard shall be taken.

**§ 45.2-855. Noise levels and ear protection.**

Each mine operator shall provide approved hearing protection to miners. Every miner shall wear approved hearing protection in any area of excess noise levels in accordance with the mine's hearing conservation program approved under 30 C.F.R. Part 62.

**§ 45.2-856. Smoking materials prohibited; penalty.**

A. No miner or other person shall smoke or carry or possess underground any smoker's articles or any match, lighter, or similar material generally used for igniting smoker's articles. Violation of this subsection is a Class 6 felony.

B. Each operator shall institute a smoker search program, approved by the Chief, to ensure that no person entering the underground area of the mine carries any smoking material, match, or lighter.

C. Any person entering or present in any underground area of a coal mine shall, by his entry into such underground area of the mine, be subject to a search of his person, including any personal property that is in any underground area of the mine at any time he is underground. Such search shall be conducted at the direction of the Chief by employees of the Department. It shall be limited in scope to the person and property of the person present underground at the time of the search and shall be for the purpose of enforcing the provisions of this section.

D. This section shall not prohibit the possession of equipment used solely for the operation of a flame safety lamp or for welding or cutting.

**§ 45.2-857. Allowing persons to work in a mine with smoker's articles; penalty.**

A. No operator, agent, or mine foreman shall knowingly permit any person in an underground coal mine to smoke, carry, or possess any smoker's articles or materials used for igniting smoker's articles.

B. Violation of this section is a Class 6 felony.

**§ 45.2-858. Posting of notice.**

The operator or his agent shall display, in bold-faced type, on a sign placed at the mine office, bath house, and on a bulletin board at the mine site, the following notice:

NOTICE:

IT IS UNLAWFUL FOR A MINER OR OTHER PERSON IN AN UNDERGROUND COAL MINE TO SMOKE OR CARRY OR POSSESS UNDERGROUND ANY SMOKER'S ARTICLES OR MATCHES, LIGHTERS, OR SIMILAR MATERIALS GENERALLY USED FOR IGNITING SMOKER'S ARTICLES. A VIOLATION IS PUNISHABLE AS A CLASS 6 FELONY. ANY PERSON ENTERING OR PRESENT IN



*THE UNDERGROUND AREA OF ANY COAL MINE IS SUBJECT TO A SEARCH OF HIS PERSON AND PROPERTY BY OFFICIALS OF THE DEPARTMENT OF MINES, MINERALS AND ENERGY FOR SUCH PROHIBITED SMOKER MATERIALS AT ANY TIME WHILE UNDERGROUND.*

**§ 45.2-859. Smoking in surface and other areas.**

A. No miner or other person shall smoke, carry, or possess any smoker's articles, or carry an open flame, in or near any magazine for the storage of explosive materials.

B. No miner or other person shall smoke in or around any oil house, tipple, or other surface area where such practice may cause a fire or explosion.

**§ 45.2-860. Portable illumination.**

A. For portable illumination underground, every miner shall use a permissible electric cap lamp that is worn on the person. Such requirement shall not preclude the use of any other type of permissible electric lamp, permissible flashlight, permissible safety lamp, or other permissible portable illumination device.

B. Any light bulb on an extension cable shall be guarded adequately.

Article 6.

*First Aid Equipment; Medical Care; Emergency Medical Services Providers.*

**§ 45.2-861. First aid equipment.**

Each mine shall have adequate supplies of first aid equipment as determined by the Chief. Such supplies shall be located on the surface, at the bottom of each shaft and slope, and at other strategic locations near the working faces, as the Chief prescribes. Such first aid supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture-proof. Such supplies shall be available for use of any person employed in the mine. No first aid material shall be removed or diverted without authorization except in case of injury at the mine.

**§ 45.2-862. Attention to injured persons.**

A. When an injury occurs underground, the injured person shall be brought promptly to the surface. Prompt medical attention shall be provided in the event of injury, and adequate facilities shall be made available for transporting such injured person to a hospital if necessary.

B. Safe transportation shall be provided to carry an injured person from the site where the injury occurred to the surface of the mine.

C. The operator of each mine shall post directional signs that are conspicuously located to identify the routes of ingress to and egress from any mine located off of a public road.

**§ 45.2-863. Certified emergency medical services providers.**

A. At each mine, the mine operator shall station at least one person who is a working coal miner and who holds a valid certificate as an emergency medical services provider issued pursuant to § 32.1-111.5 so as to make such person available for duty during any time when miners are working at such mine. Such operator shall utilize enough such providers to assure that workers in any mine location can be reached by a provider within a reasonable time as determined by the Chief. Each provider shall have available to him at all times the necessary equipment, as specified by the Chief, for prompt response to emergencies. Telephone facilities or their equivalent shall be installed to provide two-way voice communication between such provider and medical personnel outside the mine.

B. If an insufficient number of qualified miners at a particular mine volunteer to serve as providers pursuant to this section, the operator may utilize the services of first aid trainees, in such numbers as the Chief determines to be appropriate.

PART C.

SURFACE COAL MINES.

CHAPTER 9.

REQUIREMENTS APPLICABLE TO SURFACE COAL MINES.

Article I.

General Provisions.

**§ 45.2-900. Scope of chapter.**

This chapter applies to the operation of any surface coal mine in the Commonwealth and supplements the provisions of Chapter 5 (§ 45.2-500 et seq.).

**§ 45.2-901. Regulations governing conditions and practices at surface coal mines.**

A. The Chief may, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations necessary to ensure safe and healthy working conditions in surface coal mines in the Commonwealth. Such regulations governing surface coal mines shall relate to:

1. Safety and health standards for the protection of the life, health, and property of, and the prevention of injuries to, persons involved in or likely to be affected by any surface coal mining. Such regulations shall include standards for the control of dust concentration levels; the installation, maintenance, and use of electrical devices, equipment, cables, and wires; fire protection; the use and storage of explosives; hoistings; drilling; loading and haulage areas; the training of surface miners; the preparation of responses to emergencies; examinations of conditions at a surface mine site; and reporting requirements;

2. The storage or disposal of any matter or material that is (i) extracted or disturbed as the result of a surface coal mining operation or (ii) used in the surface coal mining operation or for the refinement or preparation of the material that is extracted from the surface coal mining operation, so that such matter or material does not threaten the health, safety, or property of miners or the general public; and

3. The operation, inspection, operating condition, and movement of drilling equipment and machines to protect the health, safety, and property of miners and the general public.

B. The Chief shall adopt no regulation establishing a requirement for the operation of, or for conditions at, a surface coal mine that is inconsistent with any requirement established by the Act.

**§ 45.2-902. Standards for regulations.**

In adopting regulations pursuant to § 45.2-901, the Chief shall consider:

1. Standards utilized and generally recognized by the surface coal mining industry;

2. Standards established by recognized professional coal mining organizations and groups;

3. Standards established by federal mine safety laws;

4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of the highest degree of safety protection, including the latest available scientific data in the field, the technical feasibility of the standards, and the experience gained under the Act and other mine safety laws; and

5. Such other criteria necessary for the protection of the safety and health of miners and other persons or property likely to be affected by surface coal mines or related operations.

Article 2.

Work Area Examinations, Recordkeeping, and Reporting.

**§ 45.2-903. Safety examinations.**

A. An on-shift examination of the work area, including any pit, auger, thin seam, or highwall operation, shall be conducted by a certified person for each production shift and at such other times or frequency as the Chief designates as necessary for hazardous conditions.

B. A pre-operational examination of all mobile equipment shall be conducted by an authorized person.

C. A pre-shift examination shall be conducted by a certified person for certain hazardous conditions designated by the Chief.

D. Each mine refuse pile, as defined in § 45.2-617, shall be examined by an authorized person on each day on which any person works at such location.

E. The location of each natural gas pipeline on a permitted surface mine area shall be identified and conspicuously marked so that equipment operators can readily identify the location of such pipeline. A pre-shift examination shall be conducted of the location of each pipeline whenever the work area approaches within 500 feet of such pipeline unless otherwise approved by the Chief.

F. An air quality examination shall be conducted by a certified person when a surface coal mining operation intersects an underground mine, auger hole, or other underground working.

G. At least one examination for methane shall be conducted for each production shift in each surface installation, enclosure, or other facility in which coal is handled or stored. Each such area shall also be tested for methane before any activity involving welding, cutting, or an open flame. An examination conducted pursuant to this subsection shall be made by an authorized person certified to make gas tests.

H. Electrical equipment and wiring shall be inspected as often as necessary but at least once per month.

I. Each fire extinguisher shall be examined at least once every six months.

J. Each area of an inactive surface coal mine shall be examined for hazardous conditions by a mine foreman immediately before any miner is permitted to enter into such area to take emergency actions to preserve a mine.

**§ 45.2-904. Records of examinations.**

A. Documentation of examinations and testing conducted pursuant to § 45.2-903 shall be recorded in a mine record book provided for that purpose. Documentation shall include records of hazardous conditions found in the work area. However, examinations of fire extinguishers shall be conducted by an authorized person and documentation shall be accomplished by recording the date of the examination on a permanent tag attached to each extinguisher.

B. The actual methane readings taken during examinations required under the Act shall be recorded in the mine record book.

C. The surface foreman shall maintain and sign a daily record book. Where any such report discloses a hazardous condition, the surface foreman shall take prompt action to have such condition corrected, barricaded, or posted with warning signs.

D. Each record shall be countersigned by the supervisor of the examiner creating the record. Where such record discloses a hazardous condition, the countersigning of the record shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination record was completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous condition have been taken. Where such record does not disclose a hazardous condition, the countersigning shall be completed within 24 hours following the end of the shift for which

the examination record was completed. The operator may authorize another person who has authority equivalent to that of the supervisor to act in the supervisor's temporary absence to read and countersign records and ensure that action is taken to eliminate any hazardous condition disclosed in a record.

E. All records of inspections shall be open for inspection by any interested person and maintained at the mine site for a minimum of one year.

**§ 45.2-905. Areas with safety or health hazards; duties of surface mine foreman.**

A. Any hazardous condition shall be corrected promptly or the affected area shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures. Any imminent danger that cannot be removed within a reasonable time shall be reported to the Chief by the quickest available means.

B. The surface mine foreman shall see that the requirements of the Act pertaining to his duties and to the health and safety of the miners are fully complied with at all times.

C. The surface mine foreman shall see that every miner employed to work at the mine, before beginning work therein, is aware of any hazardous condition incident to his work at the mine.

Article 3.

Personal Protection.

**§ 45.2-906. Personal protection devices and practices.**

A. Every person at a surface coal mine shall wear the following protection in the specified conditions:

1. A hard hat in and around any area of a mine where falling objects could cause injury.
2. Hard-toed footwear in and around a mine.
3. Safety goggles or a shield where there is a hazard of flying material.
4. A protective shield or goggles when welding.
5. Snug-fitting clothes when working around moving parts or machinery.
6. Gloves where the hands could be injured. Gauntlet cuffed gloves are prohibited around moving machinery.

B. The operator shall supply ear protection to any miner upon request.

C. Every person assigned to or performing duties at a surface mine work area shall wear reflective material adequate to make the person visible from all sides. Such reflective material shall be placed on the hard hat and at least one other item of outer clothing, such as a belt, suspenders, a jacket, a coat, coveralls, a shirt, pants, or a vest.

**§ 45.2-907. Housekeeping.**

A. Good housekeeping shall be practiced in and around every building, shaft, slope, yard, or other area of the mine. Such practices include cleanliness, orderly storage of materials, and the removal of possible sources of injury, such as stumbling hazards, protruding nails, broken glass, and material that could fall or roll.

B. Every surface mine structure, enclosure, or other facility shall be maintained in a safe condition.

**§ 45.2-908. Noxious fumes.**

Painting or any operation that creates noxious fumes shall be performed only in a well-ventilated atmosphere.

Article 4.

First Aid Equipment; Medical Care; Emergency Medical Services Providers.

**§ 45.2-909. First aid equipment.**

Every surface coal mine shall have adequate supplies of first aid equipment as determined by the Chief. Such supplies shall be located at strategic locations at the mine site so as to be available in a reasonable response time. Such supplies shall be encased in suitable sanitary receptacles designed to be reasonably dust-tight and moisture proof. In addition to the supplies in the receptacles, blankets, splints, and properly constructed stretchers in good condition shall be provided at every mine. All of the first aid supplies shall be available for use by any person employed at the mine. No first aid supplies shall be removed or diverted without authorization except in case of injury at the mine.

**§ 45.2-910. First aid training.**

A. Each surface foreman shall complete and pass a first aid course of study as prescribed by the Chief. The Chief may utilize the Department's educational and training facilities in the conduct of such training programs and may require the cooperation of mine operators in making such programs available to their employees.

B. Each operator of a surface coal mine shall make first aid training, including refresher training, available upon request to every miner employed at such mine.

**§ 45.2-911. Attention to injured persons.**

A. Prompt medical attention shall be provided in the event of an injury, and adequate facilities shall be made available for transporting injured persons to a hospital where necessary.

B. Safe transportation shall be provided to move injured persons from the site where the injury occurred to an area that is accessible to emergency transportation.

C. The operator of each mine shall post directional signs that are conspicuously located to identify each route of ingress to and egress from any mine located off of a public road.

## Article 5.

*Fire Prevention and Fire Control.***§ 45.2-912. Firefighting equipment; duties in case of fire; fire precaution in transportation of mining equipment; fire prevention generally.**

A. Each mine shall be provided with suitable firefighting equipment that is adequate for the size of the mine and includes at least three 20-pound dry chemical fire extinguishers. Equipment and devices used for the detection, warning, and extinguishing of fires shall be suitable in type, size, and quantity for the type of fire hazard that could be encountered. Such equipment and devices shall be strategically located and plainly identified.

B. Suitable fire extinguishers shall be provided at or on each (i) electrical station, such as a substation, transformer station, or permanent pump station; (ii) piece of self-propelled mobile equipment; (iii) belt head; (iv) area used for the storage of flammable materials; (v) fueling station; and (vi) other area that could constitute a fire hazard. Such fire extinguishers shall be placed so as to be out of the smoke in case of a fire.

**§ 45.2-913. Duties in case of fire.**

A. If a fire occurs, the person discovering it and any other person in the vicinity of the fire shall make a prompt effort to extinguish it. When a fire that could endanger persons at the mine cannot be extinguished immediately, all persons shall be withdrawn promptly from the area of the fire.

B. In case of any unplanned fire at or about a mine that is not extinguished within 30 minutes of discovery, the operator or agent shall report the fire to the Chief by the quickest available means, giving all information known to the operator or agent regarding the fire. The Chief shall take prompt action and decide whether to go in person or dispatch qualified subordinates to the scene of the fire for consultation and assistance in the extinguishing of the fire and the protection of exposed persons. In the event of a difference of opinion as to measures required, the decision of the Chief or his designated subordinate shall be final, but such decision shall be given to the operator in writing in order to have the force of an order.

**§ 45.2-914. Fire precautions.**

A. An examination for fire shall be made after every blasting operation.

B. No person shall smoke or use an open flame within 25 feet of any location used to handle or store flammable or combustible liquids or where an arc or flame could cause a fire or explosion.

C. Any area surrounding a flammable liquid storage tank or electrical substation or transformer shall be kept free of combustible material for at least 25 feet in every direction. Each such storage tank, substation, or transformer shall be posted with readily visible fire hazard warning signs.

D. Any structure or area used for storage of flammable materials shall be constructed of fire resistant material; kept well-ventilated, clean, and orderly; and posted with readily visible fire hazard warning signs.

E. Every fuel line shall be equipped with a shut-off valve at its source. Each such valve shall be readily accessible and maintained in good operating condition.

F. Every battery charging area shall be well-ventilated and posted with warning signs prohibiting smoking or open flames within 25 feet.

G. Oil, grease, flammable hydraulic fluid, and other flammable materials shall be kept in closed metal containers and separated from other materials so as to not create a fire hazard.

H. Combustible materials, grease, lubricants, paints, and other flammable materials and liquids shall not be allowed to accumulate where they could create a fire hazard. Provision shall be made to prevent the accumulation of such material on any equipment, at any storage area, and at any location where the material is used.

I. Electric motors, switches, lighting fixtures, and controls shall be protected by dust-tight construction.

J. Precautions shall be taken to ensure that no spark or other hot material results in a fire when welding or cutting. No welding or cutting with an arc or flame shall be done in any excessively dusty atmosphere or location. Firefighting apparatus shall be readily available when welding or cutting is performed.

K. Precautions shall be taken before applying heat, cutting, or welding on any pipe or container that has contained a flammable or combustible material.

L. Every oxygen or acetylene bottle shall be (i) stored in a rack constructed and designated for the storage of such bottles with their caps in place and (ii) secured when not in use. Such bottles shall not be stored near oil, grease, or other flammable material.

M. Every oxygen and acetylene gauge and regulator shall be kept clean and free of oil, grease, and other combustible materials.

N. Every belt conveyor shall be equipped with a control switch to automatically stop the driving motor of the conveyor in the event that the belt is stopped by slipping on the driving pulley as a result of breakage or other accident.

O. The area surrounding every main fan installation or other mine opening shall be kept free from grass, weeds, underbrush, and other combustible materials for 25 feet in every direction.

*P. Every internal combustion engine, except a diesel engine, shall be shut off prior to fueling.*

*Article 6.*

*Surface Equipment.*

**§ 45.2-915. Haulage and mobile equipment; operating condition.**

*A. All mobile equipment shall be maintained in a safe operating condition.*

*B. Positive-acting stopblocks shall be used where necessary to protect persons from the danger of moving or runaway haulage equipment.*

*C. Where it is necessary for persons to cross conveyors regularly, suitable crossing facilities shall be provided.*

*D. No person shall get on or off moving equipment.*

*E. When the equipment operator is present, any person getting on or off mobile equipment shall notify the operator before doing so.*

*F. Mobile equipment shall not be left unattended unless the brakes are set. Mobile equipment with wheels or tracks, when parked on a grade, shall either be blocked or turned in to a bank unless the lowering of the bucket or blade to the ground will prevent movement and such bucket or blade is lowered.*

*G. No person shall work on or from a piece of mobile equipment in a raised position unless the equipment is specifically designed to lift a person.*

*H. Water, debris, or spilled materials that could create a hazard to moving equipment shall be removed.*

*I. Where seating facilities are provided on self-propelled mobile equipment, the operator shall be seated before such equipment is moved. No person shall be allowed to ride on top of self-propelled mobile equipment.*

*J. The operator of a piece of self-propelled haulage equipment shall sound a warning before he starts such equipment and as he approaches any place where a person is or is likely to be.*

*K. Each mantrip shall be operated independently under the charge of an authorized person.*

*L. Each mantrip shall be maintained in safe operating condition. Mantrips shall be provided in sufficient number to prevent any mantrip from becoming overloaded.*

*M. No employee shall board or leave a moving mantrip. Each employee shall remain seated while in a moving car and shall proceed in an orderly manner to and from a mantrip.*

**§ 45.2-916. Equipment operation.**

*A. Equipment operating speeds, conditions, and characteristics shall be prudent and consistent with the conditions of the roadway, grade, clearance, visibility, and traffic and the type and use of equipment.*

*B. Any vehicle that follows another vehicle shall do so at a safe distance; passing shall be limited to areas of adequate clearance and visibility.*

*C. Mobile equipment shall be operated under power control at all times and each mobile equipment operator shall have full control of the equipment while in motion.*

*D. Before starting or moving equipment, an equipment operator shall be certain by signal or other means that all persons are clear.*

**§ 45.2-917. Safety measures on equipment.**

*A. Every rubber-tired or crawler-mounted piece of equipment shall have a rollover protective structure to the extent required by 30 C.F.R. § 77.403-1.*

*B. Each seat belt provided in mobile equipment shall be maintained in safe working condition. Every operator of such equipment shall wear a seat belt when the equipment is in motion.*

*C. Mobile equipment shall be equipped with adequate brakes and parking brakes.*

*D. Cab windows shall be of safe design, kept in good condition, and clean for adequate visibility.*

*E. Any tire shall be deflated before any repair on it is started, and adequate means shall be provided to prevent wheel-locking rims from creating a hazard during tire inflation.*

*F. An audible warning device and headlights shall be provided on each piece of self-propelled mobile equipment.*

*G. An automatic backup alarm that is audible above surrounding noise levels shall be provided on each piece of mobile equipment. An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.*

*H. Each piece of equipment that is raised for repairs or other work shall be securely blocked before any person positions himself where the falling of such equipment could create a hazardous condition.*

**§ 45.2-918. Transportation of personnel.**

*No person shall be permitted to ride or otherwise be transported (i) on or in a dipper, shovel, bucket, fork, or clamshell; (ii) on or in the cargo space of a dump truck; (iii) outside the cab or bed of a piece of heavy equipment; or (iv) on or in a chain, belt, or bucket conveyor, unless the item described in clauses (i) through (iv) is specifically designed to transport persons.*

**§ 45.2-919. Lighting.**

*A. Lights shall be provided on or in surface structures as needed.*

*B. Roads, paths, and walks outside of surface structures shall be kept free from obstructions and*

shall be well-illuminated if used at night.

**§ 45.2-920. Shop and other equipment.**

A. The following shall be guarded and maintained adequately:

1. Gears, sprockets, pulleys, fan blades or propellers, friction devices, and couplings with protruding bolts or nuts.
2. Shafting and projecting shaft ends that are within seven feet of the floor or the platform level.
3. Belt, chain, or rope drives that are within seven feet of the floor or the platform.
4. Fly wheels. Any fly wheel that extends more than seven feet above the floor shall be guarded to a height of at least seven feet.
5. Circular and band saws and planers.
6. Repair pits. Guards shall be kept in place when a pit is not in use.
7. Counterweights.
8. Mine fans. The approach to any mine fan shall be guarded.
9. Lighting and other electrical equipment that could create a shock hazard or cause personal injury.

B. No machinery shall be repaired or oiled while in motion unless a safe remote oiling device is used.

C. A guard or safety device that is removed from any machine shall be replaced before the machine is put in operation.

D. Every mechanically operated grinding wheel shall be equipped with:

1. Safety washers and tool rests;
2. A substantial retaining hood, the hood opening of which shall not expose more than a 90-degree sector of the wheel. Each such hood shall include a device to control and collect excess rock, metal, or dust particles. If no such device is provided, equivalent protection shall be provided to each employee operating such machinery; and
3. Eyeshields, unless goggles are worn by the operator.

E. The operator or his agent shall develop proper procedures for examining for potential hazards, completing maintenance, and operating each type of centrifugal pump. The procedures shall, at a minimum, address the manufacturers' recommendations for start-up and shutdown of each type of pump, the proper actions to be taken when a pump is suspected of overheating, the safe location of start and stop switches, and the actions to be taken when signs of structural metal fatigue, such as cracks in the frame, damaged cover mounting brackets, or missing bolts or other components, are detected. Every miner who repairs, maintains, or operates any such pump shall be trained in these procedures.

**§ 45.2-921. Hydraulic hoses.**

Every hydraulic hose that is used on equipment shall have the hydraulic hose manufacturer's rated pressure in pounds per square inch (psi) permanently affixed on the outer surface of the hose and repeated at least every two feet. Every hose installed on an automatic displacement hydraulic system shall either (i) have a four-to-one safety factor based on the ratio between minimum burst pressure and the setting of the hydraulic unloading system, such as a relief valve, or (ii) meet the minimum hose pressure requirements set by the hydraulic equipment manufacturer per the applicable hose standards for each type of equipment. No hydraulic hose shall be used in an application where the hydraulic unloading system is set higher than the hose's rated pressure.

Article 7.

Travel Ways and Loading and Haulage Areas.

**§ 45.2-922. Stairways, platforms, runways, and floor openings.**

A. Stairways, platforms, and runways shall be provided where persons work or travel.

B. Stairways, elevated platforms, elevated runways, and floor openings shall be equipped with suitable handrails or guardrails.

C. Stairways, elevated platforms, runways, and floor openings shall be provided with toe boards. Stairways, platforms, and runways shall be kept clear of stumbling and slipping hazards and shall be maintained in good repair.

**§ 45.2-923. Loading and haulage work area requirements.**

A. Every ramp or dump shall be of solid construction, ample width, and ample clearance, and headroom shall be kept reasonably free of spillage.

B. Berms or guards shall be provided on the outer bank of every elevated haulage road. Every berm shall be constructed of substantial material to the mid-axle height of the largest vehicle regularly used on such haulage road. The width and height of the berm shall be constructed on a two-to-one ratio when it is constructed of unconsolidated material. Other equally effective and appropriate methods may be used for berms.

C. Berms, bumper blocks, safety hooks, or similar means shall be provided to prevent overtravel and overturning at dumping stations.

D. Dumping locations and haulage roads shall be kept reasonably free of water, debris, and spillage. Water, debris, or spilled material that creates a hazard to moving equipment shall be removed.

E. Every haulage road constructed on or after July 1, 2005, shall be constructed at least one and one-half times the width of the widest equipment in use, and any haulage road that is used for passing

shall be constructed at least three times the width of the widest equipment in use. In any area in which it is not possible to construct the haulage road to at least the applicable minimum width, the foreman shall establish procedures for safe travel of haulage vehicles.

F. Traffic rules, signals, and warning signs shall be standardized at each mine and shall be posted. Such rules, signals, and signs shall include rules for the travel of on-road vehicles operating near off-road haulers in work areas.

G. Every dumping station at which material is dumped over an embankment shall be designed to minimize backing and, where conditions permit, to provide for perpendicular travel to allow the equipment operator to observe the dumping station for changing conditions prior to backing. Reflectorized signs, strobe lights, or other available means shall be used to clearly indicate each dumping location. This subsection shall not apply to a dumping station (i) that is moved after each dumped load as mining progresses, (ii) where spotters are being used, or (iii) where loads are dumped short and pushed over the embankment. Any dumping station that could interfere with a haulage road or work area below shall be clearly marked with signs to prevent further dumping, unless other effective precautions are taken to protect such haulage road or work area below the dump station.

**§ 45.2-924. Equipment operation.**

A. If a truck spotter is used, he shall be well in the clear while any truck is backing into dumping position and dumping. Every truck spotter shall use lights at night to direct backing and dumping operations.

B. Every dipper, bucket, scraper blade, or similar movable part shall be secured or lowered to the ground when not in use.

C. Equipment that is to be hauled shall be loaded and protected so as to prevent sliding or spillage. When moving between work areas, the equipment shall be secured in the travel position.

D. Tow bars shall be used to tow heavy equipment and a safety chain shall be used in conjunction with each tow bar.

E. Dust control measures shall be taken so as to prevent the obstruction of visibility of any equipment operator.

F. No dipper, bucket, loading boom, or other heavy load shall be swung over the cab of haulage equipment until the driver is out of the cab and in a safe location, unless the equipment is designed specifically to protect the driver from falling material.

G. Lights, flares, or other warning devices shall be posted when parked equipment creates a hazard for other vehicles.

Article 8.

Dust Control.

**§ 45.2-925. Control of dust and combustible material.**

A. Where a surface coal mining operation raises an excessive amount of dust into the air, such dust shall be allayed at its sources by the use of water, water with a wetting agent added to it, or another effective method.

B. Drilling in rock shall be done wet or other means of dust control shall be used.

C. Loose coal, coal dust, oil, grease, or other combustible materials shall not be permitted to accumulate excessively on equipment or surface structures.

Article 9.

Electricity.

**§ 45.2-926. Overhead high-potential power lines; surface transmission lines; electric wiring in surface buildings.**

A. Overhead high-potential power lines shall be (i) placed at least 15 feet above the ground and 20 feet above any driveway or haulage road, (ii) installed on insulators, and (iii) supported and guarded to prevent contact with other circuits.

B. Surface transmission lines shall be protected against short circuits and lightning.

C. Electric wiring in surface buildings shall be installed so as to prevent fire and contact hazards.

**§ 45.2-927. Transformers.**

A. Unless a surface transformer is isolated by elevation to a height of eight feet or more above the ground, it shall be enclosed in a transformer house or surrounded by a suitable fence at least six feet high. If the enclosure or fence is made of metal, such enclosure or fence shall be grounded effectively. The gate or door to the enclosure shall be kept locked at all times unless an authorized person is present.

B. Any surface transformer that contains flammable oil and is installed where it presents a fire hazard shall be provided with a means to drain or confine the oil in the event of a rupture of the transformer casing.

C. Suitable warning signs shall be posted conspicuously at every transformer station on the surface.

D. Every transformer station on the surface shall be kept free of nonessential combustible materials and refuse.

E. No electrical work shall be performed on any low-voltage, medium-voltage, or high-voltage distribution circuit or equipment except by (i) a certified person or (ii) a person who is trained to

perform electrical work and to maintain electrical equipment and who is working under the direct supervision of a certified person. Every high-voltage circuit shall be grounded before repair work is performed. Disconnecting devices shall be locked out and suitably tagged by the person who performs electrical or mechanical work on such a circuit or on any equipment connected to the circuit. However, in a case in which such locking out is not possible, such devices shall be opened and suitably tagged by such person. Each lock and tag shall be removed only by the person who installed it or, if such person is unavailable, by a certified person who is authorized by the operator or his agent. However, an employee may, where necessary, repair energized trolley wires if he wears insulated shoes and lineman's gloves.

F. This section does not prohibit a certified electrical repairman from making checks on or troubleshooting an energized circuit or an authorized person from performing repairs or maintenance on equipment once the power is off and the equipment is blocked against motion, except where motion is necessary to make adjustments.

**§ 45.2-928. Grounding.**

A. Every metallic sheath, armor, or conduit enclosing a power conductor shall be electrically continuous throughout and shall be grounded effectively.

B. Every metallic frame, casing, or other enclosure of stationary electric equipment that can become electrified through failure of insulation or by contact with energized parts shall be grounded effectively, or equivalent protection shall be provided.

C. When electric equipment is operated from a three-phase alternating current circuit originating in a transformer that is connected to provide a neutral point, a continuous grounding conductor of adequate size shall be installed and connected to the neutral point and to the frame of the power-utilizing equipment. Such grounding conductor shall be grounded at the neutral point and at intervals along the conductor, if feasible. A suitable circuit breaker or switching device shall be provided having a ground-trip coil connected in series with the grounding conductor to provide effective ground-fault tripping.

**§ 45.2-929. Circuit breakers and switches.**

A. An automatic circuit breaking device or fuse of the correct type and capacity shall be installed so as to protect each piece of electric equipment and power circuit against excessive overload. Wire or another conducting material shall not be used as a substitute for a properly designed fuse, and every circuit breaking device shall be maintained in safe operating condition.

B. Operating controls, such as switches, starters, or switch buttons, shall be so installed that they are readily accessible and can be operated without danger of contact with moving or live parts.

C. Electric equipment and circuits shall be provided with switches or other controls of safe design, construction, and installation.

D. An insulating mat or other electrically nonconductive material shall be kept in place at each power-control switch and at stationary machinery where a shock hazard exists.

E. Suitable warning signs shall be posted conspicuously at every high-voltage installation.

F. Every power wire or cable shall have adequate current-carrying capacity, be guarded from mechanical injury, and be installed in a permanent manner.

G. Every power circuit shall be labeled to indicate the unit or circuit that it controls.

H. All persons shall stay clear of any electrically powered shovel or other similar heavy equipment during an electrical storm.

I. Every device that is installed on or after July 1, 2005, that provides either short circuit protection or protection against overload shall conform to the minimum requirements for protection of electric circuits and equipment of the National Electrical Code in effect at the time of its installation.

J. Every electric conductor installed on or after July 1, 2005, shall be sufficient in size to meet the minimum current-carrying capacity provided for in the National Electrical Code in effect at the time of its installation.

K. Every trailing cable purchased on or after July 1, 2005, shall meet the minimum requirements for ampacity provided in the standards of the Insulated Cable Engineers Association/National Electrical Manufacturers Association in effect at the time such cable is purchased.

**§ 45.2-930. Electrical trailing cables.**

A. Every trailing cable shall be provided with suitable short-circuit protection and a means of disconnecting power from the cable.

B. Any temporary splice in a trailing cable shall be made in a workmanlike manner and shall be mechanically strong and well-insulated.

C. The number of temporary, unvulcanized splices in a trailing cable shall be limited to one.

D. Every permanent splice in a trailing cable shall be made mechanically strong, with adequate electrical conductivity and flexibility, and shall be effectively insulated and sealed so as to exclude moisture. The finished splice shall be vulcanized or otherwise treated with suitable materials to provide flame-resistant properties and good bonding to the outer jacket.

E. Every trailing cable shall be protected against mechanical injury.



*Explosives and Blasting.***§ 45.2-931. Surface storage of explosives and detonators.**

A. Two or more surface magazines shall be provided for the storage of explosives and the separate storage of detonators.

B. Every surface magazine for storing and distributing explosives in an amount exceeding 150 pounds shall be:

1. Reasonably bullet-resistant and constructed of incombustible material or covered with fire-resistant material. The roof of a magazine that is located in such a way as to make it impossible to fire a bullet directly through the roof from the ground need not be bullet-resistant. Where it is possible to fire a bullet directly through a roof from the ground, such roof shall be made bullet-resistant by material construction, by the use of a ceiling that forms a tray containing not less than a four-inch thickness of sand, or by another method;

2. Provided with doors that are constructed of three-eighth-inch steel plate. Such doors shall be lined with a two-inch thickness of wood or the equivalent;

3. Provided with dry floors made of wood or other nonsparking material and have no metal exposed inside the magazine;

4. Provided with suitable warning signs located so that a bullet passing directly through the face of a sign will not strike the magazine;

5. Provided with properly screened ventilators;

6. Equipped with no openings except for entrance and ventilation openings;

7. Kept locked securely when unattended; and

8. Electrically bonded and grounded if constructed of metal.

C. A surface magazine for storing detonators need not be bullet-resistant, but it shall comply with other provisions for storing explosives.

D. Explosives weighing a total of no more than 150 pounds, or detonators numbering 5,000 or fewer, shall be stored either (i) in accordance with the standards set forth in subsection A, B, or C or (ii) in a separate locked box-type magazine. A box-type magazine may also be used as a distributing magazine when the weight of the explosives or the number of detonators does not exceed the limits set forth in this subsection. Every box-type magazine shall be strongly constructed of two-inch hardwood or the equivalent. Every metal magazine shall be lined with nonsparking material. No magazine shall be placed (a) in a building containing oil, grease, gasoline, wastepaper, or other highly flammable material or (b) within 20 feet of a stove, furnace, open fire, or flame.

E. No magazine shall be placed less than 300 feet from any mine opening. However, if a magazine cannot be practicably located at such a distance, it may be located less than 300 feet from a mine opening if it is sufficiently barricaded and is approved by the Chief. Unless approved by the Chief, no magazine shall be located closer to an occupied building, public road, or passenger railway than the distance recommended in the "American Table of Distances for Storage of Explosive Materials" published by the Institute of Makers of Explosives.

F. The supply kept in a distribution magazine shall be limited to approximately a 48-hour supply, and supplies of explosives and detonators may be distributed from the same magazine if they are separated by a substantially fastened hardwood partition at least four inches thick or the equivalent.

G. The area surrounding any magazine shall be kept free of rubbish, dry grass, or other materials of a combustible nature for at least 25 feet in every direction.

H. If an explosives magazine is illuminated electrically, each lamp shall be of vapor-proof type and installed and wired so as to present a minimal fire or contact hazard.

I. Only nonmetallic tools shall be used for opening any wooden explosives container. Extraneous materials shall not be stored with explosives or detonators in an explosives magazine.

J. Smoking or carrying smokers' articles or open flames is prohibited in or near any magazine.

**§ 45.2-932. Misfires.**

A. Every misfire shall be reported promptly to the mine foreman, and no other work shall be performed in the blasting area until the hazard has been corrected. A waiting period of at least 15 minutes is required before anyone is allowed to any misfired hole. If explosives are suspected of burning in a hole, every person affected shall move to a safe location for one hour or until the danger has passed, whichever time is longer. When such failure involves an electronic detonator, the blasting cable shall be disconnected from the source of power and the battery ends short-circuited before any electrical connection is examined.

B. Explosives shall be removed by (i) firing a separate charge at least two feet away from, and parallel to, the misfired charge; (ii) washing the stemming and the charge from the borehole with water; or (iii) inserting and firing a new primer after the stemming has been washed out.

C. A careful search of the blasting area and, if necessary, of the coal after it reaches the tibble shall be made after blasting a misfired hole to recover any undetonated explosive.

D. The handling of a misfired shot shall occur under the direct supervision of the foreman or an authorized person designated by him.

**§ 45.2-933. Minimum blasting practices.**

A. If explosives are in use on the surface and an electrical storm approaches, all persons shall be removed from the blast area until the storm has passed.

B. In accordance with the standards set forth in § 45.2-902, the Chief shall adopt regulations regarding the safe storage, transportation, handling, and use of blasting agents and other explosives.

Article 11.

Ground Control.

**§ 45.2-934. Ground control.**

A. Every surface coal mining operation shall establish and follow a ground control plan approved by the Chief to ensure the safety of workers and others affected by the operation. The ground control plan shall be consistent with prudent engineering design. Mining methods, including benching, shall ensure wall and bank stability in order to obtain a safe overall slope. The ground control plan shall also ensure the safety of every person who is (i) located in a residence or other occupied building; (ii) working or traveling on any roadway; or (iii) located in any other area where persons congregate, work, or travel that could be affected by blasting or by the falling, sliding, or other uncontrolled movement of material. The ground control plan shall identify how residents or occupants of other buildings located down the slope from active workings will be notified when ground-disturbing activities will take place above them and what actions will be taken to protect such residents or occupants from ground control failures during the work.

B. Scaling and removal of loose hazardous material from the top of a pit or from a highwall, wall, bank, or bench shall be completed to ensure a safe work area.

C. Employees and other persons, except those involved in correction of the condition, shall be restricted from any area where hazardous highwall or pit conditions exist.

D. Unless he is required for the purpose of making repairs, no person shall be allowed in any area that is located between equipment and a highwall, wall, bank, or bench if the equipment could hinder escape from falling or sliding material. Special precautions shall be taken when any person is required to perform such repairs.

Article 12.

Auger and Highwall Mining.

**§ 45.2-935. Inspection of electric equipment and wiring; checking and testing methane monitors.**

Electric equipment and wiring that extends to an underground area shall be inspected by a certified person at least once a week and more often if necessary to ensure safe operating conditions. Any hazardous condition found shall be corrected or the equipment or wiring shall be removed from service. Such surface inspection is also required for any trailing cable or circuit breaker used in conjunction with such equipment and wiring.

**§ 45.2-936. Highwall inspections.**

A. A mine foreman shall inspect the face of each highwall for a distance of 25 feet in both directions from an auger or highwall miner operation (i) before any such operation begins and at least once during each coal producing shift and (ii) frequently during any period of heavy rainfall or intermittent freezing and thawing.

B. Hazardous conditions shall be corrected and loose material removed from above the mining area before any work is begun.

C. Records shall be kept of the inspection and examination performed pursuant to subsection A. Such records shall be maintained for at least one year.

**§ 45.2-937. Penetration of underground mines; testing.**

A. A qualified person shall test for the presence of methane and for a deficiency of oxygen, using an approved device, at the entrance to an auger hole or at a highwall miner entry when either such entry point penetrates a worked-out area of an underground mine.

B. If one percent or more of methane is detected or 19.5 percent or less of oxygen is found to exist, no further work shall be performed until the atmosphere has been made safe.

**§ 45.2-938. Safety precautions.**

A. No person shall enter an auger hole or highwall miner entry without prior approval from the Chief.

B. Every auger hole or highwall miner entry shall be blocked with highwall spoil or other suitable material before it is abandoned.

C. Every auger or highwall mining machine that is exposed to any highwall or explosion hazard shall be provided with worker protection from falling material and a mine explosion.

D. At least one person shall be assigned to observe the highwall for possible movement while ground personnel are working in a high-risk area in close proximity to the highwall.

E. All persons shall stay clear of any moving auger or highwall miner train, and no person shall pass over or under a moving train unless adequate crossing facilities are provided.

F. The ground control plan shall specify any spacing of holes, web design, and use of alignment control devices.

G. The ground control plan shall include other administrative, engineering, and source controls that are to be provided for safe operations.

## Article 13.

*Proximity of Mining to Gas or Oil Wells or Vertical Ventilation Holes.***§ 45.2-939. Surface coal mining; distance from wells; requirements.**

A. Any mine operator who plans to remove coal or extend any workings in any mine to a distance of less than 500 feet from any gas or oil well that is already drilled or is in the process of being drilled shall file with the Chief a notice that such mining is taking place or will take place, together with copies of parts of the maps and plans required under § 45.2-542 that show the mine workings and projected mine workings beneath the tract in question and within 500 feet of the well. Such mine operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the provisions of § 45.2-1604. The mine operator shall certify in each notice that he has complied with the provisions of this subsection.

B. Subsequent to the filing of the notice required by subsection A, the mine operator may proceed with surface coal mining operations in accordance with the maps and plans. However, without the prior approval of the Chief, such mine operator shall not remove any coal or extend any workings in any mine to a distance of less than 200 feet from any gas or oil well that is already drilled or is in the process of being drilled.

C. The Chief shall adopt regulations that prescribe the procedure to be followed by a mine operator in petitioning the Chief for approval to conduct surface coal mining operations to a distance of less than 200 feet from a well. A petition may include a request to mine through a plugged well or a plugged vertical ventilation hole. Such petition may also include a request to mine through a well or a vertical ventilation hole and to lower the head of such well or vertical ventilation hole. Each mine operator who files a petition to remove coal or extend any workings to a distance of less than 200 feet from any gas or oil well shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The well operator and the Gas and Oil Inspector shall have standing to object to any petition filed under this section. Such objection shall be filed within 10 days following the date such petition is filed.

## CHAPTER 10.

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

## Article I.

## General and Administrative Provisions.

**§ 45.2-1000. Definitions.**

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

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

"Coal surface mining and reclamation operation" means a surface mining operation and any activity necessary and incidental to the reclamation of such operation.

"Coal surface mining operation" means:

1. Any activity conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of § 45.2-1018, any surface operation and surface impact incident to an underground coal mine, the products of which enter commerce or the operation of which directly or indirectly affects interstate commerce. Such activity includes (i) excavation for the purpose of obtaining coal, including by such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; (ii) the use of explosives and blasting; (iii) in situ distillation or retorting, leaching, or other chemical or physical processing; and (iv) the cleaning, concentrating, or other processing or preparation and loading of coal for interstate commerce at or near the mine site. However, such activity does not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to § 45.2-1008; and

2. The area upon which such activity occurs or where such activity disturbs the natural land surface. Such area includes (i) any adjacent land whose use is incidental to any such activity; (ii) all lands affected by the construction of any new road or the improvement or use of any existing road to gain access to the site of such activity and for haulage; and (iii) any excavation, workings, impoundment, dam, ventilation shaft, entryway, refuse bank, dump, stockpile, overburden pile, spoil bank, culm bank, tailings, hole or depression, repair area, storage area, processing area, shipping area, and other area upon which is sited any structure, facility, or other property or materials on the surface, resulting from or incident to such activity.

"Division" means the Division of Mined Land Reclamation.

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

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

"Operator" means any person engaging in a coal surface mining operation whether or not such coal is sold within the Commonwealth.

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

"Permit" means a permit issued by the Director pursuant to state regulations.

"Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application. Such area of land shall be covered by the operator's bond as required by § 45.2-1016 and shall be readily identifiable by appropriate markers on the site.

"Permittee" means a person holding any of the following permits issued by the Director: (i) a permit for coal surface mining pursuant to § 45.2-1009, (ii) a permit for coal exploration pursuant to § 45.2-1008, or (iii) a National Pollutant Discharge Elimination System permit pursuant to § 45.2-1029.

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

"Secretary" means the U.S. Secretary of the Interior.

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

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

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

#### **§ 45.2-1001. Limitations of chapter.**

Nothing in this chapter is intended or shall be construed to limit, impair, abridge, create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person in any dispute involving property rights, including interests in water resources, or the right of any person to seek damages or other relief on account of injury to persons or property, including interests in water resources, and to maintain any action or other appropriate proceeding therefor, except as is otherwise specifically provided in this chapter. Nothing in this chapter is intended or shall be construed to affect the powers of the Commonwealth to initiate, prosecute, or maintain actions to abate public nuisances.

#### **§ 45.2-1002. Application of chapter.**

A. The provisions of this chapter shall not apply to the extraction of coal:

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

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

#### **§ 45.2-1003. Authority and duties of Director.**

A. The authority to adopt regulations necessary to carry out the purposes and provisions of this chapter is vested in the Director. Such regulations shall be consistent with regulations adopted by the Secretary pursuant to the federal act or in conformity with any court ruling construing such act. The Director may adopt by regulation definitions other than those provided in § 45.2-1000 as necessary to carry out the intent of this chapter. Unless otherwise directed by law, in adopting regulations, the Director shall comply with the Administrative Process Act (§ 2.2-4000 et seq.) and the Virginia Register Act (§ 2.2-4100 et seq.).

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

the force of regulations.

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

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

2. To administer the program for the purchase and reclamation of abandoned and unreclaimed mine areas pursuant to Article 4 (§ 45.2-1031 et seq.);

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

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

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

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

**§ 45.2-1004. Training and certification of blasters.**

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

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

**§ 45.2-1005. Conflicts of interest prohibited.**

A. For the purposes of this section, "financial interest" includes a pecuniary interest accruing to an employee or to the employee's spouse, minor child, or other relative living in the same household.

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

C. The Director shall adopt regulations for the monitoring and enforcement of the provisions of this section, including regulations (i) for the filing and review of statements and supplements by employees concerning any financial interest that might be affected by this section; (ii) for the hiring, transfer, and removal of employees consistent with the prohibition of this section; (iii) for the resolution of prohibited interests; (iv) for the confidentiality, protection, and disclosure to enforcement authorities of reporting statements; and (v) for such exemptions from the provisions of this section as are consistent with federal law.

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

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

**§ 45.2-1006. Resisting, etc., Director or agent of the Director; penalty.**

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

**§ 45.2-1007. Coal Surface Mining Regulatory Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Regulatory Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to § 45.2-1010 or another provision of this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for administering coal surface mining state regulations. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

Article 2.

Regulation of Mining Activity.

**§ 45.2-1008. Coal exploration operations.**

A. Any coal exploration operation that substantially disturbs the natural land surface shall be conducted in accordance with exploration regulations adopted by the Director. Such regulations shall, at a minimum, (i) require that any person, prior to conducting any exploration under this section, file with the Director notice of intention to explore that includes a description of the exploration area and the proposed period of exploration and (ii) include provisions for the reclamation, in accordance with the performance standards established pursuant to § 45.2-1017, of all lands disturbed in exploration, including all excavations, roads, and drill holes, and for the removal of necessary facilities and equipment.

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

C. Any person who conducts any coal exploration activity that substantially disturbs the natural land surface in violation of this section or any regulation issued pursuant thereto is subject to the provisions of § 45.2-1021.

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

**§ 45.2-1009. Permit required for coal surface mining operation; term; transfer, etc.**

A. No person shall engage in or carry out any coal surface mining operation without having first obtained a permit to engage in such operation issued by the Director in accordance with state regulations.

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

**§ 45.2-1010. Form and contents of permit application; fee.**

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

B. The application shall contain the information required by regulations adopted by the Director, including the information required under the provisions of § 507(b) of the federal act.

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

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

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of \$26 per acre for the area of land to be affected by the total operation for which plans have been submitted. A payment of \$13 per acre for any area disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this section shall be paid into the Coal Surface Mining Regulatory Fund created pursuant to § 45.2-1007.

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

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

**§ 45.2-1011. Operation and reclamation plans.**

Each application for a coal surface mining permit pursuant to state regulations shall include an operation plan and a reclamation plan, in such form and containing such information as the Director requires, including the information required under § 508(a) of the federal act, and meeting the requirements of this chapter and regulations adopted by the Director. An operation plan shall not include underground workings. An operation plan and a reclamation plan, as approved by the Director, shall be integral parts of the terms and conditions of a coal surface mining permit.

**§ 45.2-1012. Revision of permits.**

A. The process for revision of a permit is as follows:

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

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

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

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

**§ 45.2-1013. Approval or denial of permit.**

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

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

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

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

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

4. The area proposed to be mined is not included within an area designated as unsuitable for coal surface mining pursuant to this chapter or located within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter; and

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

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

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

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, evidence that the surface-subsurface legal relationship will be determined in accordance with the laws of the Commonwealth. Nothing herein shall be construed to authorize the Director to adjudicate any property rights dispute.

C. The applicant shall file with each permit application a schedule listing all notices of violations of the federal act, this chapter, and any law, rule, or regulation of the United States, the Commonwealth, or any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of each such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of any law, rule, or regulation referred to in this subsection, the permit shall not be issued until the applicant

submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the authority, department, or agency that has jurisdiction over such violation. No permit shall be issued to an applicant after a finding by the Director, following an opportunity for a hearing, that the applicant or the operator specified in the application controls or has controlled any mining operation with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the federal act or this chapter.

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

**§ 45.2-1014. Public participation in process of issuing or revising permits.**

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

B. Any person having an interest that is or might be adversely affected, or the officer or head of any federal, state, or local governmental agency or authority, has the right to file written objections to the proposed initial or revised application for a permit for a coal surface mining operation with the Director within 30 days after the last publication of the applicant's notice required by the regulation adopted pursuant to subsection A. If no written objection is filed and an informal hearing is requested, the Director shall then hold an informal hearing in the manner and location prescribed by regulation, unless every party requesting the informal hearing stipulates agreement prior to the requested informal hearing and withdraws such request therefor.

**§ 45.2-1015. Decision of Director upon permit application; hearing; appeal.**

A. The Director shall notify each applicant for a permit within a reasonable time, as set forth in regulations, taking into account the time needed for proper investigation of the site, the complexity of the permit application, and written objections that have been filed, of his written decision to approve or disapprove the application, in whole or in part, except that if an informal hearing has been held pursuant to § 45.2-1014, the Director shall issue to the applicant and the parties to the hearing his written decision within 60 days of such hearing.

B. If such application is approved, a permit shall be issued. If such application is disapproved, specific reasons shall be given in the notification. Within 30 days after the applicant is notified of the final decision of the Director on such permit application, the applicant, or any person with an interest that is or might be adversely affected, may request a hearing on the reasons for the final determination. The Director shall hold a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and within 30 days thereafter shall issue to the applicant and every person who participated in the hearing the written decision of the Director granting or denying the permit in whole or in part and stating the reasons therefor. No person who presided at an informal hearing under § 45.2-1014 shall preside at the formal adjudicatory hearing or participate in the decision therein or any administrative appeal therefrom.

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

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

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

**§ 45.2-1016. Performance bonds.**

A. After a coal surface mining permit application has been approved, but before such permit is issued, the applicant shall file with the Director, on a form prescribed and furnished by the Director, a bond for performance payable to the Commonwealth and conditioned upon the faithful performance of all the requirements of this chapter and the permit. The bond shall cover that area of land within the permit area upon which the operator plans to initiate and conduct surface coal mining and reclamation operations within the initial term of the permit. As each succeeding increment of coal surface mining and reclamation operations is initiated and conducted within the permit area, the permittee shall file with the Director an additional bond to cover such increment in accordance with this section. The amount of the bond required for each bonded area shall be determined by the Director and shall (i) depend upon the reclamation requirements of the approved permit and (ii) reflect the probable difficulty of reclamation, giving consideration to such factors as topography, geology of the site, hydrology, and



revegetation potential. The amount of the bond shall be sufficient to assure the completion of the reclamation plan if the work is performed by the Director in the event of forfeiture but in no case shall the bond for the entire area under one permit be less than \$10,000.

B. Liability under a performance bond shall be for the duration of the coal surface mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation as required under regulations adopted pursuant to § 45.2-1017. The bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth, except that the operator may elect to deposit cash, negotiable bonds of the United States or the Commonwealth, or negotiable certificates of deposit of any bank organized for transacting business in the United States. The cash deposit or market value of such securities shall be equal to or greater than the amount of the bond required for the bonded area.

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

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

E. The issuer of a letter of credit pursuant to subsection D shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violation of a regulatory requirement that could result in the suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill any of its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency, or the suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department. The Department shall then issue a notice to the permittee specifying a reasonable period not exceeding 90 days to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with its reclamation plan. No coal extraction or coal processing operation shall resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until an acceptable bond is posted.

F. The Director may develop and adopt an alternative system to achieve the objectives and purposes of the bonding program established under this section.

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

**§ 45.2-1017. Performance standards.**

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

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

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

D. The Director may adopt, with the approval of the Secretary, alternative performance standards and procedures for administering and enforcing the program created pursuant to this chapter.

E. The Director, with the approval of the Secretary, may authorize departures on an experimental basis from the environmental protection performance standards adopted under this section and § 45.2-1018.

**§ 45.2-1018. Surface effects of underground coal mining operations.**

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

shall be construed to prohibit or interrupt any underground coal mining operation.

B. The regulations adopted by the Director shall require that each permit applicant submit hydrologic reclamation plans that include measures to prevent the sudden release of accumulated water from underground workings.

C. The Director shall suspend underground coal mining under any elementary or secondary school, institution of higher education, urbanized area, city, town, or community, and adjacent to any industrial or commercial building, major impoundment, or permanent stream, if he finds imminent danger to people from such underground coal mining.

**§ 45.2-1019. Inspections and monitoring.**

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

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

2. For any coal surface mining and reclamation operation that removes or disturbs strata that serve as aquifers and thereby significantly ensure the hydrologic balance of water use, either on or off the mining site, the Director shall specify monitoring sites at which the permittee shall record (i) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence; (ii) the level, amount, and characteristics of samples of groundwater and aquifers that are potentially affected by mining or are located directly below the deepest coal seam to be mined; and (iii) amount of precipitation. The Director shall specify certain records of well logs and borehole data to be maintained. The monitoring, data collection, and analysis required by this section shall be conducted according to standards and procedures set forth in regulations adopted by the Director in order to assure their reliability and validity; and

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

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

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

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

D. Each inspector, upon detection of a violation of any requirement of this chapter or of a regulation adopted hereunder, shall promptly inform the operator in writing and shall report such violation to the Director in writing.

E. Copies of any records, reports, inspection materials, or information obtained by the Director under this article shall be made immediately available to the public at central and sufficient locations in the area of mining so that they are conveniently available to residents in such areas. However, information that pertains only to the analysis of the chemical and physical properties of the coal, excepting information regarding mineral or elemental content that is potentially toxic in the environment, shall be kept confidential and be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**§ 45.2-1020. Enforcement of chapter generally.**

A. If the Director determines that any condition or practice or any violation by a permittee of any requirement of this chapter, regulation adopted hereunder, or permit condition (i) creates an imminent danger to the health or safety of the public or (ii) is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the Director shall immediately order a cessation of the coal surface mining and reclamation operation or the portion thereof relevant to the condition, practice, or violation. Such cessation order shall remain in effect until the Director determines that the condition, practice, or violation has been abated or until such order is modified, vacated, or terminated by the Director. Whenever the Director finds that the ordered cessation of coal surface mining and reclamation operations, or any portion thereof, is not expected to completely abate the imminent danger to health or safety of the public or the significant imminent environmental harm to land, air, or water resources, the Director shall, in addition to ordering the cessation of the

operation, impose affirmative obligations on the operator and require such operator to take whatever steps the Director determines necessary to abate the imminent danger or the significant environmental harm.

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

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

D. Whenever the Director determines that a pattern of violations of the requirements of this chapter, any regulation adopted hereunder, or any permit condition exists or has existed, and if the Director also finds that such violations are (i) caused by the unwarranted failure of the permittee to comply with any such requirements or (ii) willfully caused by the permittee, the Director shall promptly issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide opportunity for a formal public hearing. If a hearing is requested, the Director shall inform all interested parties of the time and place of the hearing. Upon the permittee's failure to show cause as to why the permit should not be suspended or revoked, the Director shall promptly suspend or revoke the permit.

E. Each notice or order issued pursuant to this section shall set forth with reasonable specificity the nature of the violation and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the coal surface mining and reclamation operation to which the notice or order applies. Each notice or order shall be given promptly to the permittee or his agent by the Director and shall be in writing and signed by the Director. Any notice or order issued pursuant to this section may be modified, vacated, or terminated by the Director. Any notice or order issued pursuant to this section that requires cessation of mining by the operator shall expire within 30 days of actual notice to the operator unless an informal public hearing is held at the site or close enough to the site to allow viewings thereof during the course of the public hearing. Such informal public hearing may be waived by the operator.

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

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

**§ 45.2-1021. Civil and criminal penalties.**

A. Any permittee who violates any permit condition or any other provision of this chapter or the regulations adopted hereunder may be assessed a civil penalty by the Director, except that if such violation leads to the issuance of a cessation order, the civil penalty shall be assessed. Such penalty shall not exceed \$5,000 for each violation except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty shall not exceed \$70,000 for each violation. Each day of continuing violation may be deemed a separate violation for the purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the permittee's history of previous violations at the particular coal surface mining operation; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the permittee was negligent; and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

B. A civil penalty may be assessed by the Director only after the person charged with a violation has been given an opportunity for a public hearing. After such public hearing has been held, the Director shall make findings of fact and issue a written decision as to the occurrence of the violation and the

amount of the penalty that is warranted, incorporating therein, when appropriate, an order requiring that the penalty be paid. When appropriate, the Director shall consolidate such hearing with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). If the person charged with such violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Director after the Director determines that a violation has occurred and the amount of the penalty warranted and issues an order requiring that the penalty be paid.

C. Upon the issuance of a notice or order charging that a violation described under subsection A has occurred, the Director shall inform the permittee within 30 days of the proposed amount of the penalty. Such permittee shall, within 30 days of being so informed, pay the proposed penalty in full or, if the permittee contests either the amount of the penalty or the fact of the violation, forward the proposed amount to the Director for placement in an interest-bearing trust account in the state treasury. Failure to forward the money to the Director within 30 days constitutes a waiver of all legal rights to contest the violation or the amount of the penalty. If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty will be reduced, the Director shall within 30 days of such determination remit the appropriate amount to the permittee with accrued interest thereon.

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

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

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

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

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

**§ 45.2-1022. Citizen suits; rights of citizens to accompany inspectors.**

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

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

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

B. No action shall be commenced under subdivision A 1:

1. Prior to 60 days after the plaintiff has given written notice of the violation to the Secretary, the Director, and any alleged violator; or

2. If the Commonwealth or the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or the Commonwealth to require compliance with the provisions of this chapter, or any regulation, order, or permit issued pursuant to this chapter, so long as in any such action in a court of the Commonwealth, any person is entitled to intervene as a matter of right.

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

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

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

F. Nothing in this section shall restrict any common-law or statutory right of any person or class of persons to seek enforcement of any provision of this chapter or the regulations adopted hereunder or to seek any other relief, including relief against the Director.

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

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

**§ 45.2-1023. Forfeiture or release of performance bond.**

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

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

C. Without prejudice to the rights of any objector or the applicant or the responsibilities of the Director pursuant to this section, the Director may establish an informal conference, in accordance with regulations adopted pursuant to § 45.2-1014, to resolve written objections.

D. For the purpose of the hearing specified in subsection B, the Director may administer oaths, subpoena witnesses or written or printed materials, compel the attendance of witnesses or production of materials, and take evidence, including inspections of the land affected or other coal surface mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the Director.

**§ 45.2-1024. Performance of reclamation operations by Director.**

In the event of forfeiture of a performance bond, in whole or in part, the Director shall deposit the

proceeds in the state treasury in a special fund to be used by the Director to complete the reclamation plan and other regulatory requirements pertaining to the operation for which the forfeited bond had been posted. The Director may use the resources and facilities of the Division or enter into contracts for performance of such reclamation with any person, any soil conservation district, or any agency of the state or federal government. After completion of the reclamation and payment of all costs and administrative expenses associated with the completion of reclamation, any additional funds from the forfeiture of the bond shall be returned.

**§ 45.2-1025. Administrative review of notice or order issued under § 45.2-1020.**

A. A permittee who is issued a notice or order pursuant to § 45.2-1020, or any person having an interest that is or could be adversely affected by such notice or order or by any modification, vacation, or termination of such notice or order, may apply to the Director for the review of such notice or order within 30 days of the receipt thereof or within 30 days of its modification, vacation, or termination. Upon receipt of such application, the Director shall cause such investigation to be made as he deems appropriate. Such investigation shall, at the request of the applicant or the person having an interest that is or could be adversely affected, include a public formal hearing to enable the applicant or such person to present information relating to the issuance and continuance of such notice or order or the modification, vacation, or termination thereof. The filing of an application for review under this subsection shall not operate as a stay of any order or notice.

B. Upon receiving the report of such investigation, the Director shall make findings of fact and shall issue a written decision, incorporating therein an order vacating, affirming, modifying, or terminating the notice or order complained of. Such order shall incorporate the Director's findings of fact. If the application for review concerns an order for cessation of coal surface mining and reclamation operations issued pursuant to the provisions of subsection A or C of § 45.2-1020, the Director shall issue the written decision within 30 days of the receipt of the application for review unless temporary relief has been granted by the Director pursuant to subsection C or by a court pursuant to § 45.2-1027.

C. Pending completion of the hearing required by this section, the applicant may file with the Director a written request that the Director grant temporary relief from any notice or order issued under § 45.2-1020, together with a detailed statement giving reasons for granting such relief. The Director shall issue an order granting or denying such relief expeditiously. If the applicant requests relief from an order for cessation of coal surface mining and reclamation operations issued pursuant to subsection A or C of § 45.2-1020, the order on such a request shall be issued within five days of its receipt. The Director may grant such relief, under such conditions as the Director prescribes, if:

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

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

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

D. Following the issuance of an order to show cause as to why a permit should not be suspended or revoked pursuant to § 45.2-1020, the Director shall hold a public formal hearing, unless waived by the permittee, after giving written notice of the time, place, and date thereof. Within 60 days following the formal hearing, the Director shall issue and furnish to the permittee and every other party to the hearing a written decision concerning suspension or revocation of the permit and reasons therefor. If the Director revokes the permit, the permittee shall immediately cease coal surface mining operations on the permit area and shall complete reclamation within a period specified by the Director, or the Director shall declare as forfeited the performance bonds for the operation.

E. The Director may adopt regulations providing for the award of costs and expenses, including attorney fees, to any party to any administrative proceedings under this chapter, incurred by such person in connection with his participation in such proceedings, and may assess such costs and expenses against any other party as the Director deems proper. For the purpose of this subsection, "party" includes the Commonwealth or any of its agents, officers, or employees.

**§ 45.2-1026. Hearings.**

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

**§ 45.2-1027. Judicial review of final order or decision or decision under § 45.2-1035.**

A. Any party aggrieved by a final order, decision, or decision for entry upon property pursuant to § 45.2-1035, issued by the Director, after exhaustion of the administrative remedies provided for in this chapter, has the right to the judicial review thereof in the circuit court of the county or city in which the land at issue or a major portion thereof is located. In all other respects, judicial review shall be in

accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

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

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

C. The court may award costs and expenses, including attorney fees, to any party to any proceeding under this section and may assess such costs and expenses against any other party as the court deems proper. For the purpose of this subsection, "party" includes the Commonwealth or any of its agents, officers, or employees.

**§ 45.2-1028. Designating areas unsuitable for coal surface mining.**

A. 1. The Director shall establish a planning process that enables objective decisions, based on competent and scientifically sound data and information, regarding which land areas of the Commonwealth, if any, are unsuitable for coal surface mining operations pursuant to the standards set forth in subdivisions 2 and 3. Such designation shall not prevent the mineral exploration pursuant to this chapter of any area so designated.

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

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

4. Any determination of the unsuitability of a land area for coal surface mining made pursuant to this section shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

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

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

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

D. Subject to valid existing rights, no coal surface mining operation, except an operation that existed on August 3, 1977, shall be permitted:

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



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

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

4. Within 300 feet of any occupied dwelling, unless waived by the owner thereof; within 300 feet of any public building, school, church, community or institutional building, or public park; or within 100 feet of a cemetery.

### Article 3.

#### National Pollutant Discharge Elimination System Permit; Replacement of Water Supply.

#### **§ 45.2-1029. National Pollutant Discharge Elimination System permits.**

A. For the purpose of this section:

"Board" means the State Water Control Board.

"Industrial wastes" means the same as that term is defined in § 62.1-44.3.

"NPDES" means the National Pollutant Discharge Elimination System.

"Other wastes" means the same as that term is defined in § 62.1-44.3.

"Sewage" means the same as that term is defined in § 62.1-44.3.

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

C. The Director shall transmit to the State Water Control Board a copy of each application for an NPDES permit received by the Director and provide written notice to the Board of every action related to the consideration of such permit application.

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

E. No NPDES permit shall be issued if, within 30 days of the date of the transmittal of the complete application and the proposed NPDES permit, the Board objects in writing to the issuance of such permit. Whenever the Board objects to the issuance of such permit under this section, such written objection shall contain a statement of the reasons for such objection and the effluent limitations and conditions that such permit would include if it were issued by the Board.

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

G. Whenever, on the basis of any information available to it, the Board finds that any person is in violation of any condition or limitation contained in a NPDES permit issued by the Director, it shall notify the person allegedly in violation and the Director. If after the thirtieth day following notification by the Board, the Director has not commenced appropriate enforcement action, the Board may take appropriate enforcement action pursuant to §§ 62.1-44.15, 62.1-44.23, and 62.1-44.32.

H. The Director shall adopt regulations deemed necessary for the issuance, administration, monitoring, and enforcement of NPDES permits for coal surface mining operations.

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

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



if he determines that the discharge adversely affects the biological condition of the receiving water body.

**§ 45.2-1030. Replacement of water supply.**

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

B. Every underground coal mining operation shall promptly replace any drinking, domestic, or residential water supply from a well or spring that was in existence prior to the application for a surface coal mining and reclamation permit and that has been affected by contamination, diminution, or interruption resulting from underground coal mining operations. Nothing in this subsection shall be construed to prohibit or interrupt underground coal mining operations.

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

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

Article 4.

Abandoned Mine Reclamation.

**§ 45.2-1031. State Reclamation Program.**

A. The Commonwealth's program for the reclamation of land and water adversely affected by past mining shall include the State Reclamation Plan, the Abandoned Mine Reclamation Fund created pursuant to § 45.2-1032, and annual reclamation projects, as provided for in this article.

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

C. The Director may:

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

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

**§ 45.2-1032. Abandoned Mine Reclamation Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Abandoned Mine Reclamation Fund, referred to in this article as "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the Director.

B. All funds granted by the Secretary for purposes of conducting the approved State Reclamation Plan and annual reclamation projects; use fees charged for uses of lands acquired or reclaimed pursuant to this article, after expenditures for maintenance have been deducted; moneys recovered through the satisfaction of liens filed against privately owned land pursuant to this article; moneys recovered from sale of lands acquired by the Director pursuant to this article; and donations made for the purposes of this article and other moneys made available or appropriated to the Director for such purposes shall be paid into the state treasury and credited to the Fund.

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

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

**§ 45.2-1033. Operator may perform reclamation; bidding; conditions; adjustment of required bonds; regulations.**

A. Notwithstanding any licensing requirement under Title 54.1, an operator is 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 (§ 45.2-1043 et seq.) if 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 this chapter and (ii) the operator meets all other applicable requirements of federal, state, and local law.

B. Notwithstanding the provisions of Title 11 (§ 11-1 et seq.), the Director may adjust the amounts 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 adopt regulations to implement this section.

**§ 45.2-1034. Eligible lands and water; priorities for expenditures.**

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

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

**§ 45.2-1035. Right of entry, acquisition, disposition, and reclamation of land adversely affected by past coal mining practices.**

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

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

1. Land or water resources have been adversely affected by past coal mining practices;
2. The adverse effects are significant enough that, in the public interest, action to restore, reclaim, abate, control, or prevent such effects should be taken; and
3. The owners of the land or water resources where entry will be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices (i) are not known or readily available or (ii) will not give permission for the Director or his agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

C. Upon making the findings of fact required by subsection B and giving notice by certified mail to the owners if known or, if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the county or city in which the land lies, the Director, his agents, employees, or contractors shall have the right to enter upon the property adversely affected by past coal mining practices and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land to the extent provided in § 45.2-1036 and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry. Such provision regarding the mitigation or offsetting of a claim or action by an owner is not intended to create new rights of action or eliminate the existing sovereign immunity of the Commonwealth and its agents and employees.

D. The Director and his agents, employees, or contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass thereon.

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

1. The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreational, historical, conservation, or reclamation

*purposes or provide open space benefits; and*

2. *Either (a) permanent facilities, such as a treatment plant or a relocated stream channel, will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices or (b) acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.*

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

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

1. *Transfer the administrative responsibility for land acquired under this section to any state, regional, or local agency, department, or institution, with or without cost, upon terms that will ensure that the use of the land is consistent with the authorization under which the land was acquired;*

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

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

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

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

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

**§ 45.2-1036. Commonwealth to have lien for reclamation work.**

*The Commonwealth shall have a lien, if perfected as provided in § 45.2-1037, on land reclaimed by the Director pursuant to this article for the amount of the increase in the appraised market value of the land resulting from the reclamation. However, no such lien shall attach to or be filed against the property of any person who owned the surface of the land prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this article. Nor shall any such lien attach to or be filed against any property if the Director waives the lien as provided in § 45.2-1037.*

**§ 45.2-1037. Perfection of lien; waiver of lien.**

A. *The Director shall perfect the lien given under the provisions of § 45.2-1036 by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is located, a statement consisting of the name of the owner of record of the property sought to be charged; an itemized account of moneys expended for the reclamation work; notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work; and a brief description of the property to which the lien attaches.*

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

**§ 45.2-1038. Recordation and indexing of lien; notice.**

*It is the duty of the clerk in whose office the statement described in § 45.2-1037 is filed to record such statement in the deed books of such office and to index such recording in the general index of deeds. Such indexing shall be made in the name of the Commonwealth as well as the owner of the property and shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.*

**§ 45.2-1039. Priority of lien.**

*Any lien acquired under this article shall have priority as a lien second only to the lien of real*

estate taxes imposed upon the land.

**§ 45.2-1040. Hearing to determine amount of lien.**

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

**§ 45.2-1041. Satisfaction of lien.**

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

**§ 45.2-1042. Miscellaneous powers of Director.**

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

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

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

Article 5.

Coal Surface Mining Reclamation Fund.

**§ 45.2-1043. Coal Surface Mining Reclamation Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Coal Surface Mining Reclamation Fund, referred to in this article as "the Fund." The Fund shall be established on the books of the Comptroller. All payments made into the Fund in accordance with the provisions of this article shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-1044. Participation in Fund.**

A. Participation in the Fund is open to any operator applying for a permit under this chapter who can demonstrate to the Director a history of at least three consecutive years of compliance under this chapter or any other comparable state or federal act.

B. Participation in the Fund is optional as to each permit application, and approval of such participation by the Division, upon payment by the operator of all entrance fees to the Fund required by this article, shall constitute compliance with all requirements of § 45.2-1016 and regulations issued pursuant thereto. Such participation shall relieve the operator of all bonding requirements except those set forth in this article. Nothing in this article shall preclude compliance with § 45.2-1016 in lieu of participation in the Fund, prior to commencement of such participation. Commencement of participation in the Fund, as to the applicable permit, constitutes an irrevocable commitment to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

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

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

**§ 45.2-1045. Initial payments into Fund; renewal payments; bonds.**

A. Any operator filing a permit application for a coal surface mining operation participating in the pool fund shall pay into the Fund, as an entrance fee, a sum equal to \$1,000 for each applicable permit application. An entrance fee of \$5,000 shall be required of each operator who elects to participate in the Fund if the Director has determined that the total balance of the Fund is less than \$1.75 million. The entrance fee shall be reduced to \$1,000 when the total Fund balance is greater than \$2 million. A

renewal fee of \$1,000 shall be required of each permittee in the Fund at permit renewal.

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

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

B. In addition to the initial payments into the Fund described in subsection A, every operator who participates in the Fund shall furnish to the Fund a bond that meets the criteria of § 45.2-1016 and regulations issued pursuant thereto as follows:

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

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

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

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

C. All fees and payments provided in this article shall be in addition to initial permit application and anniversary payments provided pursuant to § 45.2-1010 or any other payments required in compliance with this chapter.

D. Each Fund participant shall be allowed to post incremental bonds as set forth in § 45.2-1016. Such bonds shall be posted in annual increments according to a schedule contained in the permit application and approved annually by the Director on the anniversary date.

E. Any mining operation participating in the Fund that has been in temporary cessation for more than six months as of July 1, 1991, shall within 90 days of that date post bond equal to the total estimated cost of reclamation for all portions of the permitted site that are in temporary cessation. Any mining operation participating in the Fund that has been in temporary cessation for six months or less as of July 1, 1991, shall within 90 days after the date on which the operation has been in temporary cessation for more than six months post bond equal to the total estimated cost of reclamation for all portions of the permitted site that are in temporary cessation. Any mining operation participating in the Fund that enters temporary cessation on or after July 1, 1991, shall, prior to the date on which the operation has been in temporary cessation for more than six months, post bond equal to the total estimated cost of reclamation for all portions of the permitted site that are in temporary cessation. Such bond shall remain in effect throughout the remainder of the period during which the site is in temporary cessation. At such time as the site returns to active status, the bond posted under this subsection may be released if the permittee has posted bond pursuant to subsection B.

**§ 45.2-1046. Assessment of reclamation tax revenues for Fund.**

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

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

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

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

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

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

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

to the surface mining operation or deep mining operation.

**§ 45.2-1047. Special assessment.**

A. In addition to the tax assessed pursuant to § 45.2-1046, and in order to ensure Fund solvency, the Director of the Division shall require each permittee to pay any special assessment made pursuant to subsection B.

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

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

D. Failure to tender moneys assessed pursuant to the provisions of this section within 30 calendar days of assessment shall constitute a violation of this chapter. Any civil penalties collected for violations of this section shall be applied to the balance of the Fund.

**§ 45.2-1048. Collection of reclamation tax and penalties for nonpayment.**

A. Payment of taxes under this section shall be made no later than 30 days after the end of each calendar quarter when taxes are applicable in accordance with § 45.2-1046. The Division shall notify each operator holding a permit under this chapter of those periods during which the taxes are applicable, provide forms for reporting coal production figures subject to taxes, and collect all taxes for the Fund.

B. Pursuant to regulations adopted by the Director, and consistent with the provisions of § 45.2-1024, all funds paid into the Fund, and interest accrued to the Fund, shall be available for the completion of defaulted reclamation plans filed pursuant to § 45.2-1011. From the interest accrued to the Fund, amounts sufficient to properly administer the Fund are hereby appropriated to the Division. The Director shall also adopt regulations for the implementation of this article and for the collection of taxes hereunder.

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

D. Upon the failure of an operator to pay taxes when due under this section, the Division shall issue a notice of violation pursuant to subsection B of § 45.2-1020. The notice of violation shall state that upon failure of payment within 15 days thereafter, the Division shall issue a cessation order to the operator for failure to abate the notice of violation. Upon the issuance of the cessation order pursuant to subsection C of § 45.2-1020, the enforcement procedures set forth in Article 2 (§ 45.2-1008 et seq.) shall apply. Civil penalties imposed upon an operator pursuant to a violation of this article shall be placed in the Fund.

**§ 45.2-1049. Forfeiture of bonds on operations participating in the Fund; alternative remedies.**

A. Forfeiture of bonds of an operation participating in the Fund shall be accomplished as set forth in § 45.2-1023 and the regulations adopted by the Director.

B. In addition to forfeiture, the Director may proceed against the permittee of a surface coal mining operation under the provisions of subsection F of § 45.2-1020 by filing a civil action for injunctive or other relief in any court of competent jurisdiction to compel the permittee to perform the reclamation work in full compliance with this chapter, the regulations, and approved permit plans. Any injunctive relief shall be granted without the necessity of pleading or proving inadequate remedy at law or irreparable harm, and no bond shall be required.

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

**§ 45.2-1050. Reinstatement to the Fund; recovery of Fund expenditures.**

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

B. The Director may file a motion for judgment in any court of competent jurisdiction against the permittee to recover all moneys expended by the Fund to accomplish a reclamation. Such expenditures

shall include construction costs, engineering costs, administrative costs, and legal costs. In any action to recover such costs, the defendant shall not relitigate the facts giving rise to the forfeiture or defend by claiming the forfeiture was improper.

**§ 45.2-1051. Coal Surface Mining Reclamation Fund Advisory Board.**

A. The Coal Surface Mining Reclamation Fund Advisory Board (the Advisory Board) is established as an advisory board in the executive branch of state government. The purpose of the Advisory Board is to formulate recommendations for the Director concerning oversight of the general operation of the Fund.

B. The Advisory Board shall have a total membership of eight members that shall consist of seven nonlegislative citizen members and one *ex officio* member. Nonlegislative citizen members shall be appointed by the Governor and subject to confirmation by the General Assembly as follows: at least four shall represent the coal industry, one shall be a representative of the Director, and two shall represent conservation interests and any other public or private interests as are appropriate in accordance with Article V of the Interstate Mining Compact (§ 45.2-201). The Director of the Division or his designee shall serve *ex officio* with nonvoting privileges and shall serve as Secretary to the Advisory Board. Nonlegislative citizen members of the Advisory Board shall be citizens of the Commonwealth.

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

D. The nonlegislative citizen members of the Advisory Board shall be appointed for five-year staggered terms. No person shall serve more than two consecutive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

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

F. The nonlegislative citizen members of the Advisory Board shall serve without compensation or reimbursement for expenses incurred in the performance of their duties.

G. The Advisory Board shall meet not less than twice each year, with such meetings held at the call of the chairman or whenever the majority of the members so request.

H. The Advisory Board shall have the following powers and duties:

1. Report biannually to the Director and the Governor on the status of the Fund; and
2. Recommend to the Director regulations or changes to the Fund for the administration or operation of the Fund.

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

J. The Director may adopt the recommendations of the Advisory Board through regulatory action from time to time in accordance with the provisions of this chapter and otherwise in accordance with law.

K. The Advisory Board shall serve as the advisory body required by Article V of the Interstate Mining Compact (§ 45.2-201).

SUBTITLE III.  
MINERAL MINES.

PART A.

MINERAL MINES GENERALLY.

CHAPTER 11.

MINERAL MINE SAFETY ACT.

Article I.

General Provisions.

**§ 45.2-1100. Mineral Mine Safety Act.**

For purposes of this title, this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) shall be known as the Mineral Mine Safety Act.

**§ 45.2-1101. Definitions.**

As used in the Mineral Mine Safety Act and in regulations adopted under the Act, unless the context requires a different meaning:

"Abandoned area" means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

"Accident" means (i) a death of an individual at a mine; (ii) a serious personal injury; (iii) an entrapment of an individual for more than 30 minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned mine fire not extinguished within 30 minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use, or an unplanned roof or rib fall in active workings that impairs ventilation or

impedes passage; (ix) a rock outburst that causes withdrawal of miners or that disrupts regular mining activity for more than one hour; (x) an unstable condition at a water or silt retaining dam or mine refuse pile that requires emergency action in order to prevent failure or causes individuals to evacuate an area, or failure of such retaining dam or refuse pile; (xi) damage to hoisting equipment in a shaft or slope that endangers an individual or interferes with use of the equipment for more than 30 minutes; and (xii) an event at a mine that causes death or serious personal injury to any individual not at a mine at the time the event occurs.

"Active area" means any place in a mine that is ventilated, if underground, and examined regularly.

"Active workings" means any place in a mine where miners are normally required to work or travel.

"Agent" means any person charged by the operator with responsibility for the operation of all or a part of a mine or the supervision of miners in a mine.

"Approved" means, with reference to a device, apparatus, equipment, condition, method, course, or practice, approved in writing by the Director.

"Approved competent person" means a person with more than two years of experience designated by the Department as having the authority to function as a mine foreman even though the person has less than five years of experience. If an approved competent person meets all the criteria for certification as a mine foreman other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

"Armored cable" means a cable provided with a wrapping of metal, plastic, or other approved material.

"Authorized person" means a person who is assigned by the operator or agent to perform a specific type of duty or to be at a specific location in the mine and is task-trained in accordance with requirements of the federal mine safety law.

"Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working place.

"Booster fan" means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

"Cable" means (i) a stranded conductor, known as single-conductor cable, or (ii) a combination of conductors insulated from one another, known as multiple-conductor cable.

"Certified person" means a person who holds a valid certificate from the Department authorizing him to perform the particular task to which he is assigned.

"Circuit" means a conducting part or a system of conducting parts through which an electric current is intended to flow.

"Circuit breaker" means a device for interrupting a circuit between separable contacts under normal or abnormal conditions.

"Competent person" means a person having abilities and experience that fully qualify him to perform the particular duty to which he is assigned.

"Cross entry" means any entry or set of entries, turned from main entries, from which room entries are turned.

"Division" means the Division of Mineral Mining.

"Experienced surface miner" means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

"Experienced underground miner" means a person with more than six months of underground mining experience.

"Federal mine safety law" means the Federal Mine Safety and Health Act of 1977 (P.L. 91-173, as amended by P.L. 95-164) and regulations adopted thereunder.

"Fuse" means an overcurrent protective device with a circuit-opening fusible member directly heated and destroyed by the passage of overcurrent through it.

"Ground" means a conducting connection between an electric circuit or electrical equipment and earth or some conducting body that serves in place of earth.

"Grounded" means connected to earth or to some connecting body that serves in place of earth.

"Hazardous condition" means a condition that is likely to cause death or serious personal injury to a person exposed to such condition.

"Imminent danger" means the existence of any condition or practice in a mine that could reasonably be expected to cause death or serious personal injury before such condition or practice can be abated.

"Inactive mine" means a mine (i) at which (a) coal or minerals have not been excavated or processed or (b) work, other than examination by a certified person or emergency work to preserve the mine, has not been performed for a period of 30 days at an underground mine or for a period of 60 days at a surface mine; (ii) for which a valid license is in effect; and (iii) at which reclamation activities have not been completed.

"Independent contractor" means any person who contracts to perform services or construction at a mine.

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed entrance to an abandoned area and by analysis contains at least 19.5 percent oxygen and



not more than 0.5 percent carbon dioxide and does not contain a hazardous quantity of flammable gas or a harmful quantity of poisonous gas.

"Interested persons" means members of the mine safety committee and other duly authorized representatives of the employees at a mine, MSHA employees, mine inspectors, and, to the extent required by the Act, any other person.

"Licensed operator" means the operator who has obtained the license for a particular mine under § 45.2-1124.

"Main entry" means the principal entry or set of entries driven through the coal bed or mineral deposit and from which cross entries, room entries, or rooms are turned.

"Mine" means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and that are administered as distinct units are considered separate mines. A site is not considered a mine unless the mineral extracted or excavated from it is offered for sale or exchange or used for any other commercial purpose.

"Mine fire" means an unplanned fire not extinguished within 30 minutes of discovery.

"Mine foreman" means a person who holds a valid certificate of qualification as a foreman issued by the Department.

"Mine inspector" means a public employee assigned by the Director to make mine inspections as required by the Mineral Mine Safety Act or other applicable law.

"Miner" means any individual working in a mineral mine.

"Mineral" means clay, stone, sand, gravel, metalliferous or nonmetalliferous ore, or any other solid material or substance of commercial value excavated in solid form from a natural deposit on or in the earth, exclusive of coal and any mineral that occurs naturally in liquid or gaseous form.

"Mineral mine" means a surface mineral mine or an underground mineral mine.

"Mineral Mine Safety Act" or "the Act" means this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) and includes any regulations adopted thereunder, where applicable.

"Mine Safety and Health Administration" or "MSHA" means the federal Mine Safety and Health Administration.

"Operator" means any person who operates, controls, or supervises a mine or any independent contractor performing services or construction at a mine.

"Panel entry" means a room entry.

"Permissible" means any device, process, equipment, or method classified at any time as permissible by MSHA, when such classification is adopted by the Director. "Permissible" includes, unless otherwise herein expressly stated, any requirement, restriction, exception, limitation, or condition attached to such classification by MSHA.

"Return air" means air that has passed through (i) the last active working place on each split or (ii) an abandoned or worked-out area. No area within a panel shall be deemed abandoned until it is inaccessible or sealed.

"Room entry" means any entry or set of entries from which a room is turned.

"Serious personal injury" means any injury that (i) has a reasonable potential to cause death or (ii) is other than a sprain or strain and requires an admission to a hospital for 24 hours or more for medical treatment.

"Substation" means an electrical installation containing generating or power-conversion equipment and associated electric equipment and parts, such as switchboards, switches, wiring, fuses, circuit breakers, compensators, and transformers.

"Surface mineral mine" means (i) the pit and any other active or inactive area of surface extraction of minerals; (ii) any onsite mill, shop, loadout facility, or related structure appurtenant to the excavation and processing of minerals; (iii) any impoundment, water or silt retaining dam, tailing pond, mine refuse pile, or other area appurtenant to the extraction of minerals from the site; (iv) any onsite surface area for the transportation or storage of minerals excavated at the site; (v) equipment, machinery, tools, and other property used in, or to be used in, the work of extracting minerals from the site; (vi) any private way or road appurtenant to such area; and (vii) any area used for surface-disturbing exploration, other than by drilling or seismic testing, or for preparation of a site for surface mineral extraction activity. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activity other than exploratory drilling or seismic testing and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless the mineral (a) is extracted for its unique or intrinsic characteristics or (b) requires processing prior to its intended use.

"Travel way" means a passage, walk, or way regularly used and designated for persons to use in going from one place to another.

"Underground mineral mine" means (i) the working face and any other active or inactive area of underground excavation of minerals; (ii) any underground travel way, shaft, slope, drift, incline, or tunnel connected to such area; (iii) any onsite mill, loadout area, shop, or related facility appurtenant to the excavation and processing of minerals; (iv) any onsite surface area for the transportation or storage of minerals excavated at the site; (v) any impoundment, retention dam, tailing pond, or waste

area appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) any private way or road appurtenant to such area; and (viii) any area used to prepare a site for underground mineral excavation activities. A site commences being an underground mineral mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity and ceases to be an underground mineral mine upon completion of initial reclamation activities.

"Work area," as used in Chapter 9 (§ 45.2-900 et seq.), means an area of a mine in production or being prepared for production or an area of a mine that may pose a danger to miners at such area in production or being prepared for production.

"Working face" means any place in a mine in which work of extracting minerals from their natural deposit in the earth is performed during the mining cycle.

"Working place" means the area of an underground mine in by the last open crosscut.

"Working section" means the portion of a mine encompassing all areas from the loading point of a section to and including the working faces.

**§ 45.2-1102. Safety and health.**

In safety and health, all mineral miners are to be governed by the Act, Article 1 (§ 45.2-1300 et seq.) of Chapter 13, any other section of the Code relating to the safety and health of miners, and regulations adopted by the Department.

**§ 45.2-1103. Special safety rules.**

The operator of a mine may adopt special safety rules for the safety and operation of his mine regarding the work pertaining thereto inside and outside of the mine. Such rules, however, shall not conflict with the provisions of the Act. Such rules, if established, shall be posted at some conspicuous place about the mine where they may be seen by all miners subject to such rules. In lieu of posting the rules, the operator may furnish a printed copy of such rules to each miner subject to such rules.

**§ 45.2-1104. Persons permitted to work in mines; age requirements.**

A. No person under 18 years of age shall be permitted to work in any mine.

B. The Department shall conform to § 212 of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and federal regulations adopted pursuant to that Act with respect to any person under 18 years of age working around any mine.

C. No operator, agent, or mine foreman shall make a false statement as to the age of any person under 18 years of age applying for work in or around any mine.

**§ 45.2-1105. Prohibited acts by miners or other persons; miners to comply with law.**

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct any airway; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution or a warning sign or barricade; or (vi) disobey any order issued pursuant to the provisions of the Act.

B. Each miner at any mine shall comply fully with the provisions of the Act and other mining laws of the Commonwealth, including regulations adopted by the Department, that pertain to his duties.

**§ 45.2-1106. Safety materials and supplies.**

It is the duty of each operator or agent to keep on hand at all times at each mine, or within convenient distance of each mine, a sufficient quantity of all materials and supplies required to preserve the safety of miners working in any area in which the operator is responsible for their health and safety, as required by the Act. If for any reason the operator or agent cannot procure the necessary materials or supplies, he shall cause all miners to withdraw from the mine, or from the affected portion of the mine, until such materials or supplies are received.

**§ 45.2-1107. Notifying miners of violations; compliance with Act.**

A. The operator and his agent shall cooperate with the mine foreman, competent person, and other officials in the discharge of their duties as required by the Act. Such operator and agent shall direct all miners to comply with all provisions of the Act, especially when the attention of such operator or agent is called by the Director or a mine inspector to any violation of the Act.

B. The operator of any mine or his agent shall operate at all times in full conformity with the Act and any other mining law of the Commonwealth, including any regulation of the Department. This requirement shall not relieve any other person who is subject to the provisions of the Act from his duty to comply with the requirements of the Act.

C. Nothing in the Act shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.

D. No operator, agent, competent person, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to the Act.

Article 2.

Director and Mining Inspectors.

**§ 45.2-1108. Affiliations of Department personnel with labor union, mining company, etc.; interest**

***in mine; inspections of mines where inspector previously employed.***

A. Neither the Director nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating company, operators' association, or labor union or fail to comply with the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Neither the Director nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any mine, nor shall the Director or any other officer while in office own any stock in a corporation that owns a mine either directly or through a subsidiary.

B. Neither the Director nor any mine inspector shall perform an inspection at any mine at which he was last employed for a period of two years following termination of his employment.

**§ 45.2-1109. Appointment and general qualifications of mine inspectors.**

A. Each mine inspector shall be appointed by the Director.

B. Each mine inspector shall (i) be at least 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1, 2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

**§ 45.2-1110. Qualifications of mine inspectors.**

Each mine inspector conducting inspections of mineral mines shall have a thorough knowledge of the various systems of working and ventilating underground mineral mines and working surface mineral mines, the control of mine roof and ground control, methods of rescue and recovery in mining operations, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, and mine haulage.

**§ 45.2-1111. Duties of Director.**

A. The Director shall (i) supervise the execution and enforcement of all laws pertaining to the safety and health of persons employed within or at mineral mines within the Commonwealth and the protection of property used in connection therewith and (ii) perform all other duties required pursuant to the Act.

B. The Director shall keep a record of all inspections of mineral mines made by him or his authorized representatives. The Director shall also keep a permanent record of such inspections, properly indexed, and such record shall at all times be open to inspection by any citizen of the Commonwealth.

**§ 45.2-1112. Technical specialists.**

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation, and other mine specialties. Each technical specialist shall have all the qualifications of a mine inspector plus any specialized knowledge required in his field. A technical specialist shall advise the Director and mine operators in the areas of his specialty and shall have the power of an inspector to issue a closure order only in a case of imminent danger.

**Article 3.****Certification of Mineral Mine Workers.****§ 45.2-1113. Records of Board of Mineral Mining Examiners.**

The Director of the Division shall preserve in his office a record of the meetings and transactions of the Board of Mineral Mining Examiners and of all certificates issued by the Board.

**§ 45.2-1114. Certification of certain persons employed in mineral mines; powers of the Department.**

A. The Department may require certification of each person who works in a mineral mine or whose duties and responsibilities in relation to mineral mining require competency, skill, or knowledge in order to perform the tasks required of him in a manner consistent with the preservation of the health and safety of persons and property. Each of the following certificates shall be issued by the Department, and a person who holds such a certificate is authorized to perform the tasks that the Act requires to be performed by such certified person:

1. Surface foreman;
2. Surface foreman open pit;
3. Underground foreman;
4. Surface blaster;
5. Electrical repairman;
6. Underground mining blaster;
7. General mineral miner; and
8. Mine inspector.

B. Certification shall also be required for any additional tasks that the Department requires by regulation.

C. The Department may adopt regulations necessary or incidental to the performance of duties or the execution of powers conferred under this title. Such regulations shall be adopted in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

**§ 45.2-1115. Examinations required for Mineral Mining Certifications.**

A. The Department may require the examination of each applicant for certification. The Department shall require the examination of each applicant for a mine inspector certification. The Department may require such other information from an applicant as necessary to ascertain competency and qualifications for each task.

B. Except as provided by the Act for a general mineral miner or surface foreman certification, the Department shall prescribe the qualifications for each type of certification. The examinations shall be conducted under conditions and regulations that the Department establishes or adopts. Such established conditions and adopted regulations shall be made a part of the permanent record of the Department, published periodically, and applied uniformly to all applicants.

C. Any certificate issued by the Department, except the general mineral miner certificate, shall be valid from the date of issuance for a period of five years unless renewed or unless revoked pursuant to § 45.2-1120. The general mineral miner certificate shall be valid from the date of issuance until it is revoked pursuant to § 45.2-1120.

**§ 45.2-1116. Performance of certain tasks by uncertified persons; penalty.**

It is unlawful for any person to perform any task requiring Department certification unless he has been certified. It is unlawful for an operator or his agent to permit any uncertified person to perform such task. A violation of this section constitutes a Class 1 misdemeanor. Each day of operation without a required certification constitutes a separate offense. A certificate issued by the Board of Mineral Mining Examiners prior to July 1, 2012, shall be acceptable as a certificate issued by the Department until the Department provides otherwise by appropriate regulations.

**§ 45.2-1117. Examination fees; Mineral Mining Examiners' Fund.**

A. A fee of \$10 shall be paid to the Director by each person examined before the commencement of the examination.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mining Examiners' Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection A, together with moneys collected pursuant to § 45.2-1119, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. The Fund shall be administered by the Director, and moneys in the Fund shall be used solely for the purposes of payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director. The Director shall keep accounts and records concerning the receipts and expenditures of the Fund as required by the Auditor of Public Accounts.

**§ 45.2-1118. Reciprocal acceptance of other certifications.**

In lieu of conducting an examination prescribed by law or regulation, the Department may issue to any person holding a certificate issued by another state a certificate permitting him to perform similar tasks in the Commonwealth so long as (i) the Department finds that the requirements for certification in such other state are substantially equivalent to those of the Commonwealth and (ii) holders of certificates issued by the Department are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Department and without additional testing, training, or other requirements not directly related to program administration.

**§ 45.2-1119. Renewal of certificates.**

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance with the procedure set forth in § 45.2-1115. The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal that is not renewed by the fifth anniversary of its issuance or of a previous renewal is invalid. As a condition to renewal, the holder shall provide the Department with all administrative information reasonably required and pay the examination fee as provided in § 45.2-1117.

**§ 45.2-1120. Revocation of certificates.**

A. The Department may revoke any certificate upon finding that (i) the holder has (a) been intoxicated while on duty; (b) neglected his duties; (c) violated any provision of the Act or any other mineral mining law of the Commonwealth, including any regulation adopted by the Department; or (d) used any controlled substance without the prescription of a licensed physician or (ii) other sufficient cause exists.

B. The Department may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) 10

persons working at the mine at which such person is employed or, if fewer than 10 persons are working at the mine, a majority of the workers at the mine.

C. Prior to revoking a certificate, the Department shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing shall be conducted by a hearing officer as provided in § 2.2-4024.

D. Any person aggrieved by a decision of the Department is entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

**§ 45.2-1121. Reexamination.**

The holder of a certificate revoked pursuant to § 45.2-1120 is entitled to examination by the Department after a period of three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

**§ 45.2-1122. General mineral miner certification.**

A. Every person beginning work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners or the Department. Any person who has worked in a mineral mine in the Commonwealth prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of the Act and applicable regulations pertaining to mineral mining health and safety.

**§ 45.2-1123. Foreman certification.**

A. At any mineral mine where three or more persons work at the same time during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only a person holding a foreman certificate in accordance with § 45.2-1114 shall be employed as a mine foreman. The holder of such a certificate shall present the certificate, or a copy thereof, to the operator where he is employed. Such operator shall file the certificate or its copy in the office at the mine and make it available for inspection by interested persons.

B. Every applicant for a foreman certificate shall have at least five years of experience at mineral mining, or other experience deemed appropriate by the Department, and shall demonstrate to the Department a thorough knowledge of the theory and practice of mineral mining by making a score of 85 percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman at each mine shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected before any miner starts work in the affected area.

D. Any independent contractor working in a mineral mine who is engaged in an activity other than the extraction or processing of minerals and is working in a clearly demarcated area where (i) no mining-associated hazard exists and (ii) no other miner travels or works while engaged in an extraction or processing activity shall employ a competent person to examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to any person starting work in the affected area.

Article 4.

Licensing of Mineral Mines.

**§ 45.2-1124. License required for operation of mineral mines; term.**

A. No person shall engage in the operation of any mineral mine within the Commonwealth without first obtaining a license from the Department. Licenses shall be in a form that the Director prescribes. The license for each mine shall be posted in a conspicuous place near the main entrance to such mine.

B. A license is required prior to commencement of the operation of a mine, and a separate license shall be secured for each mine operated. The Director may transfer a license to a successor operator so long as the successor operator has complied with the requirements of the Act. Every change in ownership of a mine shall be reported to the Department as provided in subsection D of § 45.2-1129.

C. Each license shall be valid for a period of one year following the date of issuance, and a mine operator shall secure the renewal of a license by its anniversary date.

D. Within 30 days after the occurrence of any change in the information required by subsection B, the licensed operator shall notify the Department in writing of such change.

**§ 45.2-1125. Fee to accompany application for license; Mineral Mine License Fund; disposition of fees.**

A. Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee of \$400 payable to the State Treasurer, except an application submitted electronically, which shall be accompanied by a fee of \$330. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of

\$100, except an application submitted electronically, which shall be accompanied by a fee of \$80. All such fees collected shall be retained by the Department and paid into the Mineral Mine License Fund created pursuant to subsection B.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mine License Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection A shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures from the Fund shall be made solely for the purpose of acquiring or providing safety equipment, safety training, or safety education or to further the safety program in the mineral mining industry. All expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-1126. Application for license.**

A. Each application for a license shall be submitted by the person who will be the licensed operator of the mine. No application for a license or a renewal thereof is complete unless it contains the following:

1. The identity of the applicant. The applicant shall state (i) the name and address of the mine and its federal mine identification number, (ii) the name and address of the person with overall responsibility for operating decisions at the mine, (iii) the name and address of the person with overall responsibility for health and safety at the mine, and (iv) the federal mine identification number of every other mine in which the applicant has a 20 percent or greater ownership interest;

2. If the applicant is a sole proprietorship, in addition to the information required by subdivision 1, (i) his full name and address and (ii) the trade name, if any, and the full name, address of record, and telephone number of the proprietorship;

3. If the applicant is a partnership, in addition to the information required by subdivision 1, (i) the full name and address of each partner; (ii) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (iii) the federal mine identification number of every other mine in which any partner has a 20 percent or greater ownership interest;

4. If the applicant is a corporation, in addition to the information required by subdivision 1, (i) the full name, address of record, and telephone number of the corporation and the state of incorporation; (ii) the full name and address of each officer and director of the corporation; (iii) the full name, address, and state of incorporation of the parent corporation if the corporation is a subsidiary corporation; and (iv) the federal mine identification numbers of every other mine in which any corporate officer has a 20 percent or greater ownership interest;

5. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, in addition to the information required by subdivision 1, (i) the nature and type, or legal identity, of the organization; (ii) the full name, address of record, and telephone number of the organization; (iii) the name and address of each individual who has an ownership interest in the organization; (iv) the name and address of the principal organization officials or members; and (v) the federal mine identification number of every other mine in which any official or member has a 20 percent or greater ownership interest;

6. The name and address of any agent of the applicant with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the minerals to be mined;

7. The following information about each independent contractor working at the mine: (i) the independent contractor's trade name, business address, and business telephone number; (ii) a description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed; (iii) the independent contractor's MSHA identification number, if any; (iv) the independent contractor's address of record for service of citations and other documents; (v) the names and addresses of persons with overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

8. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

9. Any information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

10. For any license renewal, the annual report required pursuant to § 45.2-1129.

B. The application shall be certified as being complete and accurate by the applicant, if an individual; by the agent of a corporate applicant; or by a general partner of an applicant that is a partnership. The application shall be submitted on forms furnished or approved by the Department.

C. Within 30 days after the occurrence of any change in the information required by subsection A, the licensed operator shall notify the Department in writing of such change.

**§ 45.2-1127. Denial or revocation of license.**

A. The Director may deny an application for, or revoke a license for, the operation of a mineral mine upon determining that the applicant, the licensed operator, or the agent of such applicant or

operator has committed violations of the mine safety laws of the Commonwealth that demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine if such person has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.2-849.

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine if such person has been convicted of violating subsection A of § 45.2-856 or 45.2-857.

D. Any person whose license is denied or revoked pursuant to subsection A, B, or C may bring a civil action in the circuit court of the city or county in which the mine is located for review of the decision. The commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the decision. The court shall promptly hear and determine the matters raised by the aggrieved party. In any such action the court shall receive the records of the Department regarding the determination and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

**§ 45.2-1128. Operating without license; penalty.**

A. In addition to any other power conferred by law, the Director or his designated representative may issue an order closing any mineral mine that is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.2-1158.

B. Any person operating an unlicensed mineral mine is guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mineral mine constitutes a separate offense.

**§ 45.2-1129. Annual reports; condition to issuance of license following transfer of ownership.**

A. The licensed operator of each mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the 12 months ending prior to the preceding January 1. Such report shall state (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the amount of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § 45.2-1126; and (iv) any other information, not of a private nature, that from time to time is required by the Department on forms furnished or approved by the Department.

B. Each independent contractor who is working or has worked at a mine during the preceding 12 months shall annually, by February 15, mail or deliver to the Department a report for the 12 months ending prior to the preceding January 1. Such report shall state (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine, listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above \$1,000, listed by mine name and license number.

C. For purposes of subsection B, "independent contractor" means any (i) extraction or processing contractor, including a driller, blaster, portable crusher, or stripping or land clearing contractor; (ii) maintenance or repair contractor for mobile or stationary extraction or processing equipment, including a welder, mechanic, painter, or electrician; and (iii) construction contractor involved in mine site construction maintenance or repair, including a plant construction contractor, concrete fabricator, or equipment erector.

D. If the owner of a mine transfers the ownership of such mine to another person, the person transferring such ownership shall submit a report to the Department of such change and a statement of the amount of minerals produced since the January 1 prior to the date of such transfer of ownership. No license shall be issued covering such transfer of ownership until the report is furnished.

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be published or made open to public inspection in any manner revealing the employing unit's identity. However, such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title. Wage data aggregated so as to not reveal the employing unit's identity shall not be exempt from such disclosure.

**§ 45.2-1130. Notices to Department; resumption of mining following discontinuance.**

A. The licensed operator or his agent shall send notice of intent to abandon or discontinue the working of an underground mine for a period of 30 days, or a surface mine for a period of 60 days, to the Department at least 10 days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine.

B. The licensed operator or his agent shall send to the Department 10 days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine that is inspected by MSHA, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

C. An emergency action necessary to preserve a mine may be undertaken without the prior notice of intent and advance inspection required by subsection B. In such event, a mine foreman shall examine the mine for hazardous conditions immediately before any miner is permitted to work. The licensed operator or his agent shall notify the Department as soon as possible after commencing an emergency action necessary to preserve the mine.

D. The licensed operator or his agent shall send to the Department 10 days' prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The licensed operator or his agent shall send to the Department 10 days' prior notice of the opening of a new mine.

F. Any notice required by this section shall be in writing and shall include the name and location of the mine and the name, mailing address, and email address of the licensed operator.

**§ 45.2-1131. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.**

A. Prior to commencing mining activity, the licensed operator of a mineral mine or his agent shall submit, unless already submitted, an accurate map of such mine. The scale of such map shall be stated thereon and shall be between 100 feet and 400 feet to the inch. Such map shall show the openings or excavations, shafts, slopes, entries, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and airways with darts or arrows showing direction of air currents. Such map shall also show any portion of such mine that has been abandoned and any portion of the property lines and the outcrop of the mineral of the tract of land on which the mine is located that are located within 1,000 feet of any part of the workings of such mine. For an underground mine only, such map shall show the general inclination of the mineral strata.

B. The licensed operator of such mine shall annually, beginning on the anniversary date of the mine permit issued pursuant to Chapter 12 (§ 45.2-1200 et seq.) and continuing while the mine is in operation, cause such map to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described in subsection A, and shall forward such updated map to the Department to be kept on record, subject to the conditions stated in subsection D. If there are no changes in the information required by this section, the licensed operator shall not be required to submit an updated map to the Department.

C. Each map required pursuant to this section shall be filed and preserved among the records of the Department. The Department shall make such map available at a reasonable cost to any person owning, leasing, or residing on or having an equitable interest in any surface area or coal or mineral interest within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon a sworn affidavit that such person requesting a map has the required legal or equitable interest. However, the Director shall provide to such person only that portion of the map that abuts or is contiguous to the property in which such requesting party has a legal or equitable interest. In no case shall any copy of such map be made for any person who does not possess the required legal or equitable interest without the consent of the licensed operator or his agent. The Director shall promptly deliver notice of such request to the licensed operator of such mining operation.

D. The original version of a map required by this section, or a true copy thereof, shall be kept by the licensed operator at the active mine, open at all reasonable times for the examination and use of the mine inspector.

E. Copies of the maps required pursuant to this section shall be made available at a reasonable cost to the governing body of any locality in which the mine is located upon written request; however, such copies shall be provided on the condition that they not be released to any person who does not have a legal or equitable interest in any surface area or mineral interest within 1,000 feet of the mining operation without the written consent of the licensed operator or his agent. The governing body shall promptly deliver notice of any such request for a copy of a map to the licensed operator or his agent.

**§ 45.2-1132. When the Director may cause maps to be made; payment of expense.**

A. If a licensed mine operator or his agent neglects or fails to furnish to the Director a copy of any map or extension thereof, as provided in § 45.2-1131, the Director may cause a correct survey and map of such mine or extension to be made at the expense of the licensed operator of such mine. The expense of making such survey and map or extension thereof shall be recovered from such licensed operator as other debts are recoverable by a civil action.

B. If at any time the Director has reason to believe that a map or extension furnished pursuant to § 45.2-1131 is substantially incorrect or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made or corrected. The expense of making such survey and map or extension thereof shall be paid by the licensed operator and recovered from such licensed operator as other debts are recoverable by a civil action. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

**§ 45.2-1133. Making false statements; penalty.**

It is unlawful for any person responsible for making any map or other data to be furnished pursuant to the Act to (i) fail to correctly show, within the limits of error, the data required or (ii) knowingly make any false statement or return in connection with such map or other data. A violation of this



section is a misdemeanor, and a person convicted of violating this section shall be fined not less than \$50 and not more than \$200.

Article 5.

Mine Rescue Teams.

**§ 45.2-1134. Mine rescue and first aid stations.**

The Director is hereby authorized to purchase, equip, and operate for the use of the Department any mine rescue and first aid stations he determines necessary for the adequate provision of mine rescue and recovery services at all mines in the Commonwealth.

**§ 45.2-1135. Mine rescue teams.**

The Director may have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth the mine rescue teams that he determines necessary. Each member of a mine rescue team shall devote four hours each month for training purposes and shall be available at all times to assist in rescue work. Members shall receive compensation for services at a rate set by the Director, to be determined annually based on prevailing wage rates within the industry. For the purposes of workers' compensation coverage during training periods, such team members shall be deemed to be within the scope of their regular employment. The Director shall certify to the Comptroller of the Commonwealth that such team members have performed the required service. Upon such certification, the Comptroller shall issue a warrant upon the state treasury for their compensation. The Director may remove any team member at any time.

**§ 45.2-1136. Duty to train team.**

It is the duty and responsibility of the Department to see that every mine rescue team is properly trained by a qualified instructor of the Department or another person who has a certificate of training from the Department or MSHA.

**§ 45.2-1137. Qualification for team membership; direction of teams.**

A. To qualify for membership in a mine rescue team, an applicant shall (i) be an experienced miner; (ii) be 50 years of age or younger; and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the team member and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by any mine rescue team shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of MSHA, and representatives of the miners, and all shall be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Director in his discretion may take full responsibility in directing such work. In every instance, procedures shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

**§ 45.2-1138. Team members considered employees of the mine where emergency exists; compensation; workers' compensation.**

When engaged in rescue or recovery work during an emergency at a mine, all team members assigned to the work shall be considered, during the period of their work, employees of the mine where the emergency exists and shall be compensated by the licensed operator at the rate established in the area for such work. In no event shall such rate be less than the prevailing wage rate in the industry for the most skilled class of inside mine labor. During the period of their emergency employment, all team members shall be deemed to be within the employment of the licensed operator of the mine for the purpose of workers' compensation coverage.

**§ 45.2-1139. Requirements of recovery work.**

A. During recovery work and prior to entering any mine, each mine rescue team conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

B. Each mine rescue team performing rescue or recovery work with breathing apparatus shall be provided with a backup team of equal strength, stationed at each fresh air base.

C. For every two teams performing work underground, one six-member team shall be stationed at the mine portal.

D. Two-way communication, life lines, or their equivalent shall be provided by the fresh air base to each team, and no team member shall be permitted to advance beyond such communication system.

E. A mine rescue team shall immediately return to the fresh air base if any team member's breathing apparatus malfunctions or the low-oxygen alarm activates.

F. The Director may also assign rescue and recovery work to inspectors, instructors, or other qualified employees of the Department as the Director determines to be desirable.

**§ 45.2-1140. State-designated mine rescue teams.**

The Director may, upon the request of a licensed operator or agent who employs a mine rescue team, designate two or more mine rescue teams as "state-designated mine rescue teams." Any team that is certified as a mine rescue team by MSHA under 30 C.F.R. Part 49 is eligible to be a state-designated team. Following the designation of any such team, the Director shall, upon the payment to the Department of an annual fee, set by the Director based on current costs for maintaining mine rescue stations and personnel, assign two or more state-designated teams to the licensed operator. A licensed

operator who has paid the rescue fee is entitled to the rescue services of a state-designated rescue team at no additional charge.

**§ 45.2-1141. Mine Rescue Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Mine Rescue Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected from licensed operators pursuant to the provisions of § 45.2-1140 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. Moneys in the Fund shall be used solely for the purposes of administering the state-designated mine rescue team program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

C. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Fund, 10 percent of the moneys in the Fund shall be transferred from the Fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum that is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams.

**§ 45.2-1142. Inspections; Mine Rescue Coordinator.**

A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times each year; (ii) ensure that each rescue station is adequately equipped; and (iii) ensure that all team members are adequately trained.

B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator, who shall perform the duties assigned by the Director.

**§ 45.2-1143. Workers' compensation; liability.**

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, each member of the state-designated team shall be deemed to be within the employment of the licensed operator of the mine at which the disaster occurred.

B. No member of a state-designated team engaging in rescue work at a mine shall be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. No operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

Article 6.

Mine Explosions; Mine Fires; Accidents.

**§ 45.2-1144. Reports of explosions and mine fires; procedure.**

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. Any independent contractor shall notify the licensed operator of such incident. All facilities of the mine shall be made available for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting shall be attempted or started until and unless it is authorized by the Department.

C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority of the officials in charge of rescue and recovery work, and then only after a study of the effect of reversing the fan on persons who might have survived the explosion and are still underground.

D. The Department shall make available all the facilities at its disposal in effecting rescue and recovery work. The Director shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire, or other accident warrant.

E. The orders of the officials in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

F. The Director shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mineral mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plans shall be published annually and furnished to all licensed operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all licensed operators of mines.

**§ 45.2-1145. Operators' reports of accidents; investigations; reports by Department.**

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident involving serious personal injury or death to any person, whether employed in the mine or not. The scene of the accident shall not be disturbed pending an investigation, except to prevent the suspension of use of a slope, entry, or facility vital to the operation of a section or a mine. In any case in which reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any change is made.

B. The Director shall go personally or dispatch one or more mine inspectors to the scene of such a

mineral mine accident, investigate causes, and issue any orders needed to ensure the safety of other persons.

C. Representatives of the operator shall render any assistance needed and act in a consulting capacity in the investigation. An employee, if so designated by the employees of the mine, shall be notified, and as many as three employees if so designated as representatives of the employees may be present at the investigation in a consulting capacity.

D. The Department shall render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department shall furnish one copy of the report to the licensed operator, one copy to any other operator whose employees were exposed to hazards as a result of the accident, and one copy to the employee representative if he has been present at the investigation. The Director shall maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

**§ 45.2-1146. Reports of other accidents and injuries.**

A. Each miner employed at a mine shall promptly notify his supervisor of any injury received during the course of his employment.

B. Each operator shall keep on file a report of each accident including any accident that does not result in a lost-time injury. Copies of such report shall be given to the injured person or his designated representative to enable him to review the accident report and verify its accuracy prior to the filing of such report for the review of state or federal mine inspectors.

**§ 45.2-1147. Duties of mine inspectors.**

Each mine inspector shall:

1. Report to his supervisor immediately, and by the quickest available means, any mine fire, mine explosion, or accident involving serious personal injury or death;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make any investigation and suggestions and render any assistance he deems necessary for the future safety of the employees, and he shall make a complete report to his supervisor as soon as practicable. He shall have the power to compel the attendance of witnesses and administer oaths or affirmations; and

3. Take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs and supervise the reopening of any mine or section thereof that has been sealed or abandoned on account of fire or any other cause.

Article 7.

Mine Inspections.

**§ 45.2-1148. Frequency of mine inspections.**

A. The Director shall conduct a complete inspection of each underground mineral mine at least every 180 days, and of any surface mineral mine that is not inspected by MSHA at least once per year. An additional inspection of such mineral mine shall be made when deemed appropriate by the Director based on an evaluation of risks at such mine or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct an inspection of a surface mineral mine that is inspected by MSHA; however, a mine inspector or other employee of the Department may enter such mine in order to (i) respond to a complaint of a violation of the Act; (ii) respond to and investigate any serious personal injury or death; and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a particular surface mineral mine is inspected by MSHA. The Director shall make such determination based on information provided by MSHA and Department records.

D. The Director shall request representatives of MSHA to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division and such additional Division employees as the Director designates. The committee shall meet at least twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of state and federal agencies with respect to surface mineral mines in the Commonwealth.

**§ 45.2-1149. Evaluation of risks at mines.**

A. For the purpose of allocating the resources of the Department that are to be used for conducting additional inspections, the Department shall develop a procedural policy for scheduling such inspections based on an assessment, to be made at least annually, of the comparative risks at each underground mineral mine and at any surface mineral mine that is not inspected by MSHA. Such policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of such policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables that shall be included in the risk assessment measures include (i) fatality and serious accident rates at the mine, (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine, and (iii) the frequency rates for

nonserious accidents or nonfatal days lost. Risk assessments shall be developed for both independent contractors and individual mine sites.

B. The Director shall schedule additional inspections at each underground mineral mine, and at each surface mineral mine that is not inspected by MSHA, based on the rating assigned to it reflecting the assessment of its risks compared to other such mines in the Commonwealth.

**§ 45.2-1150. Review of inspection reports and records.**

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by MSHA. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine that are required to be maintained pursuant to the Act, for the 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

**§ 45.2-1151. Advance notice of inspections; confidentiality of trade secrets.**

A. No person shall give advance notice of any mine inspection conducted under the provisions of this title without authorization from the Director.

B. All information that is reported to or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this title and that contains or might reveal a trade secret referred to in 18 U.S.C. § 1905 shall be considered confidential for the purpose of that section, except that such information may be disclosed to the Director or his authorized representative concerned with carrying out any provision of this title or any proceeding hereunder. In any such proceeding, the court or the Director shall issue any order appropriate to protect the confidentiality of trade secrets.

**§ 45.2-1152. Scheduling of mine inspections.**

A. The Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by MSHA. To this end, the Director shall endeavor to coordinate the timing of inspections with MSHA personnel.

B. The Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of the day and days of the week, including evening and night shifts, weekends, and holidays.

**§ 45.2-1153. Denial of entry.**

No person shall deny the Director or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or into any office at the site where maps or records relating to the mine are located, pursuant to the Act.

**§ 45.2-1154. Duties of operator.**

A. Each operator of a mine, or his agent, shall furnish to the Director and each mine inspector proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector.

B. Each operator of an underground mine, or his agent, shall provide each mine inspector adequate means for transportation to the active working areas of the mine within a reasonable time following the mine inspector's arrival at the mine.

C. Such operator or agent shall, when ordered to do so by a mine inspector during the course of an inspection, promptly clear the mine or section thereof of all persons.

**§ 45.2-1155. Duties of inspectors.**

A. During a complete inspection of any mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to abandoned areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where hazardous conditions might exist; electric installations and equipment; haulage facilities; first aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice, or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for oxygen deficiency and gas, in each place that he is required to inspect in an underground mine.

B. In a mine that operates more than one shift in a 24-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons might work or travel during the period the mine is an inactive mine.

C. The inspector shall make a personal examination of (i) the interior of each mine inspected and (ii) the outside of such mine where any danger to the miners might exist.

**§ 45.2-1156. Certificates of inspection.**

A. Upon completing a mine inspection, each mine inspector shall complete a certificate of inspection. Such certificate of inspection shall show the date of inspection, the condition in which the mine was found, a statement regarding any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15

(§ 45.2-1500 et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the numbers of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as are useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the licensed operator, agent, or mine foreman and one copy to the employees' safety committee, where applicable, and shall post copies at one or more prominent places on the premises where they can be read conveniently by the miners.

C. The Department shall provide access to certificates of inspection of underground mineral mines to MSHA.

#### Article 8.

#### Enforcement and Penalties; Reports of Violations.

##### **§ 45.2-1157. Notices of violations.**

A. If the Director or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person responsible for the violation. Each notice of violation shall be in writing, shall describe with particularity the nature of the violation, including a reference to the provision of the Mineral Mine Safety Act or the appropriate regulation violated, and shall include an order of abatement and set a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the licensed operator or his agent or the mine foreman and to any independent contractor whose employees were exposed to a hazard related to the violation.

C. Upon a finding by the mine inspector of the completion of the action required to abate such violation, the Director or the mine inspector shall issue a notice of correction, a copy of which shall be delivered as provided in subsection B.

D. The notice of violation shall be deemed the final order of the Department and shall not be subject to review by any court or agency unless, within 20 days following its issuance, the person to whom the notice of violation was issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding is waived, or if it fails to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of such decision is entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

E. If it is finally determined that a notice of violation was not issued in accordance with the provisions of this section, such notice of violation shall be vacated and the improperly issued notice of violation shall not be used to the detriment of the person or the operator to whom it was issued.

##### **§ 45.2-1158. Closure orders.**

A. The Director or a mine inspector shall issue a closure order requiring that a mine or section thereof be cleared of all persons, or that equipment be removed from use, and refusing further entry into the mine of any person except a person who is necessary to correct or eliminate a hazardous condition when (i) a violation of the Act has occurred and creates an imminent danger to the life or health of any person in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, making it necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § 45.2-1124; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement. However, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.2-1157. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to (i) the licensed operator of the mine, his agent, or the mine foreman and (ii) any independent contractor working in the area of the mine affected by the closure order.

C. Upon a finding by the mine inspector of the abatement of the violation creating the hazardous condition pursuant to which a closure order was issued as provided in clause (i) of subsection A, or the cessation of the need to preserve an accident scene as provided in clause (ii) of subsection A, or the issuance of a license for the mine if the closure order was issued as provided in clause (iii) of subsection A, or the abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner,

licensed operator, or independent contractor to whom such closure order was issued shall not be entitled to administrative review of such decision. Such owner, licensed operator, or independent contractor may, within 10 days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner, operator, or independent contractor. In any such action the court shall receive the records of the Department regarding the issuance of the order and shall receive additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

E. If it is finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated and the improperly issued closure order shall not be used to the detriment of the owner or operator to whom it was issued.

**§ 45.2-1159. Tolling of time for abating violations.**

The period of time specified in a notice of violation for the abatement of the violation shall not begin to run until (i) the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or (ii) the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that such appeal pursuant to clause (i) or (ii) was undertaken in good faith and not solely for delay or avoidance of penalties.

**§ 45.2-1160. Injunctive relief.**

A. Any person violating or failing, neglecting, or refusing to obey a closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey such order and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) that has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon a finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of the Act or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing to operate in compliance with the provisions of the Act.

**§ 45.2-1161. Violations; penalties.**

Any person convicted of willfully violating any provision of the Act, unless otherwise specified in the Act, is guilty of a Class 1 misdemeanor.

**§ 45.2-1162. Prosecution of violations.**

A. It is the duty of every attorney for the Commonwealth to whom the Director or his authorized representative reports any violation of the Act, or on his own initiative, to cause proceedings to be prosecuted in such case.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such case, the Director may request the Attorney General to institute proceedings for any violation of the Act on behalf of the Commonwealth. However, such action shall not preclude the Director from pursuing other applicable statutory procedures. Upon receiving such a request from the Director, the Attorney General may institute actions and proceedings for violations described in the request.

**§ 45.2-1163. Fees and costs.**

No fees or costs shall be charged to the Commonwealth by a court or any officer for or in connection with the filing of any pleading or other papers in any action authorized by this article.

**§ 45.2-1164. Reports of violations.**

A. Any person aware of a violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department, or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) to each miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of each mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at a prominent place at the mine site where it can be read conveniently by the miners, a notice containing the office and home telephone numbers of mine

inspectors and other Department personnel, and office addresses, that may be used to report any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) that is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report omitted or deleted, to the licensed operator of the mine or his agent and to any independent contractor who is alleged to have committed the violation. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent or to any other person or entity. Information regarding the identity of the person reporting a violation is excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

Article 9.  
Miner Training.

**§ 45.2-1165. Training programs.**

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety law and (ii) preparing miners for examinations administered by the Department. The Director shall establish the curriculum and teaching materials for each training program, which shall be consistent with the requirements of the federal mine safety law where feasible.

B. The Department is authorized to charge each person attending a training program reasonable fees to cover the costs of administering the program. The Director may exempt certain persons from any required fees for refresher training programs based on the person's employment status or any other criteria the Director deems appropriate. The Director shall not be required to allocate more of the Department's resources to training programs than are appropriated or otherwise made available for such purpose or are collected from fees charged to attendees.

C. No miner, operator, or other person shall be required to participate in any training program established under this section. Nothing contained in this section shall prevent an operator or any other person from administering a state-approved training program.

**§ 45.2-1166. Mineral mining safety training.**

The Director may implement a program of voluntary safety talks for mineral miners. Safety training may include topical training and talks conducted by inspectors or other Department personnel either on site or in a classroom provided for such purpose.

**§ 45.2-1167. Mineral mining safety training programs.**

A. Each operator shall have a plan containing the following programs: training for new miners, training for experienced miners who are newly employed, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include a scientific worker; delivery worker; customer, including a commercial over-the-road truck driver; vendor; or visitor.

B. Such plan shall be available to the Director for review upon request.

CHAPTER 12.

PERMITS FOR CERTAIN MINING OPERATIONS; RECLAMATION OF LAND.

Article I.

General Provisions.

**§ 45.2-1200. Definitions.**

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

"Disturbed land" means the area from which overburden has been removed in any mining operation, plus the area covered by the spoil and refuse, plus any area used in such mining operation, including land used for processing, stockpiling, or settling ponds.

"Division" means the Division of Mineral Mining.

"Mineral" means ore, rock, and any other solid homogeneous crystalline chemical element or compound that results from the inorganic processes of nature other than coal.

"Mining" means the breaking or disturbing of the surface soil or rock in order to facilitate or accomplish the extraction or removal of minerals or any activity constituting all or part of a process for the extraction or removal of minerals so as to make them suitable for commercial, industrial, or construction use. "Mining" does not include (i) any aspect of deep mining that does not have a significant effect on the surface or (ii) excavation or grading when conducted solely in aid of onsite farming or construction. Nothing in this section applies to the mining of coal. "Mining" does not include, and this title, chapter, or section shall not be construed to apply to, the process of searching, prospecting, exploring, or investigating for minerals by drilling.

"Mining operation" means any area included in an approved plan of operation.

"Operator" means any individual, corporation or corporation officer, firm, joint venture, partnership, business trust, association, or any other group or combination acting as a unit, or any legal entity that is engaged in mining.

"Orphaned lands" means lands disturbed by surface mining of minerals, other than coal operations,

*that were not required by law to be reclaimed or that have not been reclaimed.*

*"Overburden" means all of the earth and other materials that lie above a natural deposit of minerals, ores, rock, or other solid matter and also other materials after removal from their natural deposit in the process of mining.*

*"Reclamation" means the restoration or conversion of disturbed land to a stable condition that minimizes or prevents adverse disruption and the injurious effects of such disruption and presents an opportunity for further productive use if such use is reasonable.*

*"Refuse" means all waste soil, rock, mineral tailings, slimes, and other material directly connected with the mine or with the cleaning and preparation of substances mined, including all waste material deposited in the permit area from other sources.*

*"Spoil" means any overburden or other material removed from its natural state in the process of mining.*

**§ 45.2-1201. Construction of chapter.**

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

**§ 45.2-1202. Authority of Director; enforcement of chapter by injunction.**

*A. The Director may adopt regulations to effectuate the provisions and the policy of this chapter and may adopt definitions for use in interpreting this chapter.*

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

*1. Supervise the administration and enforcement of this chapter and all regulations and orders adopted thereunder;*

*2. Issue orders to enforce the provisions of this chapter, all regulations adopted thereunder, and the terms and conditions of any permit;*

*3. Make investigations and inspections to ensure compliance with any provision of this chapter or any regulation or order adopted thereunder;*

*4. Encourage and conduct investigations, research, experiments, and demonstrations and collect and disseminate information relating to surface mining and reclamation of lands and waters affected by surface mining; and*

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

*C. In addition to any administrative remedy granted herein, the Director may petition any court of competent jurisdiction for an injunction against a violation of any provision of this chapter or any regulation or order adopted hereunder or to compel the performance of any act required by such provision, regulation, or order without regard to any adequate remedy that may exist at law, and such injunction shall be issued without bond. However, with regard to the suspension of mining operations, § 45.2-1225 shall control.*

**§ 45.2-1203. Exemption for restricted mining.**

*Any operator engaged in mining who disturbs less than one acre of land and removes less than 500 tons of minerals at any particular site is exempt from all mining permit fees, renewal fees, and bond requirements of this chapter if such person intending to engage in such restricted mining submits an application for a permit, a sketch of the mining site, and an operations plan to be adhered to in accordance with §§ 45.2-1205 and 45.2-1206. The Director shall approve the application if he determines that the issuance of the permit will not violate any provision of this chapter.*

**Article 2.**

**Regulation of Mining Activity.**

**§ 45.2-1204. Permit Fee Fund.**

*There is hereby created in the state treasury a special nonreverting fund to be known as the Permit Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All permit fees and renewal fees collected pursuant to § 45.2-1205 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of the administration of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.*

**§ 45.2-1205. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to**



**landowner; approval by Department.**

A. It is unlawful for any operator to engage in any mining operation in the Commonwealth without first obtaining from the Department a permit to engage in such operation and paying a permit fee of \$50 per acre for every acre of land to be affected by the total operation for which plans have been submitted. Such permit fee shall be deposited in the Permit Fee Fund pursuant to § 45.2-1204. A permit shall be obtained prior to the start of any mining operation.

B. A separate permit shall be secured for each mining operation conducted. An application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to other information reasonably required by the Director, shall contain the following information: (i) the common name and geologic title, where applicable, of the mineral to be extracted; (ii) a description of the land upon which the applicant proposes to conduct mining operations, setting forth the name of the county or city in which such land is located, the location of its boundaries, and any other description of the land to be disturbed necessary to allow it to be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (iii) the name and address of the owner or owners of the surface of the land; (iv) the name and address of the owner or owners of the mineral, ore, or other solid matter; (v) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (vi) the total number of acres of land to be covered by the permit; (vii) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (viii) whether any mining permit of any type is now held by the applicant, and the number of such permits; (ix) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (x) if known, whether the applicant, any subsidiary or affiliate of the applicant, any partnership, association, trust, or corporation controlled by or under common control with the applicant, or any person required to be identified by clause (ix) has ever had a mining permit of any type issued under the laws of the Commonwealth or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited. Clause (iv) shall not apply to the shell, container chamber, passage, or open space set forth in § 45.2-402.

C. The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan that meets the following requirements:

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

D. No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and § 45.2-1206 and the bond from the applicant as required in § 45.2-1208.

E. If the operator believes that changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation that shall be reviewed for approval by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ 45.2-1206 and 45.2-1208.

F. If within 10 days of the anniversary date of the permit, the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator for land to be affected by the total operation in the next ensuing year according to the following schedule:

Anniversary Date:	Renewal Fee:
Beginning July 1, 2019	\$18 per disturbed acre
Beginning July 1, 2020	\$20 per disturbed acre
Beginning July 1, 2021	\$22 per disturbed acre
Beginning July 1, 2022	\$24 per disturbed acre

*The renewal fees shall be deposited in the Permit Fee Fund pursuant to § 45.2-1204.*

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

**§ 45.2-1206. Operations plan; reclamation; policy of Director.**

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

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

*1. The planned use to which the affected land is to be returned through reclamation; and*

*2. The proposed actions to ensure suitable reclamation of the affected land for the planned use to be carried out by the applicant as an integral part of the proposed mining operation and to be conducted simultaneously insofar as practicable. The Director shall set schedules for the integration of reclamation with the mining operation according to the various individual mineral types.*

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

**§ 45.2-1207. Special Reclamation Fund.**

*There is hereby created in the state treasury a special nonreverting fund to be known as the Special Reclamation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All forfeited bonds collected pursuant to this chapter shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purpose of performing reclamation pursuant to the provisions of this chapter. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.*

**§ 45.2-1208. Bond of operator.**

*Each operator at the time of filing his application shall furnish bond on a form that is prescribed by the Director. Such bond shall be payable to the Department and conditioned on the faithful performance by the operator of all requirements of this chapter and the operations plan as approved and directed by the Department. The amount of bond shall be \$3,000 per acre, based upon the number of acres of land that the operator estimates will be affected by mining operations during the next year. Such bond shall be executed by the operator and by a corporate surety licensed to do business in the Commonwealth. However, in lieu of such bond the operator may deposit cash or collateral security acceptable to the Director.*

**§ 45.2-1209. Review of operations plan and reclamation provision by Director; issuance of permit.**

*A. Upon receipt of an operations plan acceptable to the Director and bond as required by this article, the Director shall review the plan. If the Director approves the plan, he shall issue a permit. If the Director disapproves the plan, he shall furnish the applicant with his written objections thereto and his required amendments. Until the applicant amends his operations plan to meet the Director's reasonable objections and files a satisfactory amended plan with the Director, no permit shall be issued.*

*B. In reviewing the operations plan, if the Director finds that the operation will constitute a hazard to the public safety or welfare, or that a reasonable degree of reclamation or proper drainage control is not feasible, he may disapprove the permit application. However, the Director may approve the permit after deleting the areas from the permit application that he holds in his findings to be objectionable.*

*C. The Director shall issue the permit unless he finds that the applicant has had control or has had common control with a person, partnership, association, trust, or corporation that has had a mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by law, in which event no permit shall be issued. However, if an operator who forfeited a bond pays, within 30 days of notice and demand by the Director, the cost of reclamation in excess of the amount of the forfeited bond, or if any bond is forfeited and the amount forfeited is equal to or greater than the cost of reclamation, such operator shall then become eligible for another permit.*

**§ 45.2-1210. Application for permit; adjoining landowners; local official.**

*A. Each application for a permit shall be accompanied by a statement showing the names and addresses of the owners of each property within 1,000 feet of the property line of any land proposed to be permitted, as well as certification that such landowners have been notified by certified mail of the application for a permit unless notified previously. Such residents may file written objections with the*

Director and may request a hearing.

B. Each application for a permit shall also be accompanied by a statement certifying that the chief administrative official of the county or city in which the land proposed to be permitted is located has been notified of the proposed operation by certified mail.

C. This section applies to an initial application for a permit only, and no new notice shall be required for a renewal application or for a permit for acreage in addition to that originally permitted.

**§ 45.2-1211. Succession of one operator by another at uncompleted project.**

If one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation and transfer the permit to the successor operator. However, the successor operator shall have complied with the requirements of this chapter and shall assume as part of his obligation under this chapter all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be calculated according to the following schedule, except as provided by § 45.2-1203:

Date of Succession:	Permit Fee:
Beginning July 1, 2019	\$18 per disturbed acre
Beginning July 1, 2020	\$20 per disturbed acre
Beginning July 1, 2021	\$22 per disturbed acre
Beginning July 1, 2022	\$24 per disturbed acre

The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

**§ 45.2-1212. Additional bond to be posted annually; release of previous bond; report of reclamation work.**

A. Within 10 days following the anniversary date of any permit, the operator shall post additional bond in the amount of \$3,000 per acre for each acre of land estimated by him to be disturbed during the next year following the anniversary date of the permit. Bond or other security previously posted shall be released for each area disturbed in the last 12 months if reclamation work has been completed or transferred to additional acres to be disturbed.

B. To obtain the approval of the Director to release the bond, the operator shall file with the Department a written report on a form prescribed by the Department stating under oath that reclamation has been completed on certain lands and shall submit (i) the identity of the operation; (ii) the county or city in which the operation is located and its location with reference to the nearest public highway; (iii) a description of the area of land affected by the operation within the period of time covered by such report with sufficient certainty to enable the operation to be located and distinguished from other lands; and (iv) an accurate map or plan prepared by a licensed land surveyor or licensed engineer or issued by a standard mapping service or in a manner acceptable to the Director showing the boundary lines of the area of land affected by the operation, the number of acres comprising such area, and the methods of access to the area from the nearest public highway.

**§ 45.2-1213. Notice of noncompliance served on operator.**

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

1. Apply a control technique or institute an action approved in his operations or reclamation plan;
2. Comply with any required amendment to the operations or reclamation plan; or
3. Comply with any other requirement of this chapter or any regulation adopted pursuant to this chapter that affects the health, safety, or welfare of the Commonwealth.

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

C. If the operator has not complied with the requirements set forth in the notice of noncompliance within the time limits fixed therein, the Director shall revoke the permit and declare the forfeiture of the entire bond. When the bond is collected, it shall be deposited in the Special Reclamation Fund created pursuant to § 45.2-1207. After completion of the reclamation and payment of all fees as required by this chapter, any additional funds from the forfeiture of the bond shall be returned to the corporate surety, and any additional funds from the forfeiture of the collateral security, certified check, or cash that was deposited in lieu of bond shall be returned to the person who provided it originally or to the operator. Within 30 days of the issuance of any permit revocation or bond forfeiture made under this section, the operator may request a review pursuant to the provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act.

**§ 45.2-1214. Collection of debts.**

The amount by which the cost of reclamation exceeds the amount of the operator's forfeited bond shall constitute a debt of the operator to the Commonwealth. The Director is authorized to collect such

debts, together with the cost of collection, through appropriate legal action or by declaring the forfeiture of other payments. Moneys collected through legal action, less the cost of collections, shall be deposited in the Special Reclamation Fund created pursuant to § 45.2-1207.

**§ 45.2-1215. Commonwealth to have lien for reclamation work.**

The Commonwealth shall have a lien, if perfected as provided in subsection A of § 45.2-1216, on land owned by the operator and reclaimed by the Director pursuant to this chapter for the amount of the increase in the appraised market value of the land resulting from the reclamation, except that no lien shall attach to or be filed against the property of any person if the Director waives the lien as provided in subsection B of § 45.2-1216.

**§ 45.2-1216. Perfection of lien; waiver of lien.**

A. Except as provided in subsection B, the Director shall perfect the lien given under the provisions of § 45.2-1215 by filing, within six months after completion of the reclamation, in the clerk's office of the court of the county or city in which the land or any part thereof is located, a statement consisting of the names of all owners of record of the property sought to be charged; an itemized account of moneys expended for the reclamation work; notarized copies of appraisals, made by an independent appraiser, of the fair market value of the land both before and upon completion of the reclamation work; and a brief description of the property to which the lien attaches.

B. The Director shall waive a lien if he determines that (i) the direct and indirect costs of filing such lien exceed the increase in fair market value resulting from reclamation or (ii) if reclamation is necessitated by an unforeseen occurrence, the reclamation will not result in a significant increase in the fair market value of the land.

**§ 45.2-1217. Recordation and indexing of lien; notice.**

It is the duty of the clerk in whose office the statement described in § 45.2-1216 is filed to record the statement in the deed books of such office, and index the statement in the general index of deeds, in the name of the Commonwealth as well as the owner of the property, showing the type of the lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

**§ 45.2-1218. Priority of lien.**

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

**§ 45.2-1219. Hearing to determine amount of lien.**

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

**§ 45.2-1220. Satisfaction of lien.**

Any lien acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and may be satisfied in accordance with this section. If an owner fails to satisfy a lien as provided in this section, the Director may proceed to enforce the lien by a petition filed in the circuit court of the county or city in which the property or some portion thereof is located.

**§ 45.2-1221. Additional bond to cover amended estimate of land to be disturbed.**

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

**§ 45.2-1222. Interference with reclamation unlawful; other mining operations on land.**

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

**§ 45.2-1223. Penalty for violation of chapter, etc.**

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

**§ 45.2-1224. Assistance of federal, state, and local agencies.**

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

**§ 45.2-1225. Injunction prohibiting mining operation.**

Whenever adverse ecological disruptions or the injurious effects thereof seriously threaten or

endanger the health, safety, welfare, or property rights of citizens of the Commonwealth, and abatement by the application of control techniques is not feasible, the Director shall petition the appropriate circuit court for an injunction to prohibit further operations. Such injunction shall not relieve the operator of the duty to reclaim lands previously affected according to the terms and conditions of the applicable permit.

**§ 45.2-1226. Appeals from decisions of the Department.**

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

**§ 45.2-1227. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter.**

A. Any locality may establish standards and adopt regulations dealing with the same subjects dealt with in this chapter so long as such standards and regulations are no less stringent than those adopted by the Director.

B. This chapter shall not be construed to repeal any local ordinance or regulation or charter provision in any locality where such provision is no less stringent than the standard adopted by the Director. The Director may waive the application of this chapter if, in his opinion, a locality in which mining operations are being conducted has enacted and is enforcing zoning ordinances dealing with the subject matter and prescribing standards and regulations not less stringent than those set forth in this chapter. If the Director waives any provision of this chapter, the operator shall comply strictly with all the provisions of the ordinances of the locality in which the operation is located.

C. The Director may also waive the application of this chapter as to any mining or borrow pit operation that is conducted solely and exclusively for a state project and that is subject by contract to the control and supervision of a state agency, so long as regulations satisfactory to the Director have been adopted and are incorporated into any contract for such removal. The locality or state agency shall ensure strict compliance with all provisions of the ordinances, regulations, or contracts and the Director shall from time to time review such ordinances, regulations, or contracts and their enforcement programs to ensure compliance with this chapter. If the Director determines that such strict compliance is not present, then he may rescind the waiver of the application of this chapter.

Article 3.

Orphaned Lands.

**§ 45.2-1228. Orphaned Lands Reclamation Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Orphaned Lands Reclamation Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. An amount equal to the average interest rate earned for all funds in the state treasury as applied to the Minerals Reclamation Fund created pursuant to § 45.2-1234 shall be paid annually into the state treasury and credited to the Fund. Moneys in the Fund shall be used solely for the purpose of the reclamation of orphaned lands pursuant to this article. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-1229. Survey; priorities for reclamation.**

The Director shall conduct a survey to determine the extent of the orphaned lands in the Commonwealth and shall establish priorities for the reclamation of such lands.

**§ 45.2-1230. Agreements with owners or lessees; reclamation by Director.**

The Director is authorized to enter into agreements with owners or lessees of orphaned land when the owners agree to the reclamation of such land by the Division to the extent and in the manner deemed appropriate or reasonable by the Director. The Director shall not return orphaned land to any use other than the minimum potential use of the land that existed prior to the initiation of mining operations unless the landowner or owners, or lessee or lessees, agree to bind themselves to the payment of the additional cost upon terms that the Director deems reasonable. In entering into such agreements, the Director shall be guided by the priorities for reclamation established by him and shall not enter into any such agreement unless funds are immediately available for the performance of the agreement by the Director as provided in this article.

**§ 45.2-1231. Contracts for reclamation.**

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

**§ 45.2-1232. Acceptance of federal funds, gifts, etc.**

The Director is authorized (i) to accept federal funds or gifts or grants from any source for the purposes of this article; (ii) to acquire by gift or purchase, but not by the exercise of the power of eminent domain, any orphaned lands whose acquisition he judges to be in the public interest; and (iii)

to utilize any such funds, gifts, or grants for the purposes of this article.

Article 4.

Minerals Reclamation Fund.

**§ 45.2-1233. Definition.**

For purposes of this article, "Fund" means the Minerals Reclamation Fund created pursuant to § 45.2-1234.

**§ 45.2-1234. Minerals Reclamation Fund.**

There is hereby created in the state treasury a special nonreverting fund to be known as the Minerals Reclamation Fund. The Fund shall be established on the books of the Comptroller. All payments made by operators in accordance with the provisions of this article shall be paid into the state treasury and credited to the Fund. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the reclamation of mining operations pursuant to § 45.2-1238. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-1235. Membership in Fund; payments required.**

Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 12 (§ 45.2-1200 et seq.) shall become a member of the Fund by making an initial payment to the Fund of \$50 for each acre estimated to be affected by mining operations during the next year. Thereafter, the member shall, within 10 days following the anniversary date of each permit issued to the member, make a payment to the Fund of \$12.50 for each acre estimated to be affected by mining operations during the next year. Such payments shall continue to be made until the member has paid into the Fund a total of \$500 for each acre estimated to be affected under the permits issued to the member.

**§ 45.2-1236. Release of bonds and other securities.**

All bonds and other securities issued by an operator pursuant to § 45.2-1208 or 45.2-1212 shall be released upon the acceptance into the Fund of such bonds or securities and the payment of required fees.

**§ 45.2-1237. Return of member payments.**

Subject to the provisions of § 45.2-1240, the Director shall return from the Fund to the member any payment that the member has previously paid to the Fund once the Director determines that the member has completed satisfactory reclamation in accordance with § 45.2-1212. The payments returned shall be only those payments that the member made for the acres that have been satisfactorily reclaimed. In lieu of such return, the member may request that the Director retain the payments in the Fund as payments for additional acres to be disturbed by the member's operations.

**§ 45.2-1238. Revocation of permits; reclamation work.**

If a permit issued to a member is revoked pursuant to § 45.2-1213, then the payments that the member has made to the Fund in connection with such permit shall be forfeited to the Fund. The Director shall use such forfeited payments, or as much of such payments as necessary, for the reclamation of the mining operation to which the permit applied. If the cost of reclamation exceeds the amount of the forfeited payments, the Director shall also use the proceeds from the member's bond or other security also forfeited in conjunction with the revocation of the permit in accordance with § 45.2-1213, except that if all of the member's bonds and other securities have been released pursuant to § 45.2-1236, then the Director shall draw upon the Fund for the entire cost of reclamation.

**§ 45.2-1239. Collection of debt where cost of reclamation exceeds member's forfeited payments, etc.**

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

**§ 45.2-1240. Decreases in size of Fund.**

Whenever the size of the Fund decreases to less than \$2 million, the Director shall suspend the return of payments pursuant to § 45.2-1237 and shall assess all members an equal amount for each affected acre, for a total amount sufficient to raise the Fund to \$2 million. In lieu of such assessment, all members shall at the request of the Director post bonds or other securities within six months after the Director so notifies the members. Failure of a member to post bond or other surety or to pay the required assessment shall result in the revocation of the permit of the member and the forfeiture of the member's payments in accordance with § 45.2-1238.

**§ 45.2-1241. Order of return of payments.**

The return of payments to members shall be made in the order in which the Director approves the completion of reclamation pursuant to § 45.2-1212.

**§ 45.2-1242. Discontinuance of Fund.**

If the Fund is discontinued, any amounts remaining in the Fund shall be returned to the members in proportion to the amount that each member has paid.

**§ 45.2-1243. Construction of article; Fund used solely for reclamation.**

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

## CHAPTER 13.

## MINERAL MINING RETAINING DAMS; ADJACENT OWNERS.

## Article 1.

*Mineral Mining Retaining Dams and Refuse Piles.***§ 45.2-1300. Definitions.**

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

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

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

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

*"Water" means water used in a mining operation.*

**§ 45.2-1301. Dams and mine refuse piles; construction.**

*A. Any water-retaining or silt-retaining dam or mine refuse pile or modification of an existing water-retaining or silt-retaining dam or mine refuse pile shall be designed and constructed by or under the direction of a qualified engineer if such dam or pile is designed to impound water or silt to a height of (i) five feet or more above the lowest natural ground level within the impounded area and has a storage volume of 50 acre-feet or more or (ii) 20 feet or more, regardless of storage volume.*

*B. Designs, construction specifications, and other related data, including final abandonment plans, for a water-retaining or silt-retaining dam or mine refuse pile shall be approved and certified by the qualified engineer as specified in subsection A and by the licensed operator or his agent.*

*C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B shall be submitted for approval to the Director. If the Director approves the submittal, he shall notify the licensed operator in writing. If the Director disapproves the submittal, he shall notify the licensed operator with his written objections and required amendments. The Director shall approve or disapprove the submittal within 30 days following receipt thereof.*

**§ 45.2-1302. Examination of dams and mine refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.**

*A. Every water-retaining or silt-retaining dam or mine refuse pile shall be examined daily for visible structural weakness, volume overload, and other hazards by a qualified person designated by the licensed operator. When rising water and silt reaches 80 percent by volume of the safe design capacity of the dam or pile, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations shall be made during periods of rainfall that could create flooding conditions.*

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

*1. Remove all persons from the area that can reasonably be expected to be affected by such potentially hazardous condition;*

*2. Eliminate such potentially hazardous condition; and*

*3. Notify the Director.*

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

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

*1. A schedule and procedures for the inspection of the retaining dam by a qualified person;*

*2. Procedures for evaluating any potentially hazardous condition;*

*3. Procedures for removing all persons from the area that may reasonably be expected to be affected by such potentially hazardous condition;*

*4. Procedures for eliminating such potentially hazardous condition;*

*5. Procedures for notifying the Director; and*

*6. Any additional information that may be required by the Director.*

*E. Before making any change or modification in the plan approved in accordance with subsection D, the licensed operator shall obtain approval of such change or modification from the Director.*

## Article 2.

*Rights of Owners of Land Adjacent to Mineral Mines.***§ 45.2-1303. Consent required before working mine near land of another.**

*No owner or tenant of any land within the Commonwealth containing minerals shall open or sink, dig, excavate, or work in any mine on such land within five feet of the line dividing such land from that of another person without the written consent of every person interested in or having title to such*

adjoining lands or mineral rights in possession, reversion, or remainder, or of the guardian of any such person that may be under a disability. Any person violating this section shall forfeit \$500 to each person injured by such violation and to each person whose consent was required but not obtained.

**§ 45.2-1304. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.**

A. If a person who is interested in or has title to any land or mineral rights coterminal with the land or mineral rights on or in which a mine is located has reason to believe his property is being trespassed upon, then the owner, tenant, or occupant of the land or minerals on or in which such mine is opened and worked, or his agent, shall permit such interested person to have ingress and egress with surveyors and assistants to explore and survey such mine for the purpose of ascertaining whether a violation of § 45.2-1203 has occurred. Such exploration and survey shall occur at the expense of the interested person, and such person shall not be entitled to enter the mine property more often than once each month.

B. If such interested person is refused entry to such mine, he may file a complaint before the judge of the general district court of the county or city in which such mine is located. Such judge may issue a summons to such mine owner, tenant, occupant, or agent to answer the complaint. Upon the return of the executed summons and the submission of proof that the complainant has right of entry and that such right of entry has been refused without sufficient cause, the judge shall designate a prompt and convenient time for such entry to be made and issue a warrant commanding the sheriff of the county or city to attend and prevent obstructions or impediments to such entry, exploration, and survey.

C. Any owner, tenant, occupant, or agent who refuses permission, exploration, or survey pursuant to subsection A shall forfeit \$20 for each refusal to the person so refused. The costs of such summons and a fee of \$3 to the sheriff executing the warrant shall be paid by the person whose refusal caused the complaint. If the court dismisses the complaint, the costs of such summons and execution shall be paid by the party making the complaint.

#### PART B.

#### UNDERGROUND MINERAL MINES.

#### CHAPTER 14.

#### REQUIREMENTS APPLICABLE TO UNDERGROUND MINERAL MINES.

##### **§ 45.2-1400. Scope of chapter.**

This chapter is applicable to the operation of any underground mineral mine in the Commonwealth and shall supplement the provisions of Chapter 11 (§ 45.2-1100 et seq.).

##### **§ 45.2-1401. Regulations governing conditions and practices at underground mineral mines.**

A. The Director shall adopt, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, regulations necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from adopting regulations more stringent than regulations adopted pursuant to the federal mine safety law. Such regulations applicable to underground mineral mines shall establish requirements for the:

1. Protection of miners from general risks found at underground mineral mines and in mining;
2. Provision and use of personal protection equipment and devices for the head, feet, hands, and body;
3. Maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;
4. Control of unstable roof, face, rib, floor, and other ground conditions;
5. Handling and storage of combustible materials, including requirements for emergency plans, firefighting and emergency rescue, fire prevention and safety features on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;
6. Control of exposure to airborne contaminants and excessive noise levels;
7. Provision of adequate air quality and quantity through ventilation and other appropriate measures;
8. Safe storage, transportation, and use of explosives and blasting devices;
9. Safe design, operation, maintenance, and inspection of drilling equipment;
10. Construction, installation, maintenance, use, and inspection of boilers, air compressors, and compressed gas systems;
11. Safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;
12. Safe design, operation, maintenance, and inspection of electrical equipment and systems;
13. Safe storage, transportation, and handling of materials, including corrosive and hazardous substances;
14. Safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
15. Safe design and operation of chutes;
16. Inspection, maintenance, safe design, and operation of hoisting equipment and cables;



17. Inspection, maintenance, and construction of mine shafts;
18. Actions to be taken by certified and competent persons; and
19. Safe design, operation, maintenance, and inspection of, and the conduct of mining activities at, surface areas of underground mineral mines.

B. The Director shall not adopt any regulation relating to underground mineral mines that is inconsistent with any requirement established by the Act or that, if an operator were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

**§ 45.2-1402. Adoption of regulations.**

The Director shall adopt regulations:

1. Regarding transportation of miners, including regulations regarding (i) the carrying of tools by miners on mantrips; (ii) the riding of any miner, except the motorman and trip rider, inside a car; and (iii) the boarding and disembarking of miners to and from mantrips;
2. Requiring any bare wire and any cable other than a ground wire, grounded power conductor, or trailing cable to be supported by insulators and away from combustible materials, roof, and ribs;
3. Regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power;
4. Requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations;
5. Requiring respiratory equipment and hearing protection, including by requiring that (i) each miner exposed for short periods to a hazard from inhalation of gas, dust, or fumes wear approved respiratory equipment and (ii) each operator supply hearing protection to miners upon request; and
6. Requiring that fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

**§ 45.2-1403. Flame safety lamps.**

No flame safety lamp shall be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

**§ 45.2-1404. Standards for regulations.**

In adopting regulations pursuant to § 45.2-1401 or 45.2-1402, the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and any other information available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of such standards, and experience gained under the Act and other mine safety laws; and
5. Any other criteria necessary to ensure the safety and health of miners and other persons or property likely to be affected by any underground mineral mine or related operation.

**§ 45.2-1405. Mining in proximity to gas and oil wells.**

A. The Director shall adopt regulations requiring each licensed operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in proximity to any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry, or extend any workings in any mine within 500 feet of any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with copies of the maps and plans required under § 45.2-1131 showing the mine workings and projected mine workings that are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to the provisions of § 45.2-1604. Each such notice shall contain a certification made by the sender that the sender has complied with such requirements.

C. After filing such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, the operator shall not remove any material, drive any entry, or extend any workings in any mine within 200 feet of any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Any such objection shall be filed within 10 days following the date such petition is filed.

PART C.

SURFACE MINERAL MINES.

CHAPTER 15.

REQUIREMENTS APPLICABLE TO SURFACE MINERAL MINES.

**§ 45.2-1500. Scope of chapter.**

*This chapter is applicable to the operation of any surface mineral mine in the Commonwealth and shall supplement the provisions of Chapter 11 (§ 45.2-1100 et seq.).*

**§ 45.2-1501. Regulations governing conditions and practices at surface mineral mines.**

*A. The Director shall adopt, in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, regulations necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from adopting regulations more stringent than regulations adopted pursuant to the federal mine safety law. Such regulations applicable to surface mineral mines shall establish requirements for the:*

- 1. Protection of miners from general risks found at surface mineral mines;*
- 2. Provision and use of personal protection equipment;*
- 3. Control of unstable ground conditions;*
- 4. Handling and storage of combustible materials, including requirements for emergency plans, firefighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;*
- 5. Control of exposure to airborne toxic contaminants;*
- 6. Safe storage, transportation, and use of explosives and blasting devices;*
- 7. Safe design, operation, maintenance, and inspection of drilling equipment;*
- 8. Construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;*
- 9. Safe design, operation, maintenance, and inspection of mobile equipment;*
- 10. Safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;*
- 11. Safe design, operation, maintenance, and inspection of electrical equipment and systems;*
- 12. Safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;*
- 13. Safe storage, transportation, and handling of materials, including corrosive and hazardous substances;*
- 14. Safe design, operation, maintenance, and inspection of hoisting equipment and cables;*
- 15. Actions to be taken by certified and competent persons; and*
- 16. Design, construction, maintenance, and inspection of refuse piles and water and silt retaining dams, including emergency response plans.*

*B. The Director shall not adopt any regulation relating to surface mineral mines that is inconsistent with any requirement established by the Act or that, if an operator were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.*

**§ 45.2-1502. Standards for regulations.**

*In adopting regulations pursuant to § 45.2-1501, the Director shall consider:*

- 1. Standards utilized and generally recognized by the surface mineral mining industry;*
- 2. Standards established by recognized professional mineral mining organizations and groups;*
- 3. The federal mine safety law;*
- 4. Research, demonstrations, experiments, and any other information available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of such standards, and the experience gained under the Act and other mine safety laws; and*
- 5. Any other criteria necessary to ensure the safety and health of miners and other persons or property likely to be endangered by any surface mineral mine or related operation.*

**§ 45.2-1503. Mining in proximity to gas and oil wells.**

*A. The Director shall adopt regulations requiring each licensed operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in proximity to any gas or oil well already drilled or in the process of being drilled.*

*B. Any licensed operator who plans to remove any mineral, drive any passage or entry, or extend any workings in any mine within 500 feet of any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with copies of the maps and plans required under § 45.2-1131 showing the mine workings and projected mine workings that are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector appointed pursuant to § 45.2-1604. Each such notice shall contain a certification made by the sender that the sender has complied with such requirements.*

*C. After filing such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, the operator shall not remove any material, drive any entry, or extend any workings in any mine within 200 feet of any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such petition shall mail copies of the petition, maps, and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this*

section. Any such objection shall be filed within 10 days following the date such petition is filed.

**§ 45.2-1504. Respiratory equipment.**

The Director shall adopt regulations requiring any miner exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment.

**§ 45.2-1505. Health regulations.**

A. The Director may adopt regulations requiring that sources of dust at surface mineral mines be wetted down unless controlled by dry collection measures or other means approved by the Director.

B. The Director may adopt regulations providing that no miner at a surface mineral mine that is subject to inspection by the Department pursuant to § 45.2-1148 shall be exposed to noise levels that exceed the federal limit adopted by MSHA for non-coal miners. Such regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

SUBTITLE IV.

GAS AND OIL.

CHAPTER 16.

VIRGINIA GAS AND OIL ACT.

Article 1.

General Provisions.

**§ 45.2-1600. Definitions.**

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

"Abandonment of a well" or "cessation of well operations" means the time at which (i) a gas or oil operator has ceased operation of a well and has not properly plugged the well and reclaimed the site as required by this chapter, (ii) a gas or oil operator has allowed the well to become incapable of production or conversion to another well type, or (iii) the Director revokes a permit or forfeits a bond covering a gas or oil operation.

"Associated facility" means any facility utilized for gas or oil operations in the Commonwealth, other than a well or a well site.

"Barrel" means 42 U.S. gallons of liquids, including slurries, at a temperature of 60 degrees Fahrenheit.

"Board" means the Virginia Gas and Oil Board.

"Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata associated with it.

"Coalbed methane gas well" means a well capable of producing coalbed methane gas.

"Coalbed methane gas well operator" means any person who operates or has been designated to operate a coalbed methane gas well.

"Coal claimant" means a person identified as possessing an interest in production royalties when a drilling unit is force-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the coal estate contained within the drilling unit subject to the pooling order or agreement.

"Coal operator" means any person who operates or has the right to operate a coal mine.

"Coal owner" means any person who owns, leases, mines and produces, or has the right to mine and produce a coal seam.

"Coal seam" means any stratum of coal 20 inches or more in thickness. "Coal seam" includes a stratum of less than 20 inches in thickness if it (i) is being commercially worked or (ii) in the judgment of the Department could foreseeably be commercially worked and will require protection if a well is drilled through it.

"Correlative right" means the right of each gas or oil owner having an interest in a single pool to have a fair and reasonable opportunity to obtain and produce his just and equitable share of production of the gas or oil in such pool or its equivalent without being required to drill unnecessary wells or incur other unnecessary expenses to recover or receive the gas or oil or its equivalent.

"Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 pounds per square foot and a standard temperature base of 60 degrees Fahrenheit.

"DEQ" means the Department of Environmental Quality.

"Disposal well" means any well drilled or converted for the disposal of drilling fluids, produced waters, or other wastes associated with gas or oil operations.

"Drilling unit" means the acreage on which one gas or oil well may be drilled.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water, or other fluid into the productive strata; (ii) the application of pressure, heat, or other means for the reduction of viscosity of the hydrocarbons; or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well or pool.

"Evidence of a proceeding or agreement" means written evidence that the coal claimant has (i) filed and has pending a judicial or arbitration proceeding against the gas claimant to determine the

ownership of the coalbed methane gas and the right to the funds held in escrow or suspense or (ii) reached an agreement with the gas claimant to apportion the funds between them.

"Exploratory well" means any well drilled to (i) find and produce gas or oil in an unproven area, (ii) find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) extend the limits of a known gas or oil reservoir.

"Field rules" means rules established by order of the Board that define a pool, drilling units, production allowables, or other requirements for gas or oil operations within an identifiable area.

"First point of sale" means, for oil, the point at which the oil is (i) sold, exchanged, or transferred for value from one person to another person or (ii) when used by the original owner of the oil, transported off the permitted site and delivered to another facility for use by the original owner. "First point of sale" means, for gas, the point at which the gas is (a) sold, exchanged, or transferred for value to any interstate or intrastate pipeline, local distribution company, or person for use by such person or (b) when used by the owner of the gas for a purpose other than the production or transportation of the gas, delivered to a facility for use.

"Gas" or "natural gas" means all natural gas, whether hydrocarbon, nonhydrocarbon, or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil pursuant to this section.

"Gas claimant" means a person who is identified as possessing an interest in production royalties when a drilling unit is forced-pooled or who asserts or possesses a claim to funds that are held in escrow, for a force-pooled coalbed methane gas well, or in suspense, for a voluntarily pooled coalbed methane gas well, by virtue of owning an interest in the gas estate contained within the drilling unit subject to the pooling order or agreement.

"Gas or oil operations" means any (i) activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of a well to another, combining or physically changing to allow the migration of fluid from one formation to another, or plugging or replugging any well; (ii) ground-disturbing activity relating to the development, construction, operation, or abandonment of a gathering pipeline; (iii) development, operation, maintenance, or restoration of any site involved with gas or oil operations; or (iv) work undertaken at a facility used for gas or oil operations. "Gas or oil operations" embraces all of the land or property that is used for or that contributes directly or indirectly to a gas or oil operation, including all roads.

"Gas or oil operator" means any person who operates or has been designated to operate any gas or oil well or gathering pipeline.

"Gas or oil owner" means any person who owns, leases, has an interest in, or has the right to explore for, drill, or operate a gas or oil well as principal or lessee. If the gas is owned separately from the oil, this definition shall apply separately to the gas owner or oil owner.

"Gas title conflicts" means conflicting ownership claims between gas claimants. "Gas title conflicts" does not include conflicting ownership claims between a gas claimant and a coal claimant.

"Gathering pipeline" means a pipeline that is used or intended for use in the transportation of gas or oil from the well to (i) a transmission pipeline regulated by the U.S. Department of Transportation or the State Corporation Commission or (ii) an offsite storage, marketing, or other facility where the gas or oil is sold.

"Geophysical operator" means a person who has the right to explore for gas or oil using ground-disturbing geophysical exploration.

"Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Ground-disturbing" means any changing of land that could result in soil erosion from water or wind and the movement of sediments into state waters, including clearing, grading, excavating, drilling, and transporting and filling of land.

"Ground-disturbing geophysical exploration" or "geophysical operation" means any activity in search of gas or oil that breaks or disturbs the surface of the earth, including road construction or core drilling. The term does not include the conduct of (i) a gravity, magnetic, radiometric, or similar geophysical survey or (ii) a vibroseis or similar seismic survey.

"Injection well" means any well used to inject or otherwise place any substance associated with gas or oil operations into the earth or underground strata for disposal, storage, or enhanced recovery.

"Inspector" means the Virginia Gas and Oil Inspector appointed by the Director pursuant to § 45.2-1604 or such other public officer, employee, or other authority who in an emergency acts instead of, or by law is assigned the duties of, the Virginia Gas and Oil Inspector.

"Log" means the written record progressively describing all strata, water, oil, or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volume of gas, pressures, rate of fill-up, freshwater-bearing and saltwater-bearing horizons and depths, cavings strata, casing records, and other information usually recorded in the normal procedure of drilling. "Log" includes electrical survey records or electrical survey logs.

"Mine" means an underground or surface excavation or development with or without shafts, slopes, drifts, or tunnels for the extraction of coal, minerals, or nonmetallic materials, commonly designated as

mineral resources, and the hoisting or haulage equipment or appliances, if any, for the extraction of the mineral resources. "Mine" includes all of the land or property of the mining plant, including both the surface and subsurface, that is used in or contributes directly or indirectly to the mining, concentration, or handling of the mineral resources, including all roads.

"Mineral" means the same as that term is defined in § 45.2-1200.

"Mineral operator" means any person who operates or has the right to operate a mineral mine.

"Mineral owner" means any person who owns minerals, leases minerals, mines and produces minerals, or has the right to mine and produce minerals and to appropriate such minerals that he produces from it, either for himself or for himself and others.

"Nonparticipating operator" means a gas or oil owner of a tract that is included in a drilling unit who elects to share in the operation of the well on a carried basis by agreeing to have his proportionate share of the costs allocable to his interest charged against his share of production from the well.

"Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or waste from gas, oil, or geophysical operations off a permitted site that results from activity conducted on a permitted site.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, that are produced at the well in liquid form by ordinary production methods and are not the result of condensation of gas after it leaves the underground reservoir.

"Orphaned well" means any well abandoned prior to July 1, 1950, or for which no records exist concerning its drilling, plugging, or abandonment.

"Participating operator" means a gas or oil owner who elects to (i) bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a well on a drilling unit and (ii) receive a share of production from the well equal to the proportion that the acreage in the drilling unit he owns or holds under lease bears to the total acreage of the drilling unit.

"Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or geophysical operations issued under authority of this chapter.

"Person under a disability" means the same as that term is defined in § 8.01-2.

"Pipeline" means any pipe above or below the ground used or to be used to transport gas or oil.

"Plat" or "map" means a map, drawing, or print showing the location of a well, mine, or quarry, or other information required under this chapter.

"Pool" means an underground accumulation of gas or oil in a single and separate natural reservoir. A pool is characterized by a single natural pressure system so that production of gas or oil from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, or water in the formation, so that it is effectively separated from any other pool that may be present in the same geologic structure. A "coalbed methane pool" means an area that is underlain or appears to be underlain by at least one coalbed capable of producing coalbed methane gas.

"Project area" means the well and any gathering pipeline, associated facility, road, and any other disturbed area, all of which are permitted as part of a gas, oil, or geophysical operation.

"Restoration" means all activity required to return a permitted site to other use after gas, oil, or geophysical operations have ended, as approved in the operations plan for the permitted site.

"Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights, who is eligible to receive payment based on the production of gas or oil.

"State waters" means all water, on the surface and under the ground, that is wholly or partially within or bordering the Commonwealth or within its jurisdiction and that affects the public welfare.

"Stimulation" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including fracturing, shooting, or acidizing, but excluding (i) cleaning out, bailing, or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, or other agents that affect the gas or oil being produced, as distinguished from the producing formation.

"Storage well" means any well used for the underground storage of gas.

"Surface owner" means any person who is the owner of record of the surface of the land.

"Waste" or "escape of resources" means (i) physical waste, as that term is generally understood in the gas and oil industry; (ii) the inefficient, excessive, or improper use or unnecessary dissipation of reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the locating, drilling, equipping, operating, or producing of any gas or oil well in a manner that causes or tends to cause a reduction in the quantity of gas or oil ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss or destruction of gas or oil; (v) the production of gas or oil in excess of transportation or marketing facilities; (vi) the amount reasonably required to be produced in the proper drilling, completing, or testing of the well from which it is produced, except gas produced from an oil well or condensate well pending the time when with reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are just and reasonable; or (vii) underground or aboveground waste in the production or storage of gas,

oil, or condensate, however caused. "Waste" does not include gas vented from a methane drainage borehole or coalbed methane gas well where necessary for safety reasons or for the efficient testing and operation of a coalbed methane gas well, nor does it include the plugging of a coalbed methane gas well for the recovery of the coal estate.

"Waste from gas, oil, or geophysical operations" means any substance other than gas or oil that is produced or generated during or results from (i) the development, drilling, and completion of any well and associated facility or the development and construction of gathering pipelines or (ii) well, pipeline, and associated facility operations, including brines and produced fluids other than gas or oil. "Waste from gas, oil, or geophysical operations" includes all rubbish and debris, including all material generated during or resulting from well plugging, site restoration, or the removal and abandonment of gathering pipelines and associated facilities.

"Water well" means any well drilled, bored, or dug into the earth for the sole purpose of extracting from it potable, fresh, or usable water for household, domestic, industrial, agricultural, or public use.

"Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into underground strata for the extraction, injection, or placement of any gaseous or liquid substance or any shaft or hole sunk or used in conjunction with such extraction, injection, or placement. "Well" does not include any shaft or hole sunk, drilled, bored, or dug into the earth for the sole purpose of pumping or extracting from it potable, fresh, or usable water for household, domestic, industrial, agricultural, or public use and does not include any water borehole, methane drainage borehole where the methane is vented or flared rather than produced and saved, subsurface borehole drilled from the mine face of an underground coal mine, any other borehole necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of the Commonwealth, or any coal or non-fuel mineral core hole or borehole drilled for the purpose of exploration.

**§ 45.2-1601. 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 Chapter 10 (§ 45.2-1000 et seq.), including requirements for permits and bonds, shall apply to gas, oil, or geophysical operations located on any area 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 an area that has 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 adoption of variances from the postmining use requirements of Chapter 10 for gas, oil, or geophysical operations; however, all such variances shall be consistent with the provisions of Chapter 10.

**§ 45.2-1602. Construction; purposes.**

The provisions of this chapter shall be liberally construed so as to effectuate the following purposes:

1. To foster, encourage, and promote the safe and efficient exploration for and development, production, utilization, and conservation of the Commonwealth's gas and oil resources;
2. To provide a method of gas and oil conservation for maximizing exploration, development, production, and utilization of gas and oil resources;
3. To recognize and protect the rights of any person owning an interest in gas or oil resources contained within a pool;
4. To ensure the safe recovery of coal and other minerals;
5. To maximize the production and recovery of coal without substantially affecting the right of a gas or oil owner proposing to drill a gas or oil well to explore for and produce gas or oil;
6. To protect the citizens and the environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil; and
7. To recognize that the use of the surface for gas or oil development shall be only the use that is reasonably necessary to obtain the gas or oil.

**§ 45.2-1603. Virginia Gas and Oil Board; membership; compensation.**

A. The Virginia Gas and Oil Board is established as a policy board in the executive branch of state government. The purpose of the Board is to carry out the provisions of this chapter.

B. The Board shall have a total membership of seven members that shall consist of six nonlegislative citizen members and one ex officio member. Nonlegislative citizen members of the Board shall be appointed to be appointed by the Governor, subject to confirmation by the General Assembly, as follows: one who is a representative of the gas and oil industry and not the coal industry, one who is a representative of the coal industry and not the gas and oil industry, and four who are not representatives of the gas, oil, or coal industry. The Director or his designee shall serve ex officio with voting privileges. A chairman shall be designated by the Governor from among the membership of the Board.

C. All vacancies occurring on the Board shall be filled in the same manner as the original appointment within 60 days of the occurrence of the vacancy. The ex officio member of the Board shall serve terms coincident with such member's term of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. After the initial staggering of terms,

nonlegislative citizen members shall be appointed for a term of six years from the day on which the term of their immediate predecessor expired. All members may be reappointed. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth, and the Governor shall seek to appoint persons who reside in localities with significant oil or gas production or storage.

D. Each member of the Board shall receive compensation for the performance of his duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department.

**§ 45.2-1604. Duties and responsibilities of the Director; Virginia Gas and Oil Inspector.**

A. The Director has the jurisdiction and authority necessary to enforce the provisions of this chapter. The Director has the power and duty to regulate gas, oil, or geophysical operations, collect fees, and perform other responsibilities prescribed in regulations adopted by the Department or the Board.

B. The Director shall appoint the Virginia Gas and Oil Inspector.

**§ 45.2-1605. Exclusivity of regulation and enforcement.**

No locality or other political subdivision of the Commonwealth shall impose any condition or require any other local license, permit, fee, or bond that varies from or is in addition to the requirements of this chapter to perform any gas, oil, or geophysical operation. However, no provision of this chapter shall be construed to limit or supersede the jurisdiction or requirements of any other state agency, local land-use ordinance, regulation of general purpose, or § 58.1-3712, 58.1-3713, 58.1-3713.3, 58.1-3713.4, 58.1-3741, 58.1-3742, or 58.1-3743.

**§ 45.2-1606. Confidentiality.**

The Director shall hold confidential all logs, surveys, and reports relating to the drilling, completion, and testing of a well that are filed by a gas or oil operator under this chapter for a period of 90 days after the completion of the well or 18 months after the total depth of the well has been reached, whichever occurs first. Upon receipt of a gas, oil, or geophysical operator's written request, the Director shall hold confidential such information concerning an exploratory well or corehole for a period of two years after completion of the well or four years from the date such well or hole reaches total depth, whichever occurs first. The Director, for good cause shown by the gas, oil, or geophysical operator, may annually extend the period of time for which information regarding exploratory drilling is held confidential. However, the Director shall upon request provide a copy of any survey or log for strata through the lowest coal seam to the coal owner.

**§ 45.2-1607. Expenditure of funds.**

All funds, except civil penalties collected pursuant to § 45.2-1608, collected by or appropriated to the Department pursuant to the provisions of this chapter shall be expended only for the purpose of carrying out the provisions of this chapter.

**§ 45.2-1608. Violations; penalties.**

A. Any person who violates or refuses, fails, or neglects to comply with any regulation or order of the Board, Director, or Inspector, any condition of a permit, or any provision of this chapter is guilty of a Class 1 misdemeanor.

B. In addition, any person who violates any regulation or order of the Board, Director, or Inspector, any condition of a permit, or any provision of this chapter shall upon such finding by an appropriate circuit court be assessed a civil penalty of not more than \$10,000 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. The court shall direct that all civil penalties assessed under this section be paid into the treasury of the county or city where the gas, oil, or geophysical operation determined by the court to be in violation is located.

C. The Board, with the consent of the gas, oil, or geophysical operator, may provide in an order issued by the Board against such operator for the payment of civil penalties for past violations in specific sums not to exceed the limit specified in subsection B. Such civil penalties shall be instead of any appropriate civil penalty that could be imposed under this section and shall not be subject to the provisions of § 2.2-514. Civil penalties collected under this section shall be paid into the treasury of the county or city where the gas, oil, or geophysical operation subject to the order issued by the Board is located.

**§ 45.2-1609. Appeals; venue; standing.**

A. Any order or decision of the Board may be appealed to the appropriate circuit court. Whenever a coal owner, coal operator, gas owner, gas operator, or operator of a gas storage field certificated by the State Corporation Commission is a party in such action, the court shall hear such appeal de novo. The court has the power to enter interlocutory orders as necessary to protect the rights of all interested parties pending a final decision.

B. Unless the parties otherwise agree, the venue for court review shall be the county or city where the gas, oil, or geophysical operation that is the subject of such order or decision is located.

C. The Director and all parties required to be given notice of hearings of the Board pursuant to the provisions of § 45.2-1618 shall have standing to appeal any order or decision of the Board that directly affects them. The permittee or permit applicant, the Director, and those parties with standing to object

pursuant to the provisions of § 45.2-1632 shall have standing to appeal any order or decision of the Board that directly affects them. However, except for an aggrieved permit applicant or the Director, no person shall have standing to appeal a decision of the Board concerning a permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.2-1637. The filing of any petition for appeal concerning the issuance of a new permit that was objected to pursuant to the provisions of § 45.2-1611 or 45.2-1612 or by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a gas storage field certificated by the State Corporation Commission shall automatically stay the permit until such stay is dissolved or the appeal is decided by the circuit court. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to an oil, gas, or coalbed methane well completed more than 100 feet above the cap rock above the storage stratum.

**§ 45.2-1610. Copy of lease to lessor.**

Any person who, as either principal or agent, executes a lease of land or right therein for drilling for gas or oil, or for the development or production of gas or oil, shall furnish a copy of the lease, duly executed by the lessee, to the lessor.

**§ 45.2-1611. Objections by coal owner.**

A. In deciding on objections by a coal owner to a proposed permit modification or drilling unit modification, only the following questions shall be considered:

1. Whether the work can be done safely with respect to persons engaged in coal mining at or near the well site; and

2. Whether the well work is an unreasonable or arbitrary exercise of the well operator's right to explore for, market, and produce gas or oil.

B. In deciding on objections by a coal owner to the establishment of a drilling unit, the issuance of a permit for a new well, or the stimulation of a coalbed methane gas well, the following safety aspects shall first be considered, and no order or permit shall be issued where the evidence indicates that the proposed activity will be unsafe:

1. Whether the drilling unit or drilling location is above or in close proximity to any mine opening or shaft, entry, travel way, airway, haulageway, drainageway, or passageway, or to any proposed extension thereof, in any operated or abandoned or operating coal mine or in any coal mine already surveyed and platted but not yet being operated;

2. Whether the proposed drilling can reasonably be done through an existing or planned pillar of coal, or in close proximity to an existing well or such pillar of coal, taking into consideration the surface topography;

3. Whether the proposed well can be drilled safely or the proposed coalbed methane gas well can be stimulated safely, taking into consideration the dangers from creeps, squeezes, or other disturbances due to the extraction of coal; and

4. The extent to which the proposed drilling unit or drilling location or stimulation of the coalbed methane gas well unreasonably interferes with the safe recovery of coal, gas, or oil.

C. The following questions with respect to the drilling unit or drilling location of a new well or stimulation of a new coalbed methane gas well shall also be considered:

1. The extent to which the proposed drilling unit or drilling location or coalbed methane gas well stimulation will unreasonably interfere with present or future coal mining operations;

2. The feasibility of moving the proposed drilling unit or drilling location to a mined-out area, an area below the coal outcrop, or some other area;

3. The feasibility of a drilling moratorium for not more than two years in order to permit the completion of coal mining operations;

4. The methods proposed for the recovery of coal and gas;

5. The practicality of locating the unit or the well on a uniform pattern with other units or wells;

6. The surface topography and use; and

7. Whether the decision will substantially affect the right of the gas operator to explore for and produce the gas.

D. The factors in subsection C are not intended to and shall not be construed to authorize the Director, or the Board under § 45.2-1638, to supersede, impair, abridge, or affect any contractual rights or obligations existing between the respective owners of coal and gas or any interest therein.

**§ 45.2-1612. Distance limitations of certain wells.**

A. If the well operator and the objecting coal owners who are present or represented at a hearing to consider the objections to the proposed drilling unit or location are unable to agree upon a drilling unit or location for a new well within 2,500 linear feet of the location of an existing well or a well for which a permit application is on file, then the permit or drilling unit shall be refused.

B. The distance limitation established by this section shall not apply if (i) the proposed well will be drilled through an existing or planned pillar of coal required for protection of a preexisting well drilled to any depth and (ii) the proposed well will neither require enlargement of the pillar nor otherwise have an adverse effect on existing or planned coal mining operations.



*Gas and Oil Conservation.***§ 45.2-1613. Meetings of the Board; notice; general powers and duties.**

A. The Board shall schedule a monthly meeting at a time and place designated by the chairman. If no petition for action is filed with the Board prior to a meeting, the Board may cancel the meeting. Notification or cancellation of each meeting shall be given in writing to the members by the chairman at least five days in advance of the meeting. Four members shall constitute a quorum for the transaction of any business that comes before the Board. All determinations of the Board shall be by majority vote of the quorum present.

B. The Board has the power necessary to execute and carry out all of its duties specified in this chapter. The Board is authorized to investigate and inspect records and facilities as necessary and proper to perform its duties under this chapter. The Board may employ personnel and consultants as necessary to perform its duties under this chapter.

**§ 45.2-1614. Additional duties and responsibilities of the Board.**

A. In executing its duties under this chapter, the Board shall:

1. Foster, encourage, and promote the safe and efficient exploration for and development, production, and conservation of gas and oil resources located in the Commonwealth;
2. Administer a method of gas and oil conservation for the purpose of maximizing exploration, development, production, and utilization of gas and oil resources;
3. Administer procedures for the recognition and protection of the rights of gas or oil owners with interests in gas or oil resources contained within a pool;
4. Promote the maximum production and recovery of coal without substantially affecting the right of a gas owner proposing a gas well to explore for and produce gas; and
5. Hear and decide appeals of the Director's decisions and orders issued under Article 3 (§ 45.2-1629 et seq.).

B. Without limiting its general authority, the Board has the specific authority to issue regulations or orders pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) in order to:

1. Prevent waste through the design, spacing, or unitization of wells, pools, or fields.
2. Protect correlative rights.
3. Enter spacing and pooling orders.
4. Establish drilling units.
5. Establish maximum allowable production rates for the prevention of waste and the protection of correlative rights.
6. Provide for the maximum recovery of coal.
7. Classify pools and wells as gas, oil, gas and oil, or coalbed methane gas.
8. Collect data, make investigations and inspections, examine property, leases, papers, books, and records, and require or provide for the keeping of records and the making of reports.
9. Set application fees.
10. Govern practices and procedures before the Board.
11. Require additional data from parties to any hearing.
12. Take actions reasonably necessary to carry out the provisions of this chapter.

**§ 45.2-1615. Applicability and construction.**

A. The provisions of this article apply to all lands in the Commonwealth, whether publicly or privately owned. However, no well commenced prior to July 1, 1990, shall be required to be plugged or abandoned solely for purposes of complying with the conservation provisions of this article.

B. No provision of this article shall be construed to grant to the Board the authority or power to fix prices of gas or oil.

**§ 45.2-1616. Statewide spacing of wells.**

A. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. No well drilled in search of oil shall be located closer than 1,250 feet to any well completed in the same pool; however, this spacing requirement is subject to § 45.2-1612;
2. No well drilled in search of gas shall be located closer than 2,500 feet to any other well completed in the same pool or closer than 2,500 feet to any storage well within the boundary of a gas storage field certificated by the State Corporation Commission prior to January 1, 1997, if the well to be drilled is to be completed within the same horizon as the certificated gas storage field; and
3. No well shall be drilled closer to the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit, than one-half of the applicable minimum well spacing distance prescribed in this section.

B. Unless prior approval has been received from the Board or a provision of the field or pool rules so allows:

1. No well drilled in search of coalbed methane gas shall be located closer than 1,000 feet to any other coalbed methane gas well, or in the case of a coalbed methane gas well located in the gob, closer than 500 feet to any other coalbed methane gas well located in the gob.
2. No coalbed methane gas well shall be drilled closer than 500 feet, or in the case of a well located

in the gob, closer than 250 feet, from the boundary of the acreage supporting the well, whether such acreage is a single leasehold or other tract or a contractual or statutory drilling unit.

3. The spacing limitations set forth in this subsection are subject to the provisions of §§ 45.2-1611 and 45.2-1612.

**§ 45.2-1617. Voluntary pooling of interests in drilling units; validity of unit agreements.**

A. If two or more separately owned tracts are embraced within a drilling unit, or if there are separately owned interests in all or a part of any such drilling unit, the gas or oil owners owning such interests may pool their interests for the development and operation of the drilling unit by voluntary agreement. Such agreement may be based on the exercise of pooling rights or rights to establish drilling units that are granted in any gas or oil lease.

B. No voluntary pooling agreement between or among gas or oil owners shall be held to violate the statutory or common law of the Commonwealth that prohibits monopolies or acts, arrangements, contracts, combinations, or conspiracies in restraint of trade or commerce.

**§ 45.2-1618. Notice of hearing; standing; form of hearing.**

A. Any person who applies for a hearing in front of the Board pursuant to the provisions of § 45.2-1619, 45.2-1620, or 45.2-1622 shall simultaneously with the filing of such application provide notice by commercial delivery service, return receipt requested, or certified mail, return receipt requested, to each gas or oil owner, coal owner, or mineral owner having an interest underlying the tract that is the subject of the hearing and to the operator of any gas storage field certificated by the State Corporation Commission as a public utility facility whose certificated area includes the tract that is the subject of the hearing. Whenever a hearing applicant is unable to provide such written notice because the identity or location of a person to whom notice is required to be given is unknown, the hearing applicant shall promptly notify the Board of such inability.

B. At least 10 days prior to a hearing, the Board shall publish its agenda in a newspaper of general circulation in each locality where the lands that are the subject of the hearing are located. The agenda shall include the name of each applicant, the locality where the lands that are the subject of the hearing are located, the purpose of the hearing, and the date, time, and location of the hearing.

C. The Board shall conduct all hearings on any application made to it pursuant to the formal litigated issues hearing provisions of the Administrative Process Act (§ 2.2-4000 et seq.). The applicant and any person to whom notice is required to be given pursuant to subsection A shall have standing to be heard at the hearing. The Board shall render its decision on such application within 30 days of the hearing's closing date and shall provide notification of its decision to all parties to the hearing pursuant to the provisions of the Administrative Process Act.

**§ 45.2-1619. Field rules and drilling units for wells; hearings and orders.**

A. In order to prevent the waste of gas or oil or the drilling of unnecessary wells or to protect correlative rights, the Board on its own motion or upon application of the gas or oil owner may establish or modify drilling units. Drilling units, to the extent reasonably possible, shall be of uniform shape and size for an entire pool. Any gas, oil, or royalty owner may apply to the Board for the establishment of field rules and the creation of drilling units for the field. Unless such motion is made or an application is received at least 30 days prior to the next regularly scheduled monthly meeting of the Board, it shall not be heard by the Board at such meeting and shall be heard at the next meeting of the Board thereafter.

B. At any hearing of the Board regarding the establishment or modification of drilling units, the Board shall make the following determinations:

1. Whether the proposed drilling unit is an unreasonable or arbitrary exercise of a gas or oil owner's right to explore for or produce gas or oil;
2. Whether the proposal would unreasonably interfere with the present or future mining of coal or other minerals;
3. The acreage to be included in the order;
4. The acreage to be embraced within each drilling unit and its shape;
5. The area within which wells may be drilled on each unit; and
6. The allowable production of each well.

C. In establishing or modifying a drilling unit for coalbed methane gas wells, and in order to accommodate the unique characteristics of coalbed methane development, the Board shall require that drilling units conform to the mine development plan, if any. If requested by the coal operator, well spacing shall correspond with mine operations, including the drilling of multiple coalbed methane gas wells on each drilling unit.

D. If an order to establish or modify a drilling unit will allow a well to be drilled into or through a coal seam, any coal owner within the area to be covered by the drilling unit may object to the establishment of the drilling unit. Upon a coal owner's objection, and without superseding, impairing, abridging, or affecting any contractual rights or obligations existing between coal and gas owners, the Board shall make its determination in accordance with the provisions of §§ 45.2-1611 and 45.2-1612.

E. The Board may continue a hearing to its next meeting to allow for further investigation and the gathering and taking of additional data and evidence. If at the time of a hearing there is not sufficient

evidence for the Board to determine field boundaries, drilling unit size or shape, or allowable production, the Board may enter a temporary order establishing provisional drilling units, field boundaries, and allowable production for the orderly development of the pool pending receipt of the information necessary to determine the ultimate pool boundaries, spacing of wells for the pool, and allowable production. Upon additional findings of fact, the boundaries of a pool, drilling units for the pool, and allowable production may be modified by the Board.

F. Unless otherwise provided for by the Board, after an application for a hearing to establish or modify drilling units or pool boundaries has been filed, no additional well shall be permitted in the pool until the Board's order establishing or modifying the pool or units has been entered.

G. After the Board issues a field or pool spacing order that creates drilling units or a pattern of drilling units for a pool, if a gas or oil owner applies for a permit or otherwise indicates his desire to drill a well outside of such drilling units or pattern of drilling units and thereby potentially extend the pool, the Board may, on its own motion or the motion of any interested person, require that the well be located and drilled in compliance with the provisions of the order affecting the pool.

**§ 45.2-1620. Pooling of interests in drilling units.**

A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests in a drilling unit for the development and operation thereof when:

1. Two or more separately owned tracts are embraced in a drilling unit;
2. There are separately owned interests in all or part of any such drilling unit and those owners having interests have not agreed to pool their interests; or
3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § 45.2-1616.

However, no pooling order shall be entered until the notice and hearing requirements of this article have been satisfied.

B. Subject to any contrary provision contained in a gas or oil lease regarding the property, gas or oil operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit. The portion of production allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that tract bears to the total acreage of the unit.

C. Every pooling order entered by the Board pursuant to the provisions of this section shall:

1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision F 2 b of § 45.2-1631, subject to the permit provisions contained in Article 3 (§ 45.2-1629 et seq.);

2. Include the time and date when such order expires;

3. Designate the gas or oil owner who is authorized to drill and operate the well. Except in the case of a coalbed methane gas well, such designated operator shall possess the right to conduct operations or possess the written consent of owners with the right to conduct operations on at least 25 percent of the acreage included in the unit;

4. Prescribe the conditions under which a gas or oil owner may become a participating operator or exercise a right of election under subdivision 7;

5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between participating operators so that each participating operator pays the same percentage of such costs as his acreage bears to the total unit acreage;

6. Require that any nonleasing gas or oil owner be provided with reasonable access to unit records submitted to the Director or Inspector;

7. Establish a procedure for a gas or oil owner who received notice of the hearing but does not decide to become a participating operator to elect to (i) sell or lease his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his share equal the following:

a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or

b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Virginia Disposition of Unclaimed Property Act (§ 55.1-2500 et seq.). Upon discovery of the identity and location of any unknown owner of an interest that is subject to escrow under the provisions of this subsection and is not subject to conflicting claims of ownership, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the next available hearing. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed

disbursement.

E. Any person who does not make an election under the pooling order shall be deemed to have leased his gas or oil interest to the gas or oil well operator as the pooling order provides.

F. If a gas or oil owner is a person under a disability, the applicant for a pooling order may petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of § 8.01-261 for purposes of making the election provided for by this section.

G. Any royalty or overriding royalty reserved in any lease that is deducted from a nonparticipating operator's share of production shall not be subject to charges for operating costs but shall be separately calculated and paid to the royalty owner.

H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs that may be shared in pooled gas or oil operations.

**§ 45.2-1621. Coalbed methane gas; ownership.**

No conveyance, reservation, or exception of coal shall be deemed to include coalbed methane gas. Nothing in this section shall affect a coal operator's right to vent coalbed methane gas for safety purposes or release coalbed methane gas in connection with mining operations. The provisions of this section shall not affect any settlement of any dispute, or any judgment or governmental order, as to the ownership or development of coalbed methane gas made or entered into prior to April 13, 2010.

**§ 45.2-1622. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.**

A. If there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas-drilling unit for the development and operation thereof.

B. In addition to the provisions of § 45.2-1620, the following provisions shall apply to the order provided in subsection A:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § 45.2-1618 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract that is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § 45.2-1620 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses attributable to a participating or nonparticipating operator as provided for under § 45.2-1620 and the order of the Board.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them is issued, (ii) a determination is reached by an arbitrator pursuant to § 45.2-1623, or (iii) an agreement is reached among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision, determination, or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting claimants shall be determined on the basis of (a) the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing, made part of the pooling order that established the escrow account; (b) the operator's records of deposits attributable to those tracts for which funds are being requested; and (c) the records of the escrow account for the coalbed methane gas-drilling unit. The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas well operator as provided in the pooling order.

**§ 45.2-1623. Conflicting claims of ownership; arbitration.**

A. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration and notify the circuit court in the jurisdiction in which the majority of the subject tract is located (i) upon written request from all claimants to the ownership of coalbed methane gas related to the subject tract under § 45.2-1622; (ii) upon receipt of an affidavit executed by all such claimants affirming that there is no other known surface owner, gas or oil owner, coal owner, mineral owner, or

operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract; (iii) after a hearing noticed pursuant to subsection B of § 45.2-1618; and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an attorney from the list maintained by the Department pursuant to subsection C or, at the discretion of the court, another attorney meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not derived more than 10 percent of his income during any of the preceding three years from any (a) claimants asserting ownership or rights in the subject tract or (b) affiliated entities or immediate family members of such claimants. If the attorney cannot provide such certification, he shall notify the circuit court and he will be disqualified from serving as arbitrator for that particular dispute.

B. The Department shall send notice to all claimants if it determines that there are insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such funds are available.

C. To be qualified as an arbitrator, a candidate shall (i) be an attorney licensed in the Commonwealth; (ii) have at least 10 years of experience in real estate law, including substantial expertise in mineral title examination; and (iii) disclose to the Board whether he has been engaged within the preceding three years by any person in a matter subject to the jurisdiction of the Board or the Department under this chapter. The Department shall solicit applications from attorneys meeting the qualifications set forth in this subsection and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. The Department shall update its list at least once annually. To maintain qualification, each attorney whose name appears on the list shall update annually his disclosures as set forth in clause (iii).

D. The arbitrator shall determine a time and place for the arbitration hearing and cause written notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any party to the arbitration has the right to representation before the arbitrator pursuant to § 8.01-581.05. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; administer oaths; and, upon application by a party to the arbitration, permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party to appear at the hearing.

E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and entitlement to proceeds held in escrow within six months from the order of the Board requiring the matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to the Board and to each party to whom notice is required to be given under subsection D.

F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the respective claimants or any other costs of the claimants, shall be paid from the accrued interest on general escrow account funds.

G. An arbitrator's determination rendered pursuant to subsection E shall be binding upon the parties, and upon request of any party to the arbitration such determination may be entered as the judgment of the circuit court responsible for appointing the arbitrator under subsection A.

H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

**§ 45.2-1624. Release of funds held in escrow or suspense because of conflicting claims to coalbed methane gas.**

A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the coalbed methane gas well operator shall, on or before January 1, 2016, apply to the Board for the release of the funds in escrow and give written notice of such application to every conflicting claimant identified in the pooling orders, or to the successor of such claimant where the successor is known to the coalbed methane gas well operator or has identified himself to the coalbed methane gas well operator or the Board. Such notice shall be in accordance with the applicable provisions of § 45.2-1618 and, if any unknown person or unlocatable conflicting claimant is subject to escrow, such notice shall also be published in a newspaper of general circulation in the county or counties where the drilling unit is located once each week for four successive weeks. The application shall include a detailed accounting in accordance with

subdivision B 5 of § 45.2-1622. The Board shall order payment of the principal and accrued interest, less escrow account fees, held in escrow, along with all future royalties attributable to the drilling unit, to each gas claimant identified in the pooling order unless, within 45 days of the coalbed methane gas well operator's notice of its application, the coal claimant provides the Board and the coalbed methane gas well operator with evidence of a proceeding or agreement. The Board, pursuant to its authority granted by § 45.2-1614, may extend the time for filing the application and delay the payment of funds for a gas title conflict, the existence of an unknown gas claimant, the existence of an unlocatable gas claimant, an unresolved gas heirship issue, or any other reason beyond the reasonable control of the coalbed methane gas well operator and shall not order payment if the gas claimant fails to provide the Board with information needed under applicable law or regulation to distribute the funds.

B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its pooling order, shall direct the coalbed methane gas well operator to pay royalties to the gas claimant unless the coal claimant provides the coalbed methane gas well operator and the Board with evidence of a proceeding or agreement not later than the time and place of the pooling hearing. The coalbed methane gas well operator shall provide written notice of the hearing to every gas claimant and coal claimant in accordance with § 45.2-1618. However, the Board, pursuant to its authority granted by § 45.2-1614, shall not order the coalbed methane gas well operator to make payment to a gas claimant if there exists any gas title conflict, unknown gas claimant, unlocatable gas claimant, unresolved gas heirship issue, or other reason beyond the reasonable control of the coalbed methane gas well operator or if the gas claimant fails to provide the coalbed methane gas well operator with the information required under applicable law or regulation to pay royalties. If the Board so declines to order payment to be made to a gas claimant, the coalbed methane gas well operator shall provide each affected gas claimant and the Board with written notice of the reason payment is not required to be made in accordance with the applicable provisions of § 45.2-1618. If payment is not required to be made due to the gas claimant's failure to provide needed information under applicable law or regulation, the notice shall identify the information that is needed to enable the payment to be made.

C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane gas well operator shall pay royalties, including past royalties held, to each gas claimant unless, within 45 days of the coalbed methane gas well operator's provision of written notice to the coal claimant that the operator will be paying royalties to the gas claimants, the coal claimant provides the coalbed methane gas well operator and each gas claimant with evidence of a proceeding or agreement. For any unit voluntarily pooled before July 1, 2015, the coalbed methane gas well operator shall provide such written notice to each gas claimant and coal claimant on or before January 1, 2016. For any unit voluntarily pooled on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice to each gas claimant and coal claimant not later than 45 days after production commences. However, the coalbed methane gas well operator shall not be required to make payment to a gas claimant if there exists any gas title conflict, unknown gas claimant, unlocatable gas claimant, unresolved gas heirship issue, or other reason beyond the reasonable control of the coalbed methane gas well operator or if the gas claimant fails to provide the coalbed methane gas well operator with information to process or pay royalties. If the Board so declines to order payment to be made to a gas claimant, the coalbed methane gas well operator shall provide each affected gas claimant with written notice of the reason payment is not required to be made in accordance with the applicable provisions of § 45.2-1618. If payment is not required to be made due to a gas claimant's failure to provide needed information, the notice shall identify the information that is needed to enable the payment to be made.

D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant with diligence and shall not be voluntarily dismissed or nonsuited without the consent of the gas claimant. No default judgment shall be entered against a gas claimant in such proceeding. Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas claimant may recover from the nonprevailing coal claimant reasonable costs and attorney fees if such gas claimant substantially prevails on the merits of the case and the coal claimant's position is not substantially justified.

E. A coalbed methane gas well operator paying funds to a gas claimant in accordance with this section shall have no liability to a coal claimant for the payments made by the coalbed methane gas well operator to a gas claimant.

F. This section shall not operate to extinguish any other right or cause of action or defense thereto, including any claim for an accounting or claim under § 8.01-31. Nothing in this section shall create, confer, or impose a fiduciary duty.

**§ 45.2-1625. Appeals of the Director's decisions; notices; hearings and orders.**

A. With the exception of an aggrieved permit applicant, no person shall have standing to appeal a decision of the Director to the Board concerning a new permit application unless such person has previously filed an objection with the Director pursuant to the provisions of § 45.2-1637.

B. When a person applies for a hearing to appeal a decision of the Director to the Board, the Board shall, at least 20 days prior to the hearing, give notice by certified mail, return receipt requested, to the person making the appeal and, if different, to the gas or oil operator subject to the appeal.

C. Upon submittal of the petition for appeal of a decision of the Director to the Board, the Director

shall forward to the Board (i) the permit application or order and associated documents; (ii) all required notices; and (iii) the written objections, proposals, and claims recorded during the informal fact-finding hearing.

D. In any appeal involving a permit for a new well that was objected to (i) pursuant to the provisions of § 45.2-1611 or 45.2-1612 or (ii) by a gas storage field operator who asserts that the proposed well work will adversely affect the operation of a gas storage field certificated by the State Corporation Commission, the filing of a petition for appeal shall stay any permit until the case is decided by the Board or the stay is dissolved by a court of record. However, in an appeal by a gas storage field operator, such automatic stay shall not apply to any oil, gas, or coalbed methane well completed more than 100 feet above the cap rock above the storage stratum. In any other appeal, the Director may order the permit or other decision stayed for good cause shown until the case is decided by the Board or the stay is dissolved by a court of record. An appeal based on an alleged risk of danger to any person not engaged in the gas or oil operations shall be prima facie proof of good cause for a stay.

E. The Board shall conduct all hearings under this section in accordance with the formal litigated issues hearing provisions of Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. However, any person to whom notice is required to be given pursuant to subsection B shall have standing to be heard at the hearing. The Board shall render its decision on such appeals within 30 days of the hearing's closing date and shall provide notification of its decision to all parties pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

**§ 45.2-1626. Enforcement.**

The Director shall enforce the provisions of this article pursuant to the provisions of Article 3 (§ 45.2-1629 et seq.). In addition, if any person violates or threatens to violate any provision of this article, regulation adopted thereunder, or order of the Board, the Board may maintain suit to restrain any such violation or threatened violation.

**§ 45.2-1627. Standing when Director or Board fails to act.**

If the Director or Board fails to take enforcement action within 10 days of the Board's receipt of a petition alleging that the petitioner is or will be adversely affected by a violation or threatened violation of any provision of this article, regulation adopted thereunder, or order of the Board, the petitioner shall have standing to file a complaint in the appropriate circuit court. The Board, in addition to the person violating or threatening to violate the provision of this article, regulation adopted thereunder, or order of the Board, shall be made a party to any such action.

**§ 45.2-1628. Recording of orders.**

The Inspector shall cause a true copy of any order entered by the Board that establishes a drilling unit or pools any interests to be recorded in the office of the clerk of the circuit court of each locality wherein any portion of the relevant drilling unit is located. Such order shall be recorded in the record book in which gas or oil leases are normally recorded. The sole charge for recordation shall be a tax equal to \$10 plus \$1 per page of the order. From the time noted on the recordation by the clerk, the recordation shall be notice of the order to all persons.

Article 3.

Regulation of Gas and Oil Development and Production.

**§ 45.2-1629. Duties, responsibilities, and authority of the Director.**

A. The Director shall adopt and enforce regulations and orders necessary to ensure the safe and efficient development and production of gas and oil resources located in the Commonwealth. Such regulations and orders shall be designed to:

1. Prevent pollution of state waters and require compliance with the water quality standards adopted by the State Water Control Board;
2. Protect against offsite disturbances from gas, oil, or geophysical operations;
3. Ensure the restoration of all sites disturbed by gas, oil, or geophysical operations;
4. Prevent the escape of the Commonwealth's gas and oil resources;
5. Provide for safety in coal and mineral mining and coalbed methane well and related facility operations;
6. Control wastes from gas, oil, or geophysical operations;
7. Provide for the accurate measurement of gas and oil production and delivery to the first point of sale; and
8. Protect the public safety and general welfare.

B. In adopting regulations and when issuing orders for the enforcement of the provisions of this article, the Director shall consider the following factors:

1. The protection of the citizens and environment of the Commonwealth from the public safety and environmental risks associated with the development and production of gas or oil;
2. The means of ensuring the safe recovery of coal and other minerals without substantially affecting the right of coal, minerals, gas, oil, or geophysical operators to explore for and produce coal, minerals, gas, or oil; and
3. The protection of safety and health on permitted sites for coalbed methane wells and related

facilities.

C. In adopting regulations and orders, the Director may set and enforce standards governing the following: gas or oil ground-disturbing geophysical exploration; the development, drilling, casing, equipping, operating, and plugging of gas or oil production, storage, enhanced recovery, or disposal wells; the development, operation, and restoration of site disturbances for wells, gathering pipelines, and associated facilities; and gathering pipeline safety.

D. Whenever the Director determines that an emergency exists, he shall issue an emergency order without advance notice or hearing. Such order shall have the same validity as an order issued with advance notice and hearing but shall remain in force no longer than 30 days from its effective date. After issuing an emergency order, the Director shall promptly notify the public of the order by publication and hold a public hearing for the purposes of modifying, repealing, or making permanent the emergency order. An emergency order shall prevail as against a general regulation or order when in conflict with it. Emergency orders shall apply to gas, oil, or geophysical operations and to particular fields, geographical areas, subject areas, subject matters, or situations.

E. The Director also may:

1. Issue, condition, and revoke permits;
2. Issue notices of violation and orders upon the violation of any provision of this chapter or regulation adopted thereunder;
3. Issue closure orders in cases of imminent danger to persons or damage to the environment or upon a history of violations;
4. Require or forfeit bonds or other financial securities;
5. Prescribe the nature of and form for the presentation of any information or documentation required by any provision of this article or regulation adopted thereunder;
6. Maintain suit in the county or city where a violation has occurred or is threatened or wherever a person who has violated or threatens to violate any provision of this chapter is found in order to restrain the actual or threatened violation;
7. At reasonable times and under reasonable circumstances, enter upon any property and take action as necessary to administer and enforce the provisions of this chapter; and
8. Inspect and review all properties and records thereof as necessary to administer and enforce the provisions of this chapter.

F. The Director has no jurisdiction to hear objections with respect to any matter subject to the jurisdiction of the Board as set out in Article 2 (§ 45.2-1613 et seq.). Such objections shall be referred to the Board in a manner prescribed by the Director.

**§ 45.2-1630. Powers, duties, and responsibilities of the Inspector.**

A. The Inspector shall administer the laws and regulations and shall have access to all records and properties necessary for this purpose. He shall perform all duties delegated by the Director pursuant to § 45.2-105 and maintain permanent records of the following:

1. Each application for a gas, oil, or geophysical operation and each permitted gas, oil, or geophysical operation;
2. Meetings, actions, and orders of the Board;
3. Each petition for mining coal within 200 feet of or through a well;
4. Each request for special plugging by a coal owner or coal operator; and
5. All other records prepared pursuant to this chapter.

B. The Inspector shall serve as the principal executive of the staff of the Board.

C. The Inspector may take charge of well or corehole operations or pipeline emergency operations whenever a well or corehole blowout, release of hydrogen sulfide or other gas, or other serious accident occurs.

**§ 45.2-1631. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment.**

A. No person shall commence any ground-disturbing activity for a well, gathering pipeline, geophysical exploration, or associated activity, facility, or structure without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans, and other information as required by regulation or the Director.

B. For each permit issued on or after July 1, 1996, a new permit issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking an initially productive zone, plugging a well, or construction and operation of a gathering pipeline. An application for a new permit to conduct geophysical operations shall be accompanied by an application fee of \$130. An application for a new permit for any other activity shall be accompanied by an application fee of \$600.

C. For a permit issued prior to July 1, 1996, prior to commencing any reworking, deepening, or plugging of a well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. Each application for a permit modification shall be accompanied by a permit modification fee of \$300. For a permit issued on or after July 1, 1996, prior



to commencing any new zone completion, a permittee shall first obtain a permit modification from the Director.

D. Every permit and all operations provided for under this section shall conform to the regulations and orders of the Director and the Board. If permit terms or conditions required or provided for under this article are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (§ 45.2-1613 et seq.), the terms or conditions of the permit shall control. In such event, the operator shall return to the Board for reconsideration of the conservation order in light of the conflicting permit. Every permittee shall be responsible for all operations, activities, or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit is required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam that is located within (i) 750 horizontal feet of the proposed well location that the applicant proposes to stimulate or (ii) 100 vertical feet above or below a coal-bearing stratum that the applicant proposes to stimulate.

b. The consent required by this subsection may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § 45.2-1618, provided by a pooling order entered pursuant to § 45.2-1620 or 45.2-1622 if such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator, contained in such order. The consent required by this subsection shall be deemed to be granted for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the cotenants holding a majority interest in the tract and none of the coal cotenants has leased the tract for coal development. The requirement of signed consent contained in this subsection shall in no way be considered to impair, abridge, or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator or any extension or renewal thereto, and the existence of such lease or contractual arrangement and any extension or renewal thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit that is required by this chapter for an activity to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § 45.2-1646 shall be granted until the environmental impact assessment required by § 45.2-1646 has been conducted and the assessment has been reviewed by the Department.

H. The applicant for a permit for a gathering pipeline, oil or gas well, or coalbed methane well shall identify in the permit application any cemetery, as identified on a United States Geological Survey topographic map or located by routine field review, within 100 feet of the permitted activity.

I. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial service that takes place on the surface area of such cemetery. However, if the well operator or a mine operator determines that such suspension of operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

**§ 45.2-1632. Notice of permit applications and permit modification applications required; content.**

A. Within one day of the day on which the application for a permit for a gas or oil operation is filed, the applicant shall provide notice of the application to the following persons:

1. Every surface owner, coal owner, and mineral owner on the tract to be drilled;

2. Every coal operator who has registered an operation plan with the Department for activities located on the tract to be drilled;

3. Every surface owner on a tract where the surface is to be disturbed;

4. Every gas, oil, or royalty owner (i) within one half of the distance specified in § 45.2-1616 for that type of well or one half of the distance to the nearest well completed in the same pool, whichever is less, or (ii) within the boundaries of a drilling unit established pursuant to the provisions of this chapter;

5. Every coal operator who has applied for or obtained a mining or prospecting permit with respect to a tract located within 500 feet of the proposed well location or, in the case of a proposed coalbed methane gas well location, within 750 feet thereof;

6. Every coal owner or mineral owner on a tract located within 500 feet of the proposed well

location or, in the case of a proposed coalbed methane gas well location, within 750 feet thereof; and

7. Every operator of a gas storage field certificated by the State Corporation Commission as a public utility facility whose certificated area includes the well location or whose certificated boundary is within 1,250 feet of the proposed well location.

B. Within one day of the day on which the application for a permit modification for a gas or oil operation is filed, the applicant requesting such permit modification shall provide notice of the application to all persons listed in subsection A who may be directly affected by the proposed activity.

C. Within one day of the day on which the application for a permit for geophysical operations is submitted, the applicant shall provide notice to those persons listed in subdivisions A 1, 2, and 3.

D. Each notice required to be given pursuant to subsection A, B, or C shall contain a statement of the time within which objections may be made and the name and address of the person to whom objections shall be forwarded. Only a person entitled to notice under subsection A, B, or C shall have standing to object to the issuance of the proposed permit or permit modification for a gas, oil, or geophysical operation as the use may be. Upon receipt of notice, any person may waive in writing the time and right to object.

E. Within seven days of the day on which the application for a permit is filed, the applicant shall provide notice to (i) the local governing body or chief executive officer of the locality where the well is proposed to be located and (ii) the general public, through publication of a notice in at least one newspaper of general circulation in the locality where the well is proposed to be located.

F. An applicant shall make a reasonable effort to provide the notices required under subsections A, B, and C. If an applicant is unable to identify or locate any person to whom notice is required, then the notice provided in clause (ii) of subsection E shall be considered sufficient notice to such persons and the date of notification shall be the date of publication.

**§ 45.2-1633. Bonding and financial security required.**

A. To ensure compliance with all laws and regulations pertaining to permitted activities and the furnishing of reports and other information required by the Board or Director, each permit applicant shall give bond with surety acceptable to the Director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of the bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site but in no case shall the amount of the bond be less than \$10,000 per well plus \$2,000 per acre of disturbed land, calculated to the nearest tenth of an acre. Each bond shall remain in force until released by the Director. The Director may require additional bond or financial security for any well proposed to be drilled in Tidewater Virginia.

B. Upon receipt of an application for multiple permits for gas or oil operations and at the request of the permit applicant, the Director may, in lieu of requiring a separate bond for each permit, require a blanket bond. The amount of the blanket bond shall be as follows:

1. For one to 10 wells, \$25,000.
2. For 11 to 50 wells, \$50,000.
3. For 51 to 200 wells, \$100,000.
4. For more than 200 wells, \$200,000.

For purposes of calculating blanket bond amounts, from one-tenth of an acre to five acres of disturbed land for a separately permitted gathering pipeline shall be equivalent to one well. The Director shall adopt regulations for the release of acreage used to calculate blanket bond amounts for separately permitted gathering pipelines in cases where sites have been stabilized.

C. Any gas or oil operator who elects to post a blanket bond shall pay into the Gas and Oil Plugging and Restoration Fund those fees and assessments required under the provisions of § 45.2-1634.

**§ 45.2-1634. Gas and Oil Plugging and Restoration Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Gas and Oil Plugging and Restoration Fund, referred to in this section as "the Fund." All payments made into the Fund by gas or oil operators, all collections of debt for expenditures made from the Fund, and all interest payments made into the Fund pursuant to the provisions of this section shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to the Fund. The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee.

B. Each permittee operating under a blanket bond pursuant to § 45.2-1633 shall annually pay to the Fund an amount equal to \$50 multiplied by the number of permits he then holds, such payment to be submitted with the annual report required under § 45.2-1640, until the payments and interest accruing to the Fund totals \$100,000. Whenever the Director determines that the Fund's balance has fallen below \$25,000 due to uncollectible debts, the Director shall assess a fee of \$50 per permit per year on each permittee with a blanket bond until the Fund's balance once again reaches \$100,000.

C. Moneys in the Fund shall be used solely for the purpose of supplementing bond proceeds in order

to pay for the full cost of plugging and restoration in the event of a blanket bond forfeiture.

D. The amount by which the cost of plugging and restoration exceeds the amount of the gas or oil operator's forfeited bond shall constitute a debt of the operator to the Commonwealth. The Director is authorized to collect such debts together with the costs of collection through appropriate legal action. All moneys collected pursuant to this subsection, less the costs of collection, shall be deposited in the Fund.

E. No permit shall be issued to a gas or oil operator until he has fully reimbursed the Commonwealth for any debt incurred pursuant to the provisions of subsection D.

F. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall be returned to each gas or oil operator with a blanket bond in proportion to the number of permits under the blanket bond of each operator.

**§ 45.2-1635. Expiration of permits.**

Each permit issued pursuant to this chapter shall expire 24 months from its date of issuance unless the permitted activity has commenced within that time period. An operator may renew an existing permit for an additional 24 months by submitting a written request containing the coal operator's approval and remitting a \$325 renewal fee no later than the expiration date.

**§ 45.2-1636. Abandonment or cessation of well or corehole operation; plugging required.**

Upon the abandonment or cessation of the operation of any well or corehole, the gas, oil, or geophysical operator shall immediately fill and plug the well or corehole in the manner required by regulations in force at the time of abandonment or the operation's cessation.

**§ 45.2-1637. Objections to permits; hearing.**

A. Objections to a new permit or permit modification may be filed with the Director by any person having standing as set out in § 45.2-1632. Such objections shall be filed within 15 days of the objecting party's receipt of the notice required by § 45.2-1632. Any person objecting to a permit shall state the reasons for his objections.

B. The only objections to permits or permit modifications that may be raised by a surface owner are:

1. The operations plan for soil erosion and sediment control is not adequate or not effective;

2. Measures in addition to the requirement for a well's water-protection string are necessary to protect freshwater-bearing strata;

3. The permitted work will constitute a hazard to the safety of any person;

4. Location of the coalbed methane well or coalbed methane well pipeline will unreasonably infringe on the surface owner's use of the surface, so long as a reasonable alternative site is available within the unit and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest; and

5. If the surface owner is an interstate park commission, the location of the well or pipeline will unreasonably infringe on the surface owner's use of the surface, so long as a reasonable alternative site is available within the unit and granting the objection will not materially impair any right contained in an agreement, valid at the time of the objection, between the surface owner and the operator or their predecessors or successors in interest.

C. The only objections to permits or permit modifications that may be raised by a royalty owner are that the proposed well work:

1. Directly impinges upon the royalty owner's gas and oil interest;

2. Threatens to violate the objecting royalty owner's property or statutory rights aside from his contractual rights; and

3. Would not adequately prevent the escape of the Commonwealth's gas and oil resources or provide for the accurate measurement of gas and oil production and delivery to the first point to sale.

D. Objections to permits or permit modifications may be raised by a coal owner or operator pursuant to the provisions of §§ 45.2-1611 and 45.2-1612.

E. The only objections to permits or permit modifications that may be raised by a mineral owner are those that could be raised by a coal owner under § 45.2-1611, so long as the mineral owner makes the objection and affirmatively proves that it does in fact apply with equal force to the mineral in question.

F. The only objections to permits or permit modifications that may be raised by a gas storage field operator are those in which the gas storage operator affirmatively proves that the proposed well work will adversely affect the operation of his gas storage field certificated by the State Corporation Commission; however, nothing in this subsection shall be construed to preclude the owner of nonstorage strata from drilling a well for the purpose of producing oil or gas from any stratum above or below the storage stratum.

G. The Director shall fix a time and place for an informal fact-finding hearing concerning an objection filed pursuant to this section. The hearing shall be scheduled for not less than 20 nor more than 30 days after the objection is filed. The Director shall prepare a notice of the hearing, stating all objections and by whom each is made, and send a copy of such notice by certified mail, return receipt requested, at least 10 days prior to the hearing date to the permit applicant and to every person with standing to object as prescribed by § 45.2-1632.

H. At the hearing, if the parties fail to come to an agreement, the Director shall proceed to decide the objection pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) relating to informal fact-finding procedures.

**§ 45.2-1638. Appeals of Director's decisions to the Board.**

A. Any person with standing under the provisions of § 45.2-1632 who is aggrieved by a decision of the Director may appeal to the Board, subject to the limitations imposed by subsection B, by petition to the Board filed within 10 days following the appealed decision.

B. No petition for appeal may raise any matter other than a matter that was raised by the Director or that the petitioner put in issue either by application or by an objection, proposal, or claim made and specified in writing at the informal fact-finding hearing held under § 45.2-1637 leading to the appealed decision.

**§ 45.2-1639. Persons required to register; designated agents.**

A. Any person who owns a well, drills a well, completes well work, operates any well or gathering pipeline, conducts ground-disturbing geophysical explorations, or transports gas or oil up to and including the first point of sale shall register with the Director and shall provide his name and address and the name, address, and official title of the person in charge of his operations in the Commonwealth.

B. Any person registering under subsection A shall designate the name and address of an agent who shall be the attorney-in-fact of the registrant for the purposes set forth in this section. The designated agent shall be a resident of the Commonwealth. Notices, orders, other communications, and all processes issued pursuant to this chapter may be served upon or otherwise delivered to the designated agent as and for the operator. Any designation of an agent shall remain in force until the Director is notified in writing of a designation termination and the designation of a new agent.

**§ 45.2-1640. Report of permitted activities and production required; contents.**

A. Each holder of a permit for a gas or oil well or gathering pipeline shall file monthly and annual reports of his activities as prescribed by the Director. Such reports shall be for the purpose of obtaining information regarding the production and sale of gas and oil resources, as well as information concerning the ownership and control of permitted activities. Filing of such reports by a permittee shall be a condition of such permit. Every annual report filed by a permittee shall contain a certification that such permittee has paid all severance taxes levied under the provisions of §§ 58.1-3712, 58.1-3713, and 58.1-3741.

B. At the same time that a permittee files the monthly and annual reports as required by subsection A, the permittee shall send copies of the reports by mail to the commissioner of the revenue of the political subdivision where the permitted well is located.

**§ 45.2-1641. Developing a gas or oil well as a water well.**

If any well drilled for gas or oil does not produce commercial or paying quantities of either resource, the well may be developed as a water well upon the request of the surface owner of the property on which the well is located. Any such development of a water well shall occur only after notice is given to the Director and his approval has been received. Such development of a water well shall be performed in accordance with applicable state and local requirements. Unless the gas or oil operator and surface owner otherwise agree, the surface owner shall pay the gas or oil operator a reasonable sum for all casing and tubing set and left in the well that would have otherwise been removed upon plugging of the well.

**§ 45.2-1642. Orphaned Well Fund; orphaned wells.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Orphaned Well Fund, referred to in this section as "the Fund." All moneys appropriated to it and any surcharges collected pursuant to subsection D shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys from the Fund shall be used solely for purposes of restoration and plugging of orphaned wells. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director or his designee.

B. The Director shall conduct a survey to determine the condition and location of orphaned wells in the Commonwealth. He shall establish priorities for the plugging and restoration of the identified orphaned wells. The plugging and restoration of orphaned well sites that pose an imminent danger to public safety shall have the highest priority.

C. In performing his duties under this section, the Director shall make every reasonable effort to identify and obtain the permission of a surface owner prior to entering onto the surface owner's land. In all cases, the Director shall as soon as practicable cause to be published in a newspaper of general circulation in the county or city wherein an orphaned well is located a notice of the proposed plugging and restoration work to be conducted on the property.

D. Each operator who applies for a new permit for any activity other than geophysical operations shall pay a \$200 surcharge per permit into the Fund. Such surcharge shall continue until the Director determines that all orphaned wells in the Commonwealth are properly plugged and their sites are

properly stabilized.

E. In the event of a discontinuance of the Fund, any amounts remaining in the Fund shall be placed in the Gas and Oil Plugging Restoration Fund created pursuant to § 45.2-1634.

**§ 45.2-1643. Interference by injection wells with groundwater supply.**

A. For purposes of this section:

"Beneficial use" means the same as that term is defined in § 62.1-255.

"Groundwater" means the same as that term is defined in § 62.1-255.

B. Any person who owns or operates an injection well in a manner that proximately causes the contamination or diminution of groundwater used for a beneficial use by any person who resides within the lesser of (i) the area of review required by the U.S. Environmental Protection Agency for the permitting of such injection well or (ii) a one-half-mile radius of the well shall provide the person with a replacement water supply. A replacement water supply shall provide the person with water of equivalent quality and quantity as was provided by groundwater prior to the contamination or diminution of the water supply resulting from the operation of the injection well. A replacement water supply shall include the provision of necessary storage and service facilities.

C. This section shall apply to any injection well operating under a permit from the Director.

**§ 45.2-1644. Safety in coalbed methane gas, oil, and geophysical operations.**

The Director shall inspect permitted coalbed methane well and related facility operations to ensure the safety of persons on permitted sites. If an inspection reveals any hazardous condition that creates an imminent danger, the Director shall issue a closure order pursuant to § 45.2-1629 requiring the area to be cleared or the equipment removed from use, except for (i) work necessary to continue to vent methane from an active underground mine if such work can be done safely and (ii) any work necessary to correct or eliminate the imminent danger. The Director shall lift the closure order when he finds that the imminent danger has been corrected or eliminated. If an inspection reveals any other condition that creates a risk to the safety or health of any person on the permitted site, the Director shall notify the Department of Labor and Industry for actions under Title 40.1, as applicable.

Article 4.

*Drilling for Gas or Oil in the Chesapeake Bay or Tidewater Virginia; Hydraulic Fracturing.*

**§ 45.2-1645. Chesapeake Bay; drilling for gas or oil prohibited.**

Notwithstanding any other law, no person shall drill for gas or oil in the waters of the Chesapeake Bay or any of its tributaries. The provisions of this subsection shall be enforced consistent with the requirements of this chapter.

**§ 45.2-1646. Tidewater Virginia; drilling for gas or oil prohibited in certain areas.**

A. In Tidewater Virginia, as defined in § 62.1-44.15:68, no person shall drill for gas or oil (i) within 500 feet of the shoreline of the waters of the Chesapeake Bay or any of its tributaries, as measured landward of the shoreline, or (ii) if it is farther than 500 feet from such shoreline, in any Chesapeake Bay Preservation Area, as defined in § 62.1-44.15:68, that a local government designates as a Resource Protection Area and incorporates into its local comprehensive plan. Resource Protection Areas shall be defined according to the criteria developed by the State Water Control Board pursuant to § 62.1-44.15:72.

B. If any person desires to drill for gas or oil in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A, he shall submit an environmental impact assessment to the Department as part of his application for a permit to drill. Such environmental impact assessment shall include:

1. The probabilities and consequences of accidental discharge of gas or oil into the environment during drilling, production, and transportation for:

- a. Finfish, shellfish, and other marine or freshwater organisms;
- b. Birds and other wildlife that use the air and water resources;
- c. Air and water quality; and
- d. Land and water resources;

2. Recommendations for minimizing any adverse economic, fiscal, or environmental impacts; and

3. An examination of the secondary environmental effects of induced economic development due to the drilling and production.

C. Upon receipt of an environmental impact assessment, the Department shall notify the Department of Environmental Quality to coordinate a review of the environmental impact assessment. DEQ shall:

1. Publish in the Virginia Register of Regulations a notice that is sufficient to identify the environmental impact assessment and provides an opportunity for public review of and comment on the assessment. The period for public review and comment shall not be less than 30 days from the date of publication;

2. Submit the environmental impact assessment to all appropriate state agencies to review the assessment and submit their comments to DEQ; and

3. Based upon the review by all appropriate state agencies and the public comments received, submit findings and recommendations to the Department within 90 days after notification and receipt of the environmental impact assessment from the Department.

D. The Department shall not grant a permit under § 45.2-1631 until it has considered the findings and recommendations of DEQ.

E. DEQ shall, in conjunction with other state agencies and in conformance with the Administrative Process Act (§ 2.2-4000 et seq.), develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments required by this section.

F. A person may drill an exploratory well or a gas well in any area of Tidewater Virginia where drilling is not prohibited by the provisions of subsection A only if:

1. For directional drilling, the person has the permission of the owners of all lands to be directionally drilled into;

2. The person files an oil discharge contingency plan and proof of financial responsibility to implement the plan, both already filed with and approved by the State Water Control Board. For purposes of this section, such oil discharge contingency plan shall comply with the requirements set forth in § 62.1-44.34:15. The State Water Control Board's regulations governing the amount of any financial responsibility required shall take into account the type of operation, the location of the well, the risk of discharge or accidental release, the potential damage or injury to state waters or sensitive natural resource features or the impairment of their beneficial use that may result from discharge or release, the potential cost of containment and cleanup, and the nature and degree of injury or interference with general health, welfare, and property that may result from discharge or accidental release;

3. All land-disturbing activities resulting from the construction and operation of the permanent facilities necessary to implement the contingency plan and the area within the berm will be located outside any area described in subsection A;

4. The drilling site is stabilized with boards, gravel, or other materials that will result in minimal amounts of runoff;

5. Persons certified in blowout prevention are present at all times during drilling;

6. Conductor pipe is set as necessary from the surface;

7. Casing is set and pressure-grouted from the surface to a point at least 2,500 feet below the surface or 300 feet below the deepest known groundwater, as defined in § 62.1-255, for a beneficial use, as defined in § 62.1-10, whichever is deeper;

8. Freshwater-based drilling mud is used during drilling;

9. There is no onsite disposal of drilling muds, produced contaminated fluids, waste contaminated fluids, or other contaminated fluids;

10. Multiple blow-out preventers are employed; and

11. The person complies with all requirements of Chapter 16 (§ 45.2-1600 et seq.) and regulations adopted thereunder.

G. The provisions of subsection A and subdivisions F 1 and 4 through 9 shall be enforced consistent with the requirements of Chapter 16 (§ 45.2-1600 et seq.).

H. If exploration activities in Tidewater Virginia result in a finding by the Director that production of commercially recoverable quantities of oil is likely and imminent, the Director shall notify the Secretary of Commerce and Trade and the Secretary of Natural Resources. At that time, the Secretaries shall develop a joint report to the Governor and the General Assembly assessing the environmental risks and safeguards, transportation issues, state-of-the-art oil production well technology, economic impacts, regulatory initiatives, operational standards, and other matters related to the production of oil in the region. No permit for an oil production well shall be issued until (i) the Governor has had an opportunity to review the report and make recommendations, in the public interest, for legislative and regulatory changes; (ii) the General Assembly, during the next upcoming regular session, has acted on the Governor's recommendations or on its own initiatives; and (iii) any resulting legislation has become effective. The report by the Secretaries and the Governor's recommendations shall be completed within 18 months of the notification of the Secretaries of the findings of the Director.

**§ 45.2-1647. Hydraulic fracturing; groundwater management area.**

No person shall conduct any hydraulic fracturing in any well that has been drilled through any portion of a groundwater management area declared by regulation prior to January 1, 2020, pursuant to the provisions of the Ground Water Management Act of 1992 (§ 62.1-254 et seq.). For purposes of this section, "hydraulic fracturing" means the treatment of a well by the application of hydraulic fracturing fluid, including a base fluid and any additive, under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of natural gas or oil.

Article 5.

Replacement of Water by Gas Well Operators.

**§ 45.2-1648. Operator's right to sample water.**

An operator may enter upon surface land at reasonable times and in a reasonable manner to obtain samples of water from any water well that is (i) located within 1,320 feet of a proposed or existing gas well and (ii) actually being utilized by the surface owner or occupant for domestic use. If the surface owner or occupant refuses to allow the operator to sample or causes the operator to be prevented from

sampling any such water well, the operator shall promptly notify the Department of such refusal or prevention. The Department shall maintain a record of such notifications. In the event of such a refusal or prevention, the surface owner shall not be entitled to the remedies set forth in § 45.2-1649.

**§ 45.2-1649. Replacement of water supply.**

If any water supply of a surface owner who obtains all or part of his supply of water for domestic use from a water well has been materially affected by contamination or partial or complete interruption proximately resulting from a gas well operation within 1,320 feet of the water well, the operator of such gas well shall promptly provide a replacement water supply that shall be capable of meeting the uses such water supply met prior to the contamination or partial or complete interruption.

SUBTITLE V.

OTHER SOURCES OF ENERGY; ENERGY POLICY.

CHAPTER 17.

OTHER SOURCES OF ENERGY GENERALLY; ENERGY POLICY.

Article 1.

General Provisions.

**§ 45.2-1700. Definitions.**

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

"Consortium" means the Virginia Coastal Energy Research Consortium established pursuant to Article 5 (§ 45.2-1714 et seq.).

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

"Plan" means the Virginia Energy Plan prepared pursuant to Article 4 (§ 45.2-1700 et seq.).

**§ 45.2-1701. Division of Energy established; powers and duties.**

A. The Division of Energy is established in the Department. The Director has the immediate authority to coordinate the development and implementation of energy policy in the Commonwealth.

B. The Division shall coordinate the energy-related activities of the various state agencies and advise the Governor on energy issues that arise at the local, state, and national levels. All state agencies and institutions shall cooperate fully with the Division to assist in the proper execution of the duties assigned by this section.

C. In addition, the Division is authorized to make and enter into all contracts and agreements necessary or incidental to the performance of its duties or the execution of its powers, including the implementation of energy information and conservation plans and programs.

D. The Division shall:

1. Consult with state agencies and institutions concerning energy-related activities or policies as needed for the proper execution of the duties assigned to the Division by this section;

2. Serve as the Commonwealth's liaison with appropriate agencies of the federal government concerning the activities of the federal government related to energy production, consumption, and transportation and energy resource management in general;

3. Provide services to encourage efforts by and among businesses in the Commonwealth, industries, utilities, academic institutions, state and local governments, and private institutions to develop energy resources and energy conservation programs;

4. In consultation with the State Corporation Commission, the Department of Environmental Quality, and the Virginia Center for Coal and Energy Research, prepare the Virginia Energy Plan pursuant to § 45.2-1710;

5. Observe the energy-related activities of state agencies and advise such agencies in order to encourage conformity with established energy policy; and

6. Serve, pursuant to § 58.1-3660, as the state certifying authority for solar energy projects and for the production of coal, oil, and gas, including gas, natural gas, and coalbed methane gas.

Article 2.

Energy and Operational Efficiency Performance-Based Contracting Act.

**§ 45.2-1702. Definitions.**

As used in this article:

"Contracting entity" means any public body as defined in § 2.2-4301.

"Energy conservation measures" means the use of methods and techniques, the application of knowledge, or the installation of devices, including an alteration or betterment of an existing facility, that reduces energy consumption or operating costs and includes:

1. Insulation of the facility structure and systems within the facility.

2. Installation of storm windows and doors, caulking or weatherstripping, multiglazed windows and doors, heat-absorbing or heat-reflective glazed and coated window and door systems, or additional glazing; reductions in glass area; or the completion of other window and door system modifications that reduce energy consumption.

3. Installation of automatic energy control systems, including related software, or required network communication wiring, computer devices, wiring, and support services, or the design and implementation of major building technology infrastructure with operational improvements.

4. Modification or replacement of heating, ventilating, or air-conditioning systems.

5. Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system. Such replacement or modification shall, at a minimum, conform to the applicable provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

6. Installation of energy recovery systems.

7. Installation of cogeneration systems that produce, in addition to electricity, steam or another form of energy, such as heat, for use primarily within a facility or complex of facilities.

8. Installation of energy conservation measures that provide long-term operating cost reductions and significantly reduce the BTUs consumed.

9. Installation of building technology infrastructure measures that provide long-term operating cost reductions and reduce related operational costs.

10. Installation of an energy system, such as solar, biomass, or wind.

11. Installation of devices that reduce water consumption or sewer charges.

"Energy cost savings" means a measured reduction in fuel, energy, or operation and maintenance costs created from the implementation of one or more energy conservation measures when compared with an established baseline for previous fuel, energy, or operation and maintenance costs. When calculating "energy cost savings" attributable to the services performed or equipment installed pursuant to a performance-based efficiency contract, maintenance savings shall be included.

"Energy performance-based contract" means a contract for the evaluation, recommendation, and implementation of energy conservation measures that includes, at a minimum:

1. The design and installation of equipment to implement one or more such measures and, if applicable, the operation and maintenance of such measures.

2. The amount of any actual annual savings. Such amount shall meet or exceed the total annual contract payments made by the contracting entity for such contract.

3. The financing charges to be incurred by the contracting entity for such contract.

"Maintenance savings" means the operating expenses eliminated and future capital replacement expenditures avoided as a result of new equipment installed or services performed by the performance contractor.

"Performance guarantee bond" means the performance bond provided by the energy performance contractor for each year of the energy program in an amount equal to, but no greater than, the guaranteed measured and verifiable annual savings set forth in the program.

**§ 45.2-1703. Energy performance-based contract procedures; required contract provisions.**

A. Any contracting entity may enter into an energy performance-based contract with an energy performance contractor to significantly reduce (i) energy costs to a level established by the public body or (ii) operating costs of a facility through one or more energy conservation or operational efficiency measures. For the purposes of this article, energy conservation or operational efficiency measures shall not include roof replacement projects.

B. The energy performance contractor shall be selected through competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2. The evaluation of the request for proposals shall analyze the estimates of all costs of installation, maintenance, repairs, debt service, post-installation project monitoring, and reporting. Notwithstanding any other provision of law, any contracting entity may purchase energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity pursuant to this article even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

C. Before entering into a contract for energy conservation measures, the contracting entity shall require the performance contractor to provide a payment and performance bond relating to the installation of energy conservation measures in an amount the contracting entity finds reasonable and necessary to protect its interests.

D. Prior to the design and installation of any energy conservation measures, the contracting entity shall obtain from the energy performance contractor a report disclosing all costs associated with such energy conservation measures and providing an estimate of the amount of the energy cost savings. After reviewing the report, the contracting entity may enter into an energy performance-based contract if it finds (i) the amount the entity would spend on the energy conservation measures recommended in the report will not exceed the amount to be saved in energy and operation costs more than 20 years from the date of installation, based on life-cycle costing calculations, if the recommendations in the report were followed and (ii) the energy performance contractor provides a written guarantee that the energy and operating cost savings will meet or exceed the costs of the system. The contract may provide for payments over a period not to exceed 20 years.

E. The term of any energy performance-based contract shall expire at the end of each fiscal year but may be renewed annually for up to 20 years, subject to the contracting entity making sufficient annual appropriations based upon continued realized cost savings. Such contract shall stipulate that the agreement does not constitute a debt, liability, or obligation of the contracting entity, or a pledge of the faith and credit of the contracting entity. Such contract may also provide capital contributions for the purchase and installation of energy conservation measures that cannot be totally funded by the energy



and operational savings.

F. An energy performance-based contract shall include the following provisions:

1. A guarantee by the energy performance contractor that annual energy and operational cost savings will meet or exceed the amortized cost of energy conservation measures. The guaranteed energy savings contract shall include a written guarantee of the qualified provider that either the energy savings or operational cost savings, or both, will meet or exceed within 20 years the costs of the energy and operational savings measures. The qualified provider shall reimburse the contracting entity for any shortfall of guaranteed energy savings projected in the contract.

2. A requirement that the energy performance contractor to whom the contract is awarded provide a 100 percent performance guarantee bond to the contracting entity for the installation and faithful performance of the installed energy savings measures as outlined in the contract document.

3. A requirement that the energy performance contractor provide to the contracting entity an annual reconciliation of the guaranteed energy cost savings. The energy performance contractor shall be liable for any annual savings shortfall that may occur.

G. The Department shall make a reasonable effort, as long as workload permits, to:

1. Provide general advice, upon request, to local governments considering pursuit of an energy performance-based contract pursuant to this article; and

2. Annually compile a list of performance-based contracts entered into by local governments of which the Department becomes aware.

**§ 45.2-1704. Application of article.**

The provisions of this article shall not apply to any new construction project undertaken by a public body.

Article 3.

Energy Policy of the Commonwealth.

**§ 45.2-1705. Legislative findings.**

The General Assembly hereby finds that:

1. Energy is essential to the health, safety, and welfare of the people of the Commonwealth and to the Commonwealth's economy;

2. The government of the Commonwealth should facilitate the availability and delivery of reliable and adequate supplies of energy to industrial, commercial, and residential users at reasonable costs so that such users and the Commonwealth's economy are able to be productive;

3. The Commonwealth would benefit from articulating clear objectives pertaining to energy issues, adopting an energy policy that advances such objectives, and establishing a procedure for measuring the implementation of such policy;

4. Climate change is an urgent and pressing challenge for the Commonwealth. Swift decarbonization and a transition to clean energy are required to meet the urgency of the challenge; and

5. The Commonwealth will benefit from being a leader in deploying a low-carbon energy economy.

**§ 45.2-1706. Energy objectives.**

A. The Commonwealth recognizes that each of the following objectives pertaining to energy issues will advance the health, welfare, and safety of the residents of the Commonwealth:

1. Ensuring an adequate energy supply and a Commonwealth-based energy production capacity;

2. Minimizing the Commonwealth's long-term exposure to volatility and increases in world energy prices through greater energy independence;

3. Ensuring the availability of reliable energy at costs that are reasonable and in quantities that will support the Commonwealth's economy;

4. Managing the rate of consumption of existing energy resources in relation to economic growth;

5. Establishing sufficient supply and delivery infrastructure to enable widespread deployment of distributed energy resources and to maintain reliable energy availability in the event of a disruption occurring in a portion of the Commonwealth's energy matrix;

6. Maximizing energy efficiency programs that are the lowest-cost energy option to reduce greenhouse gas emissions in order to produce electricity cost savings and create jobs and economic opportunity from the energy efficiency service sector;

7. Facilitating conservation;

8. Optimizing intrastate and interstate use of energy supply and delivery to maximize energy availability, reliability, and price opportunities to the benefit of all user classes and the Commonwealth's economy pursuant to subdivision 2 of § 45.2-1705;

9. Increasing the Commonwealth's reliance on sources of energy that, compared to traditional energy resources, are less polluting of the Commonwealth's air and waters;

10. Establishing greenhouse gas emissions reduction goals across the Commonwealth's economy sufficient to reach net-zero emissions by 2045, including in the electric power, transportation, industrial, agricultural, building, and infrastructure sectors;

11. Requiring that pathways to net-zero greenhouse gas emissions be determined on the basis of technical, policy, and economic analysis to maximize their effectiveness, optimize the Commonwealth's economic development, and create quality jobs while minimizing adverse impacts on public health,

affected communities, and the environment;

12. Developing energy resources necessary to produce 30 percent of the Commonwealth's electricity from renewable energy sources by 2030 and 100 percent of the Commonwealth's electricity from carbon-free sources by 2040;

13. Enabling widespread integration of distributed energy resources into the grid, including storage and carbon-free generation, such as rooftop solar installations as defined in § 56-576;

14. Removing impediments to the use of carbon-free energy resources located within and outside the Commonwealth, including distributed renewable energy generation resources, nuclear power plants, and generation resources that employ carbon capture and sequestration;

15. Mitigating the negative impacts of climate change and the energy transition on disadvantaged communities and prioritizing investment in such communities;

16. Developing the carbon-free energy resources required to fully decarbonize the electric power supply of the Commonwealth, including deployment of 30 percent renewable energy sources by 2030 and realizing 100 percent carbon-free electric power by 2040;

17. Increasing the Commonwealth's reliance on and production of sustainably produced biofuels made from traditional agricultural crops and other feedstocks, such as winter cover crops, warm season grasses, fast-growing trees, algae, or other suitable feedstocks grown in the Commonwealth that will create jobs and income, produce clean-burning fuels that will help to improve air quality, and provide the new markets for the Commonwealth's silvicultural and agricultural products needed to preserve farm employment, conserve farmland and forestland, and increase implementation of silvicultural and agricultural best management practices to protect water quality; and

18. Ensuring that decision making is transparent and includes opportunities for full participation by the public.

B. Except as provided in subsection D of § 56-585.1, nothing in this section shall be deemed to abrogate or modify in any way the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.).

**§ 45.2-1707. Commonwealth Energy Policy.**

A. To achieve the objectives enumerated in § 45.2-1706, it is the policy of the Commonwealth to:

1. Support research and development of, and promote the use of, renewable energy sources;

2. Ensure that the combination of energy supplies and energy-saving systems is sufficient to support the demands of economic growth;

3. Promote cost-effective conservation of energy and fuel supplies;

4. Ensure the adequate supply of natural gas necessary to ensure the reliability of the electricity supply and the needs of businesses during the transition to renewable energy;

5. Promote the generation of electricity through technologies that do not contribute to greenhouse gases and global warming;

6. Promote the use of motor vehicles that utilize alternate fuels and are highly energy efficient;

7. Support efforts to reduce the demand for imported petroleum by developing alternative technologies, including the production of synthetic and hydrogen-based fuels, and the infrastructure required for the widespread implementation of such technologies;

8. Ensure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities;

9. Establish greenhouse gas emissions reduction standards across all sectors of the Commonwealth's economy that target net-zero carbon emissions by 2045;

10. Enact mandatory clean energy standards and overall strategies for reaching net-zero carbon in the electric power sector by 2040;

11. Equitably incorporate requirements for technical, policy, and economic analyses and assessments that recognize the unique attributes of different energy resources and delivery systems to identify pathways to net-zero carbon that maximize the Commonwealth's energy reliability and resilience, economic development, and jobs;

12. Minimize the negative impacts of climate change and the energy transition on economically disadvantaged or minority communities and prioritize investment in such areas; and

13. Support the distributed generation of renewable electricity by:

a. Encouraging private sector investments in distributed renewable energy;

b. Increasing the security of the electricity grid by supporting distributed renewable energy projects with the potential to supply electric energy to critical facilities during a widespread power outage; and

c. Augmenting the exercise of private property rights by landowners desiring to generate their own energy from renewable energy sources on their lands.

B. The elements of the policy set forth in subsection A shall be referred to collectively in this title as the Commonwealth Energy Policy.

C. All agencies and political subdivisions of the Commonwealth, in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate shall act in a manner consistent therewith.

D. The Commonwealth Energy Policy is intended to provide guidance to the agencies and political

subdivisions of the Commonwealth in taking discretionary action with regard to energy issues and shall not be construed to amend, repeal, or override any contrary provision of applicable law. No failure or refusal of any person to recognize the elements of the Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy Policy, or to take any other action whatsoever shall create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.

**§ 45.2-1708. Role of local governments in achieving objectives of the Commonwealth Energy Policy.**

A. In the development of any local ordinance addressing the siting of renewable energy facilities that generate electricity from wind or solar resources, such ordinance shall:

1. Be consistent with the provisions of the Commonwealth Energy Policy pursuant to subsection C of § 45.2-1707;

2. Provide reasonable criteria to be addressed in the siting of any renewable energy facility that generates electricity from wind or solar resources. Such criteria shall provide for the protection of the locality in a manner consistent with the goals of the Commonwealth to promote the generation of energy from wind and solar resources; and

3. Include provisions establishing reasonable requirements upon the siting of any such renewable energy facility, including provisions limiting noise, requiring buffer areas and setbacks, and addressing generation facility decommissioning.

B. Any measures required by an ordinance adopted pursuant to subsection A shall be consistent with the locality's existing ordinances.

**§ 45.2-1709. Nuclear energy; considered a clean energy source.**

For the purposes of the Commonwealth Energy Policy as set out in § 45.2-1707, in any clean energy initiative or carbon-free energy initiative undertaken, overseen, regulated, or permitted by the Department, nuclear energy shall be considered to be a clean energy source.

Article 4.

Virginia Energy Plan.

**§ 45.2-1710. Development of the Virginia Energy Plan.**

A. The Division, in consultation with the State Corporation Commission, the Department of Environmental Quality, the Clean Energy Advisory Board, the solar, wind, and energy efficiency sectors, and a stakeholder group that includes representatives of consumer, environmental, manufacturing, forestry, and agricultural organizations and natural gas and electric utilities, shall prepare a comprehensive Virginia Energy Plan (the Plan) that identifies actions over a 10-year period consistent with the goal of the Commonwealth Energy Policy set forth in § 45.2-1707 to achieve, no later than 2045, a net-zero carbon energy economy for all sectors, including the electricity, transportation, building, agricultural, and industrial sectors. The Plan shall propose actions, consistent with the objectives enumerated in § 45.2-1706, that will implement the Commonwealth Energy Policy set forth in § 45.2-1707.

B. In addition, the Plan shall include:

1. Projections of energy consumption in the Commonwealth, including the use of fuel sources and costs of electricity, natural gas, gasoline, coal, renewable resources, and other forms of non-greenhouse-gas-generating energy resources, such as nuclear power, used in the Commonwealth;

2. An analysis of the adequacy of electricity generation, transmission, and distribution resources in the Commonwealth for the natural gas and electric industries, and how distributed energy resources and regional generation, transmission, and distribution resources affect the Commonwealth;

3. An analysis of siting requirements for electric generation resources and natural gas and electric transmission and distribution resources, including an assessment of state and local impediments to expanded use of distributed resources and recommendations to reduce or eliminate such impediments;

4. An analysis of fuel diversity for electricity generation, recognizing the importance of flexibility in meeting future capacity needs;

5. An analysis of the efficient use of energy resources and conservation initiatives;

6. An analysis of how such Virginia-specific issues relate to regional initiatives to ensure the adequacy of fuel production, generation, transmission, and distribution assets;

7. An analysis of the siting of energy resource development, refining, and transmission facilities to identify any disproportionate adverse impact of such activities on economically disadvantaged or minority communities;

8. With regard to any regulations proposed or adopted by the U.S. Environmental Protection Agency to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d), an analysis of (i) the costs to and benefits for energy producers and electric utility customers, (ii) the effect on energy markets and reliability, and (iii) the commercial availability of technology required to comply with such regulations;

9. An inventory of greenhouse gas emissions compiled using a method determined by the Department of Environmental Quality for the four years prior to the issuance of the Plan; and

10. Recommendations, based on the analyses completed under subdivisions 1 through 9, for

legislative, regulatory, and other public and private actions to implement the elements of the Commonwealth Energy Policy.

C. In preparing the Plan, the Division and other agencies involved in the planning process shall utilize state geographic information systems, to the extent deemed practicable, to assess how recommendations in the Plan may affect pristine natural areas and other significant onshore natural resources. Effective October 1, 2024, interim updates on the Plan shall also contain projections for greenhouse gas emissions that would result from implementation of the Plan's recommendations.

D. In preparing the Plan, the Division and other agencies involved in the planning process shall develop a system for assigning numerical scores to any parcel of real property based on the extent to which such parcel is suitable for the siting of a wind energy facility or solar energy facility. For a wind energy facility, the scoring system shall address the wind velocity, sustained velocity, and turbulence. For either a wind energy facility or a solar energy facility, the scoring system shall address the parcel's proximity to electric power transmission lines or systems, potential impacts of such a facility to natural and historic resources and to economically disadvantaged or minority communities, and compatibility with the local land use plan. The system developed pursuant to this section shall allow the suitability of the parcel for the siting of a wind energy or solar energy facility to be compared to the suitability of other parcels so scored, and shall be based on a scale that allows the suitability of the parcel for the siting of such a facility to be measured against the hypothetical score of an ideal location for such a facility.

E. Upon receipt by the Division of a recommendation from the Department of General Services, a local governing body, or the parcel's owner stating that a parcel of real property is a potentially suitable location for a wind energy facility or solar energy facility, the Division shall analyze the suitability of the parcel for the location of such a facility. In conducting its analysis, the Division shall ascribe a numerical score to the parcel using the scoring system developed pursuant to subsection D.

**§ 45.2-1711. Schedule for the Plan.**

A. The Division shall complete the Plan.

B. Prior to the completion of the Plan and each update thereof, the Division shall present drafts to, and consult with, the Virginia Coal and Energy Commission established pursuant to Chapter 25 (§ 30-188 et seq.) of Title 30 and the Commission on Electric Utility Regulation established pursuant to Chapter 31 (§ 30-201 et seq.) of Title 30.

C. The Plan shall be updated by the Division and submitted as provided in § 45.2-1713 by October 1, 2014, and every fourth October 1 thereafter. In addition, the Division shall provide interim updates on the Plan by October 1 of the third year of each Governor's administration. Updated reports shall reassess goals for energy conservation on the basis of progress to date in meeting the goals in the previous Plan and lessons learned from attempts to meet such goals.

D. Beginning with the Plan update in 2014, the Division shall include a section setting forth energy policy positions relevant to any potential regulations proposed or promulgated by the State Air Pollution Control Board to reduce carbon dioxide emissions from fossil fuel-fired electric generating units under § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d). In such section of the Plan, the Division shall address policy options for establishing separate standards of performance pursuant to § 111(d) of the federal Clean Air Act, 42 U.S.C. § 7411(d), for carbon dioxide emissions from existing fossil fuel-fired electric generating units to promote the Plan's overall goal of fuel diversity as follows:

1. The Plan shall address policy options for establishing the standards of performance for existing coal-fired electric generating units, including the following factors:

a. The most suitable system of emission reduction that (i) takes into consideration (a) the cost and benefit of achieving such reduction, (b) any non-air quality health and environmental impacts, and (c) the energy requirements of the Commonwealth and (ii) has been adequately demonstrated for coal-fired electric generating units that are subject to the standard of performance;

b. Reductions in emissions of carbon dioxide that can be achieved through measures reasonably undertaken at each coal-fired electric generating unit; and

c. Increased efficiencies and other measures that can be implemented at each coal-fired electric generating unit to reduce carbon dioxide emissions from the unit without converting from coal to other fuels, co-firing other fuels with coal, or limiting the utilization of the unit.

2. The Plan shall also address policy options for establishing the standards of performance for existing gas-fired electric generating units, including the following factors:

a. The application of the criteria specified in subdivisions 1 a and b to natural gas-fired electric generating units instead of to coal-fired electric generating units; and

b. Increased efficiencies and other measures that can be reasonably implemented at the unit to reduce carbon dioxide emissions from the unit without switching from natural gas to other lower-carbon fuels or limiting the utilization of the unit.

3. The Plan shall examine policy options for state regulatory action to adopt less stringent standards or longer compliance schedules than those provided for in applicable federal rules or guidelines based on analysis of the following:

a. Consumer impacts, including any disproportionate impacts of energy price increases on

lower-income populations;

b. Unreasonable cost of reducing emissions resulting from plant age, location, or basic process design;

c. Physical difficulties with or impossibility of implementing emission reduction measures;

d. The absolute cost of applying the performance standard to the unit;

e. The expected remaining useful life of the unit;

f. The economic impacts of closing the unit, including expected job losses, if the unit is unable to comply with the performance standard; and

g. Any other factors specific to the unit that make application of a less stringent standard or longer compliance schedule more reasonable.

4. The Plan shall identify options, to the maximum extent permissible, for any federally required regulation of carbon dioxide emissions from existing fossil fuel-fired electric generating units and regulatory mechanisms that provide flexibility in complying with such standards, including the averaging of emissions, emissions trading, or other alternative implementation measures that are determined to further the interests of the Commonwealth and its citizens.

**§ 45.2-1712. Annual reporting by investor-owned public utilities.**

Each investor-owned public utility providing electric service in the Commonwealth shall prepare an annual report disclosing its efforts to conserve energy, including (i) its implementation of customer demand-side management programs and (ii) efforts by the utility to improve efficiency and conserve energy in its internal operations pursuant to § 56-235.1. The utility shall submit each annual report to the Division by November 1 of each year, and the Division shall compile the reports of the utilities and submit the compilation to the Governor and the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

**§ 45.2-1713. Submission of the Plan.**

Upon completion, the Division shall submit the Plan, including periodic updates thereto, to the Governor, the Commissioners of the State Corporation Commission, and the General Assembly. The Plan shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents. The Plan's executive summary shall be posted on the General Assembly's website.

Article 5.

Virginia Coastal Energy Research Consortium.

**§ 45.2-1714. Virginia Coastal Energy Research Consortium established; board of directors.**

A. The Virginia Coastal Energy Research Consortium is hereby established to include Old Dominion University, the Virginia Institute of Marine Science of The College of William and Mary in Virginia, the Advanced Research Institute of Virginia Polytechnic Institute and State University, James Madison University, Norfolk State University, Virginia Commonwealth University, Hampton University, George Mason University, and the University of Virginia and is to be located at Old Dominion University.

B. The Consortium shall be governed by a board of directors (the Board), which shall consist of 16 voting members as follows: the Director or his designee, the Commissioner of Marine Resources or his designee, the President of the Virginia Manufacturers Association or his appointed member of the maritime manufacturing industry, the President of the Virginia Maritime Association or his appointed member of the maritime industry, the Director of the Advanced Research Institute of Virginia Polytechnic Institute and State University or his designee, the President of Old Dominion University or his designee, the Director of the Virginia Institute of Marine Science of The College of William and Mary in Virginia or his designee, the President of Norfolk State University or his designee, the President of James Madison University or his designee, the President of Virginia Commonwealth University or his designee, the President of the University of Virginia or his designee, the President of Hampton University or his designee, the President of George Mason University or his designee, the chairman of the Hampton Roads Technology Council or his appointed member of the technology community, the Director of the Hampton Roads Clean Cities Coalition or his appointed member of the renewable energy industry, and the Director of the Department of Environmental Quality or his designee as the lead agency for the Virginia Coastal Zone Management Program.

In addition, a representative of the National Aeronautics and Space Administration's Langley Research Center, to be selected by the Director of the Research Center, shall serve as a nonvoting ex officio member of the Board.

**§ 45.2-1715. Functions, powers, and duties of the Consortium.**

The Consortium shall serve as an interdisciplinary study, research, and information resource for the Commonwealth on coastal energy issues. As used in this article, "coastal energy" includes wave or tidal action, currents, offshore winds, thermal differences, and methane hydrates. The Consortium shall (i) consult with the General Assembly, federal, state, and local agencies, nonprofit organizations, private industry, and other potential users of coastal energy research; (ii) establish and administer agreements with other baccalaureate institutions of higher education in the Commonwealth to carry out research projects relating to the feasibility of increasing the Commonwealth's reliance on all domestic forms of coastal energy; (iii) disseminate new information and research results; (iv) apply for grants made

available pursuant to federal legislation, including the federal Methane Hydrate Research and Development Act of 2000, P.L. 106-193, and from other sources; and (v) facilitate the application and transfer of new coastal energy technologies.

**§ 45.2-1716. Appointment of a director; powers and duties.**

A. The Board shall appoint an executive director to serve as the principal administrative officer of the Consortium. The executive director shall report to the Board and be under its supervision.

B. The executive director shall exercise all powers imposed upon him by law, carry out the specific duties imposed upon him by the Board, and develop appropriate policies and procedures for (i) identifying priority coastal energy research projects; (ii) cooperating with the General Assembly, federal, state, and local governmental agencies, nonprofit organizations, and private industry in formulating its research projects; (iii) selecting research projects to be funded; and (iv) disseminating information and transferring technology related to coastal energy within the Commonwealth. The executive director shall employ such personnel and secure such services as may be required to carry out the purposes of the Consortium, expend appropriated funds, and accept moneys from federal or private sources for cost-sharing on coastal energy projects.

Article 6.

Southwest Virginia Energy Research and Development Authority.

**§ 45.2-1717. (Expires July 1, 2029) Definitions.**

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

"Authority" means the Southwest Virginia Energy Research and Development Authority established pursuant to this article.

"Developer" means any private developer of an energy development project.

"Energy development project" means an electric generation facility located within Southwest Virginia and includes interests in land, improvements, and ancillary facilities.

"Southwest Virginia" means the region of the Commonwealth designated as Southwest Virginia in § 22.1-350.

**§ 45.2-1718. (Expires July 1, 2029) Southwest Virginia Energy Research and Development Authority established; purpose.**

The Southwest Virginia Energy Research and Development Authority is established as a political subdivision of the Commonwealth. The purposes of the Authority are to promote opportunities for energy development in Southwest Virginia, create jobs and economic activity in Southwest Virginia consistent with the Virginia Energy Plan prepared pursuant to Article 4 (§ 45.2-1710 et seq.), and position Southwest Virginia and the Commonwealth as a leader in energy workforce and energy technology research and development. The Authority may also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority shall have only those powers enumerated in this article.

**§ 45.2-1719. (Expires July 1, 2029) Membership; terms; vacancies; expenses.**

A. The Authority shall have a total membership of 11 nonlegislative citizen members appointed as follows: four members to be appointed by the Governor, four members to be appointed by the Speaker of the House of Delegates, and three members to be appointed by the Senate Committee on Rules. All members of the Authority shall be citizens of the Commonwealth.

B. Except as otherwise provided in this article, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

C. The Authority shall appoint from its membership a chairman and a vice-chairman, each of whom shall serve in such capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.

D. Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from funds appropriated to the Authority by the General Assembly.

E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

F. Except as otherwise provided in this article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**§ 45.2-1720. (Expires July 1, 2029) Powers and duties of the Authority.**

*In addition to the other powers and duties established under this article, the Authority has the power and duty to:*

- 1. Adopt, use, and alter at will an official seal;*
- 2. Make bylaws for the management and regulation of its affairs;*
- 3. Maintain an office at any place within the Commonwealth it designates;*
- 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is established;*
- 5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;*
- 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and any other employees and agents necessary and fix their compensation to be payable from funds made available to the Authority;*
- 7. Invest its funds as permitted by applicable law;*
- 8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, from any municipality, county, or other political subdivision thereof, or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;*
- 9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;*
- 10. Do any lawful act necessary or appropriate to carry out the powers granted or reasonably implied in this article;*
- 11. Leverage the strength in energy workforce and energy technology research and development of the Commonwealth's public and private institutions of higher education;*
- 12. Support the development of pump storage hydropower in Southwest Virginia and energy storage generally;*
- 13. Promote the development of renewable energy generation facilities on brownfield sites, including abandoned mine sites;*
- 14. Promote energy workforce development;*
- 15. Assist energy technology research and development by, among other actions, promoting the development of a Southwest Virginia Energy Park; and*
- 16. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to energy development in Southwest Virginia.*

**§ 45.2-1721. (Expires July 1, 2029) Annual report.**

*On or before October 15 of each year, beginning in 2020, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor.*

**§ 45.2-1722. (Expires July 1, 2029) Confidentiality of information.**

*A. The Authority shall hold in confidence the personal and financial information supplied to it or maintained by it concerning the siting and development of energy projects.*

*B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.*

*C. Information supplied by or maintained on any person or entity applying for or receiving an allocation of any federal loan guarantee, as well as specific information relating to the amount of, or the identity of the recipient of, such distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

**§ 45.2-1723. (Expires July 1, 2029) Declaration of public purpose; exemption from taxation.**

*A. The exercise of the powers granted by this article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.*

*B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this article.*

**§ 45.2-1724. (Expires July 1, 2029) Sunset.**

*The provisions of this article shall expire on July 1, 2029.*

**§ 45.2-1800. Definitions.**

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

"Authority" means the Virginia Offshore Wind Development Authority established pursuant to Article 2 (§ 45.2-1803 et seq.).

"Division" means the Division of Offshore Wind in the Department as established pursuant to § 45.2-1802.

"Hampton Roads region" means the same as that term is defined in § 22.1-356.

**§ 45.2-1801. Offshore wind energy resources; policy.**

It is the policy of the Commonwealth to support federal efforts to examine the feasibility of offshore wind energy being utilized in an environmentally responsible fashion.

**§ 45.2-1802. Division of Offshore Wind established.**

A. The Director shall establish the Division of Offshore Wind in the Department and shall appoint persons to direct, support, and execute the powers and duties of the Division.

B. The powers and duties of the Division include:

1. Identifying specific measures that will facilitate the establishment of the Hampton Roads region as a wind industry hub for offshore wind generation projects in state and federal waters off the United States coast;

2. Coordinating state agencies' activities related to offshore wind, including development of programs that prepare the Commonwealth's workforce to work in the offshore wind industry, create employment opportunities for Virginians within such industry, create opportunities for Commonwealth-based businesses to participate in the offshore wind industry supply chain, and attract out-of-state offshore wind-related businesses to locate within the Commonwealth;

3. Developing and implementing a stakeholder engagement strategy that identifies key groups, sets forth outreach objectives, and outlines a timeline for outreach and engagement;

4. Identifying regulatory and other barriers to the deployment of offshore wind and attraction of offshore wind supply chain businesses; and

5. Providing staff support for the Authority and facilitating fulfillment of the Authority's purpose and duties set forth in Article 2 (§ 45.2-1803 et seq.).

C. On or before October 15 of each year, the Division shall submit an annual summary of its activities, the ways in which those activities have furthered the functions and programs of the Division, and the benefits of the efforts of the Division to the Commonwealth and its economy to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor. The Division may include its submission with the report of the Authority required by § 45.2-1808.

**Article 2.****Virginia Offshore Wind Development Authority.****§ 45.2-1803. Definitions.**

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

"Developer" means any private developer of an offshore wind energy project.

"Offshore wind energy project" means a wind-powered electric energy facility, including tower, turbine, and associated equipment, located off the coast of the Commonwealth beyond the Commonwealth's three-mile jurisdictional limit, and includes interests in land, improvements, and ancillary facilities.

"Transmission study" means a study to determine the potential interconnection options to accommodate multiple offshore wind energy projects in the Hampton Roads region.

**§ 45.2-1804. Virginia Offshore Wind Development Authority established; purpose.**

A. The Virginia Offshore Wind Development Authority is established as a political subdivision of the Commonwealth.

B. The Authority is established for the purposes of facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the offshore wind energy industry, offshore wind energy projects, and associated supply chain vendors by (i) collecting relevant metocean and environmental data; (ii) identifying existing state and regulatory or administrative barriers to the development of the offshore wind energy industry; (iii) working in cooperation with relevant local, state, and federal agencies to upgrade port and other logistical facilities and sites to accommodate the manufacturing and assembly of offshore wind energy project components and vessels; and (iv) ensuring that the development of such projects is compatible with other ocean uses and avian and marine resources, including both the possible interference with and positive effects on naval facilities and operations, NASA-Wallops Flight Facility operations, shipping lanes, recreational and commercial fisheries, and avian and marine species and habitats.

C. The Authority shall, in cooperation with the relevant state and federal agencies as necessary, recommend ways to encourage and expedite the development of the offshore wind energy industry. The Authority shall also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate.



*D. The Authority shall have only those powers enumerated in this article.*

**§ 45.2-1805. Membership; terms; vacancies; expenses.**

*A. The Authority shall be composed of nine nonlegislative citizen members appointed by the Governor, one of whom shall be a representative of the Virginia Commercial Space Flight Authority as established in § 2.2-2202. In addition, one ex officio member without voting privileges shall be selected by the Governor after consideration of the persons nominated by the U.S. Secretary of the Navy. With the exception of the representative of the Virginia Commercial Space Flight Authority, all members of the Authority shall be citizens of the Commonwealth.*

*B. Except as otherwise provided in this article, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.*

*C. The Authority shall appoint from its membership a chairman and a vice-chairman, each of whom shall serve in such capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.*

*D. Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from such funds as may be appropriated to the Authority by the General Assembly.*

*E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.*

*F. Except as otherwise provided in this article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

**§ 45.2-1806. Powers and duties of the Authority.**

*In addition to the other powers and duties established under this article, the Authority has the power and duty to:*

- 1. Adopt, use, and alter at will an official seal;*
- 2. Make bylaws for the management and regulation of its affairs;*
- 3. Maintain an office at any place within the Commonwealth it designates;*
- 4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is established;*
- 5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;*
- 6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and any other employees and agents necessary, and fix their compensation to be payable from funds made available to the Authority;*
- 7. Invest its funds as permitted by applicable law;*
- 8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, from any municipality, county, or other political subdivision thereof, or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;*
- 9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;*
- 10. Do any lawful act necessary or appropriate to carry out the powers granted or reasonably implied in this article;*
- 11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the offshore wind energy industry, including facilitating any permitting processes; and*
- 12. Enter into interstate partnerships to develop the offshore wind energy industry and offshore wind energy projects.*

**§ 45.2-1807. Director; staff; counsel to the Authority.**

*A. The Director shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this article and subject to the policies, control, and direction of the Authority. The Director shall maintain and is custodian of all books, documents, and*

*papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely on such certificates. The Director also shall perform such other duties as prescribed by the Authority in carrying out the purposes of this article.*

*B. The Division shall serve as staff to the Authority.*

*C. The Office of the Attorney General shall provide counsel to the Authority.*

**§ 45.2-1808. Annual report.**

*On or before October 15 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor. Such report may include the submission of the Division required by § 45.2-1802.*

**§ 45.2-1809. Confidentiality of information.**

*A. The Authority shall hold in confidence the personal and financial information supplied to it or maintained by it concerning the siting and development of offshore wind energy projects.*

*B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.*

*C. Information supplied by or maintained on any person or entity applying for or receiving an allocation of any federal loan guarantee, as well as specific information relating to the amount of, or the identity of the recipient of, such distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).*

**§ 45.2-1810. Declaration of public purpose; exemption from taxation.**

*A. The exercise of the powers granted by this article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.*

*B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this article, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this article.*

**§ 45.2-1811. Operation.**

*The Authority shall, through moneys derived from sources other than state funds, to the extent such moneys are available, operate in cooperation with the National Oceanic and Atmospheric Administration to upgrade wind resource and other metocean assessment equipment at Chesapeake Light Tower and other structures.*

**§ 45.2-1812. Public-private partnerships.**

*A. The Authority may establish public-private partnerships with developers pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) for purposes set forth in this section.*

*B. The Authority may establish a public-private partnership for the installation and operation of wind resource and other metocean equipment, including light detection and ranging equipment, meteorological measurement towers, and data collection platforms. Any partnership established pursuant to this subsection shall stipulate that:*

*1. The Authority and the developer shall share the costs of the upgrade;*

*2. The developer, in coordination with the Authority and relevant state and federal agencies, shall operate any meteorological measurement towers and data collection platforms; and*

*3. The developer shall make all collected data available to the Authority.*

*C. The Authority may establish a public-private partnership for the collection of avian and marine environmental data. Any partnership established pursuant to this subsection shall stipulate that:*

*1. The Authority and the developer shall share the costs of data collection;*

*2. The developer, in coordination with the Authority and relevant state and federal agencies, shall manage the environmental data collection process; and*

*3. The developer shall make all collected data available to the Authority.*

*D. The Authority may make any data collected pursuant to subsection B or C available to the public.*

*E. The Authority may establish a public-private partnership for the upgrade of port facilities and other logistical equipment and sites to accommodate the manufacturing and assembly of offshore wind energy project components and vessels that will support the construction and operations of offshore wind energy projects. Any partnership established pursuant to this subsection shall stipulate that the Authority and the entities shall share the costs of the upgrade.*

**§ 45.2-1813. Federal loan guarantees.**

*A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the federal Energy Policy Act of 2005, P.L. 109-58; the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5; or other similar federal legislation to facilitate the development of offshore wind energy projects.*

B. Upon obtaining a federal loan guarantee for an offshore wind energy project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or any portion thereof to a qualified third party on terms and conditions the Authority finds appropriate. Any action of the Authority relating to the allocation and assignment of such loan guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

CHAPTER 19.  
SOLAR ENERGY.

Article 1.

Virginia Solar Energy Center.

**§ 45.2-1900. Virginia Solar Energy Center; purposes.**

A. The Virginia Solar Energy Center (the Center) is established as part of the Department. The purposes of the Center are to (i) serve the people of the Commonwealth as a clearinghouse to gather, maintain, and disseminate general and technical information on solar energy and its utilization; (ii) coordinate programs for solar energy data-gathering in the Commonwealth; (iii) coordinate efforts and programs on solar energy with other state agencies and institutions, other states, and federal agencies; (iv) promote cooperation among and between Virginia business, industry, and agriculture and the public related to the use of solar energy; (v) develop public education programs on solar energy for use in schools and by the public; and (vi) provide assistance in formulating policies on the utilization of solar energy that would be in the best interest of the Commonwealth.

B. The Center may receive nonstate funds for the purposes provided in this section.

Article 2.

Virginia Solar Energy Development and Energy Storage Authority.

**§ 45.2-1901. (Expires July 1, 2025) Definitions.**

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

"Authority" means the Virginia Solar Energy Development and Energy Storage Authority established pursuant to this article.

"Developer" means any private developer of a solar energy project or an energy storage project.

"Energy storage project" means an energy storage facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

"Solar energy project" means an electric generation facility located within the Commonwealth and includes interests in land, improvements, and ancillary facilities.

**§ 45.2-1902. (Expires July 1, 2025) Virginia Solar Energy Development and Energy Storage Authority established; purpose.**

The Virginia Solar Energy Development Authority is continued as the Virginia Solar Energy Development and Energy Storage Authority. The Authority constitutes a political subdivision of the Commonwealth. The Authority is established for the purposes of (i) facilitating, coordinating, and supporting the development, either by the Authority or by other qualified entities, of the solar energy and energy storage industries and solar energy and energy storage projects by developing programs that increase the availability of financing for solar energy projects and energy storage projects; (ii) facilitating the increase of solar energy generation systems and energy storage projects on public and private sector facilities in the Commonwealth; (iii) promoting the growth of the Commonwealth's solar and energy storage industries; (iv) providing a hub for collaboration between entities, both public and private, to partner on solar energy projects and energy storage projects; and (v) positioning the Commonwealth as a leader in research, development, commercialization, manufacturing, and deployment of energy storage technology. The Authority may also consult with research institutions, businesses, nonprofit organizations, and stakeholders as the Authority deems appropriate. The Authority has only those powers enumerated in this article.

**§ 45.2-1903. (Expires July 1, 2025) Membership; terms; vacancies; expenses.**

A. The Authority shall have a total membership of 15 nonlegislative citizen members appointed as follows: eight members to be appointed by the Governor; four members to be appointed by the Speaker of the House of Delegates; and three members to be appointed by the Senate Committee on Rules. All members of the Authority shall be citizens of the Commonwealth. Members may include representatives of solar businesses, solar customers, renewable energy financiers, state and local government solar customers, institutions of higher education who have expertise in energy technology, and solar research academics.

B. Except as otherwise provided in this article, all appointments shall be for terms of four years each. No member shall be eligible to serve more than two successive four-year terms. After expiration of an initial term of three years or less, two additional four-year terms may be served by such member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

C. The Authority shall appoint from its membership a chairman and a vice-chairman, each of whom shall serve in such capacity at the pleasure of the Authority. The chairman, or in his absence the vice-chairman, shall preside at each meeting of the Authority. The meetings of the Authority shall be held on the call of the chairman or whenever a majority of the members so request. A majority of members of the Authority serving at any one time shall constitute a quorum for the transaction of business.

D. Members shall serve without compensation. However, all members may be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such expenses shall be paid from funds appropriated to the Authority by the General Assembly.

E. Members of the Authority shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

F. Except as otherwise provided in this article, members of the Authority shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**§ 45.2-1904. (Expires July 1, 2025) Partnerships.**

A. The Authority may establish public-private partnerships with entities pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) to increase the number of solar energy generation systems on or located adjacent to public and private facilities in the Commonwealth. Any partnership established pursuant to this section shall stipulate that the Authority and the developers shall share the costs of the installation and operation of solar energy facilities and equipment.

B. The Authority may provide a central hub for appropriate entities, both public and private, to enter into partnerships that result in solar energy generation projects being developed in the Commonwealth. The Authority may act as a good faith broker in such matters to facilitate appropriate partnerships, including public-private partnerships.

**§ 45.2-1905. (Expires July 1, 2025) Federal loan guarantees.**

A. The Authority, on behalf of the Commonwealth, may apply to the U.S. Department of Energy for federal loan guarantees authorized or made available pursuant to Title XVII of the federal Energy Policy Act of 2005, P.L. 109-58; the federal American Recovery and Reinvestment Act of 2009, P.L. 111-5; or other similar federal legislation to facilitate the development of solar energy projects.

B. Upon obtaining a federal loan guarantee for a solar energy project pursuant to subsection A, the Authority, subject to any restrictions imposed by federal law, may allocate or assign all or any portion thereof to a qualified third party on terms and conditions the Authority finds appropriate. Any action of the Authority relating to the allocation and assignment of such loan guarantee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002. Any decision of the Authority pursuant to this section shall be final and not subject to review or appeal.

**§ 45.2-1906. (Expires July 1, 2025) Powers and duties of the Authority.**

In addition to other powers and duties established under this article, the Authority has the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at any place within the Commonwealth it designates;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Authority, absolutely or in trust, from any source, public or private, for the purposes for which the Authority is established;
5. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
6. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and any other employees and agents necessary and fix their compensation to be payable from funds made available to the Authority;
7. Invest its funds as permitted by applicable law;
8. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, or real or personal property for the benefit of the Authority, and receive and accept from the Commonwealth or any other state, from any municipality, county, or other political subdivision thereof, or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made;
9. Enter into agreements with any department, agency, or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating, and providing for the financing or assisting in the financing of any project;
10. Do any lawful act necessary or appropriate to carry out the powers granted or reasonably implied in this article;

11. Identify and take steps to mitigate existing state and regulatory or administrative barriers to the development of the solar energy and energy storage industries, including facilitating any permitting processes;

12. Enter into interstate partnerships to develop the solar energy industry, solar energy projects, and energy storage projects;

13. Collaborate with entities, including institutions of higher education, to increase the training and development of the workforce needed by the solar and energy storage industries in the Commonwealth, including industry-recognized credentials and certifications;

14. Conduct any other activities as may seem appropriate to increase solar energy generation in the Commonwealth and the associated jobs and economic development and competitiveness benefits, including assisting investor-owned utilities in the planned deployment of at least 400 megawatts of solar energy projects in the Commonwealth by 2020 through entering into agreements in its discretion in any manner provided by law for the purpose of planning and providing for the financing or assisting in the financing of the construction or purchase of such solar energy projects authorized pursuant to § 56-585.1;

15. Promote collaborative efforts among the Commonwealth's public and private institutions of higher education in research, development, and commercialization efforts related to energy storage;

16. Monitor relevant developments in energy storage technology and deployment nationally and globally and disseminate relevant information and research results; and

17. Identify and work with the Commonwealth's industries and nonprofit partners in advancing efforts related to the development and commercialization of energy storage.

**§ 45.2-1907. (Expires July 1, 2025) Director; staff; counsel to the Authority.**

A. The Director shall serve as Director of the Authority and shall administer the affairs and business of the Authority in accordance with the provisions of this article and subject to the policies, control, and direction of the Authority. The Director may obtain non-state-funded support to carry out any duties assigned to the Director. Funding for such support may be provided by any source, public or private, for the purposes for which the Authority is established. The Director shall maintain and is custodian of all books, documents, and papers of or filed with the Authority. The Director may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that such copies are true copies, and any person dealing with the Authority may rely on such certificates. The Director also shall perform other duties prescribed by the Authority in carrying out the purposes of this article.

B. The Department shall serve as staff to the Authority.

C. The Office of the Attorney General shall provide counsel to the Authority.

**§ 45.2-1908. (Expires July 1, 2025) Annual report.**

On or before October 15 of each year, the Authority shall submit an annual summary of its activities and recommendations to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor.

**§ 45.2-1909. (Expires July 1, 2025) Confidentiality of information.**

A. The Authority shall hold in confidence the personal and financial information supplied to it or maintained by it concerning the siting and development of solar energy projects and energy storage projects.

B. Nothing in this section shall prohibit the Authority, in its discretion, from releasing any information that has been transformed into a statistical or aggregate form that does not allow the identification of the person who supplied particular information.

C. Information supplied by or maintained on any person or entity applying for or receiving an allocation of any federal loan guarantee, as well as specific information relating to the amount of, or the identity of the recipient of, such distribution, shall be subject to disclosure in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**§ 45.2-1910. (Expires July 1, 2025) Declaration of public purpose; exemption from taxation.**

A. The exercise of the powers granted by this article shall be in all respects for the benefit of the citizens of the Commonwealth and for the promotion of their welfare, convenience, and prosperity.

B. The Authority shall be deemed to be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the property of the Authority and its income and operations shall be exempt from taxation or assessments upon any property acquired or used by the Authority under the provisions of this article.

**§ 45.2-1911. Sunset.**

The provisions of this article shall expire on July 1, 2025.

Article 3.

Clean Energy Advisory Board.

**§ 45.2-1912. Definitions.**

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

"Board" means the Clean Energy Advisory Board created pursuant to § 45.2-1913.

"Fund" means the Low-to-Moderate Income Solar Loan and Rebate Fund created pursuant to § 45.2-1916.

"Program" means the Low-to-Moderate Income Solar Loan and Rebate Pilot Program created pursuant to § 45.2-1917.

**§ 45.2-1913. Clean Energy Advisory Board; purpose.**

The Clean Energy Advisory Board is established as an advisory board in the executive branch of state government. The purpose of the Board is to establish a pilot program for disbursing loans or rebates for the installation of solar energy infrastructure in low-income and moderate-income households.

**§ 45.2-1914. Membership; terms; quorum; meetings.**

A. The Board shall have a total membership of 17 members that shall consist of 16 nonlegislative citizen members and one ex officio member. Members may reside within or without the Commonwealth. Nonlegislative citizen members shall be appointed as follows:

1. Six nonlegislative citizen members to be appointed by the Speaker of the House of Delegates upon consideration of the recommendations of the Board of Directors of the Maryland-DC-Delaware-Virginia Solar Energy Industries Association (the MDV-SEIA Board) and the Governor's Advisory Council on Environmental Justice (the Council), one of whom shall be a designee of the Virginia Housing Development Authority, created pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36; one of whom shall be a rooftop solar energy professional or employer or representative of rooftop solar energy professionals; one of whom shall be a current or former member of the Council; one of whom shall be a member or representative of the Virginia, Maryland and Delaware Association of Electric Cooperatives (VMDAEC); one of whom shall be an expert with experience developing low-income or moderate-income incentive and loan programs for distributed renewable energy resources; and one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice dedicated to rural development, rural electrification, and energy policy;

2. Three nonlegislative citizen members to be appointed by the Senate Committee on Rules upon consideration of the recommendations of the MDV-SEIA Board, one of whom shall be a solar energy professional or employer or representative of solar energy professionals, one of whom shall work for or with an investor-owned electric utility company based in the Commonwealth, and one of whom shall be a member or representative of VMDAEC; and

3. Seven nonlegislative citizen members to be appointed by the Governor upon consideration of the recommendations of the MDV-SEIA Board and the Council and subject to confirmation by the General Assembly, one of whom shall be an attorney who is licensed to practice in the Commonwealth and maintains a legal practice in renewable energy law and transactions, one of whom shall be an attorney who is licensed to practice in the Commonwealth and specializes in tax law and energy transactions, one of whom shall be an attorney with the Division of Consumer Counsel created pursuant to the provisions of § 2.2-517, one of whom shall be an employee of a community development financial institution who specializes in impact investing, one of whom shall be a member of a Virginia environmental organization, and two of whom shall be designees of the Department of Housing and Community Development, created pursuant to the provisions of Chapter 8 (§ 36-131 et seq.) of Title 36.

B. The Director or his designee shall serve ex officio with voting privileges and shall assist in convening the meetings of the Board.

C. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth. The ex officio member of the Board shall serve a term coincident with his term of office. Nonlegislative citizen members shall be appointed for a term of three years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

D. The Board shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.

**§ 45.2-1915. Powers and duties of the Board; report.**

The Board has the powers and duties to:

1. Advise the Director on the management of the Fund pursuant to the provisions of § 45.2-1916;

2. Develop, establish, and operate, with the approval of the Director, the Program pursuant to the provisions of § 45.2-1917;

3. Advise the Director on the possibility of working with a community development financial institution or other financial institutions to further the purposes of the Program;

4. Advise the Director on the distribution of moneys in the Fund in the form of loans or rebates pursuant to the provisions of § 45.2-1917; and

5. Submit to the Governor and the General Assembly an annual report for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be

submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

**§ 45.2-1916. Low-to-Moderate Income Solar Loan and Rebate Fund.**

There is hereby established in the state treasury a special nonreverting fund to be known as the Low-to-Moderate Income Solar Loan and Rebate Fund. The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of extending loans or paying rebates to electric customers who complete solar installations or energy efficiency improvements pursuant to the provisions of § 45.2-1917. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**§ 45.2-1917. Low-to-Moderate Income Solar Loan and Rebate Pilot Program.**

A. The Board, with the approval of the Director, shall develop and establish a Low-to-Moderate Income Solar Loan and Rebate Pilot Program and rules for the loan or rebate application process. The Program shall be open to any Virginia resident whose household income is at or below 80 percent of the state median income or regional median income, whichever is greater. The Program shall allow only one loan per residence, irrespective of the ownership of the solar energy system that is installed. Such loan shall be available only for a solar installation or energy efficiency improvements pursuant to the provisions of Chapter 1.2 (§ 36-55.24 et seq.) of Title 36.

B. The Board shall accept an application only from the installer of the solar installation or the agent of the customer.

Each application shall include (i) 12 months of the customer's utility bills prior to installation of the solar energy system and an agreement to provide 12 months of utility bills to the Board following the installation; (ii) the customer's permission for the Director to (a) create a customer profile for the customer if he becomes an eligible loan or rebate customer, (b) aggregate the data provided by such eligible loan or rebate customers, and (c) use such aggregate data for the purpose of lowering energy costs and implementing effective programs; (iii) evidence of the completion of a home performance audit, conducted by a qualified local weatherization service provider, before and after installation of energy efficiency services such as lighting or insulation improvements, attic tents, weatherization, air sealing of openings in the building envelope, sealing of ducts, or thermostat upgrades, to demonstrate that such energy efficiency services were completed and resulted in a reduction in consumption of at least 12 percent; and (iv) an affidavit attesting to the receipt of a public benefit at the time the solar energy system is to be installed.

C. The Board shall review each application submitted to it on a first-come, first-served basis and shall recommend to the Director the approval or denial of each such application within 30 days of receipt. If the Director approves an application, he shall hold a reservation of funds for as long as 180 days for final loan or rebate claim and disbursement.

D. A customer whose application is approved may install an energy system that is interconnected pursuant to the provisions of § 56-594 or any section in Title 56 that addresses net energy metering provisions for electric cooperative service territories.

E. All of the work of installing the energy system shall be completed by a licensed contractor that (i) possesses an Alternative Energy System (AES) Contracting specialty as defined by the Board for Contractors pursuant to the provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1; (ii) possesses certification for solar installation from the North American Board of Certified Energy Practitioners, Solar Energy International, Roof Integrated Solar Energy, or a similar installer certification program; (iii) possesses a rating of "A" or higher from the local Better Business Bureau; and (iv) has installed a minimum of 150 net-metered residential solar systems in the Commonwealth. If the work of installing the solar energy system requires electrical work, such work shall be completed by an electrical contractor licensed by the Department of Professional and Occupational Regulation. All photovoltaic panels, inverters, and other electrical apparatus used in the solar energy system shall be tested and certified by a federal Occupational Safety and Health Administration Nationally Recognized Testing Laboratory such as UL LLC and installed in compliance with manufacturer specifications and all applicable building and electrical codes.

F. The customer or the installer, acting on behalf of the customer, shall submit any loan or rebate claim within 90 days of completion of the installation of the solar energy system, with completion deemed to have occurred once the solar energy system's bi-directional meter or net meter, or the respective utility's revenue grade meter, has been installed and the system has been electrified. Each rebate claim shall include, at a minimum, a date of system electrification and a time-stamped and date-stamped verification of (i) bi-directional net meter delivery or (ii) the operation of a compatible programmed smart meter capable of tracking net metering activity.

G. The Director shall review and approve or deny a loan or rebate claim within 60 days of receipt and shall provide a written explanation of each denial to the respective claimant. The Director shall disburse from the Fund created pursuant to § 45.2-1916 the loan or rebate for each approved claim within 60 days of its receipt of the claim and according to the order in which its respective application was approved. Any rebate or grant shall be in the amount of no more than \$2 per DC watt for up to six kilowatts of solar capacity installed. The customer may use a rebate in addition to any federal tax credits or state incentives or enhancements earned for the same solar installation.

CHAPTER 20.  
GEOHERMAL ENERGY.

Article 1.

General Provisions.

**§ 45.2-2000. Definitions.**

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

"Board" means the State Water Control Board.

"Correlative right" means the right of each geothermal owner in a geothermal system to produce without waste his just and equitable share of the geothermal resources in the geothermal system.

"Geothermal energy" means the usable energy that is produced or that can be produced from a geothermal resource.

"Geothermal resource" means the natural heat of the earth and the energy, in whatever form, that is present in, associated with, or created by, or that may be extracted from, such natural heat, as determined by the regulations of the Department.

"Geothermal system" means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources.

**§ 45.2-2001. Application.**

The provisions of this chapter regarding (i) permitting, well regulations, reservoir management, and allocation apply to geothermal resources at temperatures above the minimum temperature set forth by the Department pursuant to § 45.2-2004 and (ii) leasing requirements, royalties, or severance taxes apply to geothermal resource applications producing more than the volumetric rate set forth by the Department pursuant to § 45.2-2004.

**§ 45.2-2002. Ownership.**

Ownership rights to a geothermal resource are in the owner of the surface property underlain by the geothermal resource unless such rights have been otherwise explicitly reserved or conveyed. Nothing in this section shall divest the people or the Commonwealth of any rights, title, or interest they might have in any geothermal resource.

**§ 45.2-2003. Findings; clarification of nature of the resource.**

Geothermal resources are found and hereby declared to be sui generis, being neither mineral resources nor water resources. No mineral estate shall be construed to include geothermal resources unless such inclusion is explicit in the terms of the deed or other instrument of conveyance.

Article 2.

Resource Regulation.

**§ 45.2-2004. Powers and duties of the Department.**

A. The Department has jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and has the power and authority to make and enforce regulations and orders and do whatever is reasonably necessary to carry out the provisions of this chapter. Any regulations adopted by the Department pursuant to the provisions of this chapter shall be adopted in compliance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. The Department shall:

1. Consult with the Board in carrying out its powers and duties pursuant to the provisions of this chapter;

2. Develop a comprehensive geothermal permitting system for the Commonwealth that provides for the exploration and development of geothermal resources;

3. Adopt regulations necessary to provide for geothermal drilling and the exploration for and development of geothermal resources in the Commonwealth. Such regulations shall be based on a system of correlative rights;

4. Establish minimum temperature levels and volumetric rates in order to determine Department jurisdiction over geothermal resource development. In establishing such temperature levels, the Department shall set (i) minimum temperature levels for permitting, well regulations, reservoir management, and allocation of geothermal resources and (ii) minimum volumetric rates for geothermal leasing, royalties, and severance taxes, as necessary. The Department shall review established temperature level and volumetric rate requirements biennially and revise the figures as necessary. Revision of temperature levels or volumetric rate requirements shall not occur more often than every two years, and such revision shall not operate retroactively; and

5. Consult with the State Department of Health as necessary to protect potable waters of the Commonwealth and to carry out the powers and duties of the Department pursuant to the provisions of



this chapter.

**§ 45.2-2005. Reinjection policy.**

The Department, the Board, and the State Department of Health shall jointly develop and revise as necessary a policy on reinjection of spent geothermal fluids. Such policy shall refer to the reinjection into the ground of waters extracted from the earth in the process of geothermal development, production, or utilization.

**§ 45.2-2006. Cancellation or suspension of permit.**

If the Department determines, after a public hearing held in conjunction with the Board, that a holder of a permit issued pursuant to the provisions of this chapter has willfully violated any provision of such permit or any provision of this chapter, the Department may cancel or suspend such permit for cause or impose limitations on the future use thereof in order to prevent future violations.

**§ 45.2-2007. Penalties; injunctions.**

A. Any person who violates any provision of this chapter is guilty of a misdemeanor, punishable by a civil penalty of not less than \$10 or more than \$250 for each violation.

B. In addition, upon violation of any provision of this chapter or regulation of the Department adopted pursuant to this chapter, the Department may, either before or after the institution of proceedings pursuant to subsection A, institute a civil action in the circuit court where the well is located for injunctive relief to restrain the violation and for any other or further relief that the court deems proper.

**§ 45.2-2008. Judicial review.**

Any person aggrieved by a final decision of the Department pursuant to the provisions of § 45.2-2006 is entitled to judicial review of such final decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

CHAPTER 21.  
NUCLEAR ENERGY.

Article 1.

General Provisions.

**§ 45.2-2100. Definitions.**

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

"Authority" means the Virginia Nuclear Energy Consortium Authority established pursuant to this chapter.

"Board" means the board of directors of the Authority.

"Consortium" means the Virginia Nuclear Energy Consortium established by the Authority pursuant to § 45.2-2105.

"Member" means a member of the Consortium.

**§ 45.2-2101. Nuclear energy; strategic plan.**

A. The Department and the Secretaries of Commerce and Trade and Education shall work in coordination with the Authority, established pursuant to Article 2 (§ 45.2-2102), and the Virginia Economic Development Partnership Authority, established pursuant to Article 4 (§ 2.2-2234 et seq.) of Chapter 22 of Title 2.2, to develop a strategic plan for nuclear energy as part of the Commonwealth's overall goal of carbon-free energy.

B. Such plan may include (i) the promotion of new technologies and opportunities for innovation, including advanced manufacturing; (ii) the establishment of a collaborative research center and university nuclear leadership program to promote education in fields that meet the workforce demands of Virginia's nuclear industry; and (iii) recognition of the role of nuclear energy in the Commonwealth's goal of employing 100 percent carbon-free sources of energy by 2050.

C. Such plan shall be completed by October 1, 2020, updated every four years thereafter, and published on the Internet by the Authority.

Article 2.

Virginia Nuclear Energy Consortium Authority.

**§ 45.2-2102. Virginia Nuclear Energy Consortium Authority established.**

There is hereby established a political subdivision of the Commonwealth known as the Virginia Nuclear Energy Consortium Authority. The Authority's exercise of powers conferred by this article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

**§ 45.2-2103. Purposes; powers of Authority.**

A. The Authority is established for the purposes of making the Commonwealth a national and global leader in nuclear energy and serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues.

B. The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including the following rights, powers, and duties to:

1. Adopt, use, and alter at will a corporate seal;
2. Acquire, purchase, hold, use, lease, or otherwise dispose of property, real, personal, or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the

*Authority;*

3. *Adopt bylaws for the management and regulation of its affairs;*
4. *Develop and adopt a strategic plan for carrying out the purposes set out in this article;*
5. *Make and enter into any contract or agreement necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including an agreement with any person or federal agency;*
6. *Consult with the General Assembly; federal, state, and local agencies; nonprofit organizations; private industry; and other potential developers and users of nuclear energy;*
7. *Promote and facilitate agreements among public and private institutions of higher education in the Commonwealth and other research entities to carry out research projects relating to nuclear energy;*
8. *Disseminate information and research results;*
9. *Identify and support, in cooperation with Virginia's nuclear entities and the public and private sectors, the development of education programs related to Virginia's nuclear industry;*
10. *Provide for the establishment of the Consortium by the Board as provided in § 45.2-2105;*
11. *Develop a policy regarding any interest in intellectual property acquired or developed by the Consortium;*
12. *In order to fund and support the activities of the Authority and the Consortium, apply for, solicit, and accept from any source, including any agency of the federal government, the Commonwealth, or any other state; any locality or other political subdivision; any member; or any private corporation or other entity, (i) grants, including grants made available pursuant to federal legislation; (ii) aid; or (iii) contributions of money, property, or other things of value, which shall be held, used, and applied for the purposes set out by this chapter;*
13. *Facilitate the collaboration of members toward obtaining grants and expending funds in accomplishing the purposes set out by this chapter;*
14. *Encourage, facilitate, and support the application, commercialization, and transfer of new nuclear energy technologies;*
15. *Provide public information and communication about nuclear energy and related educational and job opportunities;*
16. *Provide advice, assistance, and services to institutions of higher education and to other persons providing services or facilities for nuclear research or graduate education;*
17. *Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's public institutions of higher education, private companies, federal laboratories, and not-for-profit organizations to accomplish the purposes set out by this chapter; and*
18. *Do all acts and things necessary or convenient to carry out the powers granted to it by law.*

**§ 45.2-2104. Board of the Authority.**

A. *The Authority shall be governed by a board of directors consisting of 17 members appointed as follows:*

1. *The Director or his designee;*
2. *The President and Chief Executive Officer of the Virginia Economic Development Partnership or his designee;*
3. *The Chancellor of the Virginia Community College System or his designee;*
4. *The President of Virginia Commonwealth University or his designee;*
5. *The President of the University of Virginia or his designee;*
6. *The President of Virginia Polytechnic Institute and State University or his designee;*
7. *The President of George Mason University or his designee;*
8. *Two individuals, each representing a single institution of higher education in the Commonwealth that is not already represented on the Board. At least one of the institutions shall be a private institution of higher education;*
9. *Six individuals, each representing a single business entity located in the Commonwealth that is engaged in activities directly related to the nuclear energy industry;*
10. *One individual representing a nuclear energy-related nonprofit organization; and*
11. *One individual representing a Commonwealth-based federal research laboratory.*

B. *The members of the Board described in subdivisions A 1 through 7 shall serve terms coincident with their terms of office.*

C. *The 10 members of the Board described in subdivisions A 8 through 11 shall be appointed by the Governor. After the initial staggering of terms, such members shall be appointed for terms of four years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. Members of the Board described in subdivisions A 8 through 11 may serve two successive terms on the Board.*

D. *Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation, or removal created the vacancy.*

E. *Meetings of the Board shall be held at the call of the chairman or any seven members. Nine members of the Board constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum*

is present is an act of the Board.

F. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

G. The Board shall annually elect from among its members a chairman, a vice-chairman, and a treasurer. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers, who need not be members of the Board, as it deems proper. The chairman, or in his absence the vice-chairman, shall preside at each meeting of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore who shall preside at such meeting.

H. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall forfeit his office or employment by reason of acceptance of membership on the Board or by providing service to the Authority or to the Consortium.

I. On or before November 15 of each year, the Authority shall submit its updated strategic plan, an annual summary of its activities, and recommendations for the support and expansion of the nuclear energy industry in Virginia to the Governor and the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance and Appropriations, the House Committee on Labor and Commerce, and the Senate Committee on Commerce and Labor.

**§ 45.2-2105. Establishment of the Consortium.**

A. The Board shall provide for the formation, by January 1, 2014, of a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, not organized for profit, that shall include in its name the words "Virginia Nuclear Energy Consortium" or some variation thereof that is approved by the Board.

B. The Consortium shall be established for the purpose of conducting activities useful in (i) making the Commonwealth a leader in nuclear energy; (ii) serving as an interdisciplinary study, research, and information resource for the Commonwealth on nuclear energy issues; and (iii) carrying out the provisions of this article, including raising money on behalf of the Authority in the corporate and nonprofit community and from other nonstate sources.

C. The membership of the Consortium shall be open to:

1. Public or private institutions of higher education in the Commonwealth;
2. Commonwealth-based federal research laboratories;
3. Nuclear energy-related nonprofit organizations;
4. Business entities with operating facilities located in the Commonwealth that are engaged in activities directly related to the nuclear energy industry; and
5. Other individuals or entities whose membership is approved by the board of directors of the Consortium through a process established by the bylaws of the Consortium.

D. The board of directors of the Consortium shall consist of members selected and approved by the Consortium pursuant to a process established by its bylaws.

E. The board of directors of the Consortium shall appoint an executive director to serve as the principal administrative officer of the Consortium. The executive director shall carry out the specific duties assigned to him by the board of directors and develop appropriate policies and procedures for the operation of the Consortium; employ persons and secure services as required to carry out the purposes of the Consortium; expend funds as authorized by the Authority; and accept moneys from federal or private sources on behalf of the Authority, including moneys contributed by Consortium members to the Authority, for cost-sharing on nuclear energy research or projects. The executive director and any other employee of the Consortium (i) shall be compensated in the manner provided by the board of directors of the Authority, (ii) shall not be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.), and (iii) shall not be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

F. The articles of incorporation of the Consortium shall provide that upon dissolution the net assets of the Consortium shall be transferred to the Authority.

G. The Consortium shall not be deemed to be a state or governmental agency, advisory agency, public body, or agency or instrumentality for purposes of Chapter 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24 (§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38 (§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§ 2.2-4600 et seq.), or 47 (§ 2.2-4700 et seq.) of Title 2.2, Chapter 14 (§ 30-130 et seq.) of Title 30, or Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1.

H. The board of directors of the Consortium shall adopt, alter, and repeal bylaws governing the manner in which its business shall be transacted and the manner in which the activities of the Consortium shall be conducted.

I. The Consortium shall report on all of its nonproprietary activities at least twice a year to the Authority.

**§ 45.2-2106. Moneys of Authority.**

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give

such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of such persons as the Authority authorizes to execute such warrants or orders.

**§ 45.2-2107. Audits; external reviews.**

A. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority. The audit report and any nonproprietary information provided to the auditor in connection with the audit shall be made available to the public, upon request, in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. The Authority, if it receives state funds, shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor.

Article 3.

Exploration for Uranium Ore.

**§ 45.2-2108. Definitions.**

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

"Exploration activity" means and is limited to the drilling of test holes or stratigraphic or core holes of a depth in excess of 50 feet for the purpose of determining the location, quantity, or quality of uranium ore.

"Person" means any individual, firm, corporation, partnership, association, or other legal entity.

"Usable quality water" means groundwater that is used or can be used for a beneficial purpose, including a domestic, livestock, or irrigation use.

**§ 45.2-2109. Regulations.**

The Director shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations as may be necessary and proper to carry out the provisions of this article.

**§ 45.2-2110. Permit for exploration activity required; fee.**

A. It is unlawful for any person to commence any exploration activity without first obtaining a permit to do so from the Director. The application for the permit shall be in a form the Director prescribes and shall be accompanied by a fee of \$250 and by any other information required by this article.

B. The application for a permit to carry out exploration activity shall be accompanied by a bond, payable to the Commonwealth, with surety acceptable to the Director. The bond shall ensure compliance with the provisions of this article and any regulations adopted hereunder relating to the drilling, redrilling, plugging, or abandoning of any exploration activity. The bond shall be set by the Director in an amount deemed reasonable and necessary.

C. An initial permit shall be valid for a period of one year and may be renewed annually.

**§ 45.2-2111. Maps or plats of proposed exploration activity area.**

Before undertaking any exploration activity on any tract of land, the person proposing the exploration activity shall prepare or have prepared and file with the Director, together with the application required by § 45.2-2110, an accurate map, on a scale stated thereon, showing the location of the proposed exploration activity; the courses and distances of such activity from two permanent points or landmarks on the tract; the approximate location areas in which test holes or core or stratigraphic holes may be drilled; the name of the owner; and boundaries and acreage of the tract on which the exploration activity is to take place.

**§ 45.2-2112. Abandoning exploration hole; affidavits required.**

Within 45 days after the abandonment of any exploration hole, the permittee shall notify the Director that such exploration hole has been plugged and abandoned, giving the location of the hole. The permittee shall submit an affidavit setting forth the time and manner in which the hole was plugged and filled. One copy of the affidavit shall be retained by the permittee, one shall be sent to the State Geologist, and the third shall be sent to the Director.

**§ 45.2-2113. Plugging.**

The plugging of an exploration hole shall be as follows:

1. Each exploration hole shall be adequately plugged with cement from the bottom of the hole upward to a point three feet below plow depth. The remainder of the hole between the top of the plug and the surface shall be filled with cuttings or nontoxic material.

2. If multiple aquifers alternating usable quality water and saltwater zones, or other conditions determined by the Director to be potentially deleterious to surface water or groundwater are encountered, the conditions shall be isolated immediately by cement plugs. Each hole shall be plugged with cement to prevent water from flowing into or out of the hole or mixing within the hole. The length of the plug shall be determined by the Director on the basis of available data on the specific site.

3. Each exploration hole shall be plugged as soon as reasonably practical after drilling, unless multiple aquifers are encountered.

4. Alternative plugging procedures and materials may be utilized if the applicant demonstrates to the Director's satisfaction that the alternatives will protect groundwater and comply with the provisions of this article. In the event that a hole is more suitably plugged with a nonporous material other than cement, the material shall have characteristics at least equal to cement.

5. In the event that an exploration hole is to remain unplugged pursuant to the provisions of § 45.2-2114, the procedure contained in subdivision 2, if applicable, shall be applied and the exploration hole shall be plugged to the extent required by that subdivision.

**§ 45.2-2114. Developing an exploration hole as a water well.**

If any exploration hole drilled for the purpose of determining the location, quantity, or quality of uranium ore indicates a stratum or source of potable fresh water that could be developed pursuant to established U.S. Environmental Protection Agency safe drinking water standards for a community water system, upon the request of the owner of the property on which the exploration hole is located and following application to and approval by the Director, who shall secure concurrence from the State Department of Health, the well, in lieu of being plugged and abandoned, may be developed and completed as a water well. The development and completion of an exploration hole as a water well shall be performed in accordance with applicable state water control laws and regulations.

**§ 45.2-2115. Right of inspection by Director.**

For the purposes of carrying out the provisions of this article, the Director is hereby vested with authority to inspect at reasonable times and in a reasonable manner any area for which he has received an application for a permit, or has granted a permit, for exploration activity.

**§ 45.2-2116. Uranium mining permit applications; uranium mining deemed to have significant effect on surface.**

Notwithstanding any other provision of law, no application for a uranium mining permit shall be accepted by any agency of the Commonwealth until a program for permitting uranium mining is established by statute. For the purpose of construing the definition of "mining" in § 45.2-1200, uranium mining is deemed to have a significant effect on the surface.

**§ 45.2-2117. State and local authority.**

Nothing in this article shall be construed to alter the authority of any state or local governing body, including any authority conferred under Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2, relating to any matter that is the subject of this article.

**§ 45.2-2118. Confidentiality of logs, surveys, and reports.**

A. The Director shall hold confidential all logs, surveys, plats, and reports filed under this article by any person engaged in the exploration for uranium for a period of two years after the completion of the exploratory activities.

B. Upon written request by any person engaged in exploration for uranium, the Director shall hold confidential all logs, surveys, plats, and reports filed under this chapter for an additional two-year period. The Director shall grant such request if the requesting party certifies that he considers all such information to be of a proprietary nature relating to his competitive rights. The requesting party may renew his request every two years.

C. Nothing in this section shall be construed to deny the State Geologist access to any log, survey, plat, or report filed under this article. However, the State Geologist shall hold such information confidential to the same extent as the Director.

**§ 45.2-2119. Civil penalty.**

A. Any person who violates any provision of this article, or who fails, neglects, or refuses to comply with any regulation adopted by the Director or final order of a court lawfully issued, shall be subject to a civil penalty not to exceed \$10,000 for each violation. Each day of violation shall constitute a separate offense. All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Minerals Reclamation Fund pursuant to § 45.2-1234.

B. The Director may restrain violations of this article in accordance with the provisions of § 45.2-1608.

**§ 55.1-1820.1. Installation of solar energy collection devices.**

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any disclosure packet pursuant to § 55.1-1809 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable

according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**§ 55.1-1951.1. Installation of solar energy collection devices.**

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No unit owners' association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the unit owners' association establishes such a prohibition. However, a unit owners' association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-1990 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the unit owners' association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The unit owners' association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the unit owners' association. A unit owners' association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**§ 55.1-2133.1. Installation of solar energy collection devices.**

A. As used in this section, "solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

B. No association shall prohibit an owner from installing a solar energy collection device on that owner's property unless the recorded declaration for the association establishes such a prohibition. However, an association may establish reasonable restrictions concerning the size, place, and manner of placement of such solar energy collection devices on property designated and intended for individual ownership and use. Any resale certificate pursuant to § 55.1-2161 given to a purchaser shall contain a statement setting forth any restriction, limitation, or prohibition on the right of an owner to install or use solar energy collection devices on his property.

C. A restriction shall be deemed not to be reasonable if application of the restriction to a particular proposal (i) increases the cost of installation of the solar energy collection device by five percent over the projected cost of the initially proposed installation or (ii) reduces the energy production by the solar energy collection device by 10 percent below the projected energy production of the initially proposed installation. The owner shall provide documentation prepared by an independent solar panel design specialist, who is certified by the North American Board of Certified Energy Practitioners and is licensed in Virginia, that is satisfactory to the association to show that the restriction is not reasonable according to the criteria established in this subsection.

D. The association may prohibit or restrict the installation of solar energy collection devices on the common elements or common area within the real estate development served by the association. An association may establish reasonable restrictions as to the number, size, place, and manner of placement or installation of any solar energy collection device installed on the common elements or common area.

**CHAPTER 29.**

**RENEWABLE ENERGY CO-LOCATION OF DISTRIBUTION FACILITIES.**

**§ 56-614. Definitions.**

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

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

"Locality" means the same as that term is defined in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the primary state highway system as defined in

§ 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § 56-576.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time, and location of excavations and repair work; enforcement of the statewide building code; and inspections but does not include any existing franchise fee or public rights-of-way use fee.

**§ 56-615. Right to occupy rights-of-way; location of rights-of-way.**

A. Every renewable generator shall have authority to occupy and use the public roads, works, turnpikes, streets, avenues, and alleys in any county, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within the Commonwealth, with the consent of the Marine Resources Commission, for the erection of distribution facilities. However, if the road or street is in the primary state highway system or the secondary state highway system, the consent of the board of supervisors or other governing authority of any county shall not be necessary, provided that a permit for such occupation and use is first obtained from the Department of Transportation. The use of any road or street in the primary state highway system or secondary state highway system that has been designated a limited access highway in accordance with § 33.2-401 shall not be permitted, unless the Department of Transportation approves an exception in accordance with the then-current policy.

B. Neither a locality nor the Department of Transportation shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 56-617.

C. Neither a locality nor the Department of Transportation shall impose on renewable generators, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Department of Transportation of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. Neither a locality receiving directly or indirectly a public rights-of-way use fee nor the Department of Transportation shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. This chapter shall not affect the obligation of the Department of Transportation to give notice, pursuant to § 33.2-272, to localities when it grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way.

**§ 56-616. Occupation of property of certain localities; imposition of terms and conditions as to use of property.**

A. Any incorporated city or town may impose upon a renewable generator any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its streets, avenues, and alleys, and as to the construction and maintenance of the distribution facilities of the renewable generator along, over, or under the same, that the city or town may deem expedient and proper.

B. No locality shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 56-617.

C. No locality shall impose on a renewable generator, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair

or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. A renewable generator shall have the same rights, duties, and responsibilities related to the crossing of a railroad as afforded other public service corporations in §§ 56-12, 56-17 through 56-22, 56-25, 56-26, and 56-27. Nothing in this chapter shall expand the rights of renewable generators to either cross or otherwise have access to railroad property to an extent greater than that afforded other public service corporations in this title.

**§ 56-617. Public rights-of-way use fee.**

A. Notwithstanding any other provisions of law, there is hereby established a public rights-of-way use fee to be charged in lieu of any and all fees of general application, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise chargeable to a renewable generator by the Department of Transportation or a locality in connection with a permit for such occupation and use granted in accordance with § 56-615 or 56-616. The public rights-of-way use fee established by this section is imposed on all renewable generators that occupy and use public rights-of-way in order to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas to customers or to a natural gas distribution or transmission pipeline.

B. The amount of the public rights-of-way use fee for a renewable generator shall be \$1,500 per mile or any portion thereof over which the renewable generator has installed distribution facilities.

C. A renewable generator shall remit its required public rights-of-way use fee to the locality or the Department of Transportation, as applicable, prior to initiation of construction, as follows:

1. The renewable generator shall remit directly to the applicable locality all public rights-of-way use fees billed in (i) cities, (ii) towns whose public streets and roads are not maintained by the Department of Transportation, and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return.

2. The public rights-of-way use fees in all other counties shall be remitted by each renewable generator to the Department of Transportation, and shall first be used to offset the administrative costs of processing the permit with the remaining fee being added to the secondary system construction improvement program funds of the counties where the facilities are located.

**§ 56-618. Reimbursement for relocation costs.**

A. Renewable generators shall be reimbursed 100 percent of the eligible cost of relocating distribution facilities installed in the public rights-of-way, for the first three years after the completion of the installation, that are incurred at the direction of a locality that imposes by ordinance the public rights-of-way use fee or the Department of Transportation in any public rights-of-way in accordance with §§ 56-458 and 56-462. For the fourth through sixth year after the completion of the installation, the renewable generator shall be reimbursed 50 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way. Beginning in the seventh year, the renewable generators shall be responsible for the cost of relocating facilities installed in the public rights-of-way. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the primary state highway system or the secondary state highway system.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of public rights-of-way use fees received by that locality or the Department of Transportation from the renewable generator required to relocate its distribution facilities.

**§ 56-619. Relocation of lines or works of renewable generator acquired by Commonwealth Transportation Board.**

Whenever a renewable generator is required by the Commonwealth Transportation Board or the Commissioner of Highways to remove any part of its distribution facilities off of the right-of-way of a road now or hereafter included in the primary or secondary state highway system, or if any right-of-way, property, or interest therein used and occupied by the renewable generator with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board or the Commissioner of Highways for the uses of the primary or secondary state highway system, or if the renewable generator is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of the primary or secondary state highway system, the



renewable generator shall relocate its lines or works, or the part or parts thereof affected.

**§ 56-620. How consent of appropriate authorities obtained; terms of use.**

The consent required under § 56-615, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county in which such line is to be located, or, if such permission is to be given by the Commissioner of Highways or his designee, through the issuance of a land use permit. Such use of the public roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of the Commonwealth shall be subject to such terms, regulations, and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county, except that if the road or street is in the primary or secondary state highway system, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations, and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

**§ 56-621. Cost to Commonwealth in connection with inspection and coordination of construction of line to be paid by renewable generator.**

The actual costs and expenses of the Commonwealth for the inspection or coordination of the construction or installation of any of the distribution facilities of the renewable generator, under the provisions of this chapter, under any permit of the Commonwealth Transportation Board shall be borne by the renewable generator. The sum of the payment required by this section shall be paid to the Department of Transportation within 30 days from the receipt of a progress or final bill from the Department of Transportation.

**§ 56-622. Renewable generator may contract for right-of-way.**

A renewable generator may contract with any person that owns lands, or any interest, franchise, privilege, or easement therein or in respect thereto, over which distribution facilities are proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its poles and other structures necessary for operating its facilities, and for sufficient land for the erection and occupation of offices at suitable distances along its distribution facilities.

**§ 56-623. Construction of transmission facilities.**

All posts, poles, wires, cables, lines, pipelines, conduits, and other distribution facilities erected under any authority conferred by this chapter shall be so located as in no way to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the public roads, turnpikes, streets, avenues, alleys, railroads, or waters in or upon which the same may be erected. All distribution facilities erected as aforesaid shall be placed at such height as provided by regulations of the Commission or the Commonwealth Transportation Board. Buried distribution facilities shall be laid at such distance below the surface of any public road, turnpike, street, avenue, or alley, and at such distance from the outside of any gas or water main or other conduit already laid under such public road, turnpike, street, avenue, or alley, as prescribed by regulations of the Commission or by the Commonwealth Transportation Board. No distribution facilities shall be strung across or laid, nor posts or poles erected, upon the property of any person without first obtaining the consent of the owner thereof. Such distribution facilities shall not damage private property without compensation therefor, nor in any way obstruct the navigation of any stream, or impair or endanger the use thereof by the public or any other person entitled to the use of the same. In consideration of co-locating on existing rights of way, the renewable generator shall meet the respective safety and clearance standards of the public service corporation including the National Electrical Safety Code, the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.), gas pipeline safety standards pursuant to § 56-257.2, and the public service corporation's own safety and clearance standards as the same are communicated to the renewable generator in writing, and any applicable federal laws and regulations.

**§ 56-624. Restoring condition of ground.**

The portions of the surface of the roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying, or replacing distribution facilities under the provisions of this chapter shall be immediately restored to and maintained in good condition by the renewable generator doing such work. In case of the failure of the renewable generator to restore and maintain the same, the corporate authorities of the city or town, or the board of supervisors or other governing authority of the county, or the Commissioner of Highways, as the case may be, may properly restore and maintain the same, and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from the renewable generator, in any court of proper jurisdiction.

**2. That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 45.1, Title 67, or any other title of the Code of Virginia as such title existed prior to October 1, 2021, are transferred in the same or modified form to a new section or chapter of Title 45.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 45.2 or any other title, all references to any such former**

section or chapter of Title 45.1, Title 67, or any other title appearing in the Code of Virginia shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.

3. That the regulations of any department or agency affected by the revision of Title 45.1 or such other titles of the Code of Virginia as are in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.

4. That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 45.1 and repeal of Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia so as to give effect to other laws enacted by the 2021 Session of the General Assembly, notwithstanding the delay in the effective date of this act.

5. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect any act or offense done or committed, any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that date. Except as otherwise provided in this act, neither the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), § 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, nor the enactment of Title 45.2 shall apply to offenses committed prior to October 1, 2021, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2021, if any of the essential elements of the offense occurred prior thereto.

6. That any notice given, recognizance taken, or process or writ issued before October 1, 2021, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 45.2 had been effective before the same was given, taken, or issued.

7. That if any clause, sentence, paragraph, subdivision, or section of Title 45.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 45.2 are declared severable.

8. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.

9. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.

10. That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.

11. That Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia are repealed.

12. That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2021, shall be made in accordance with the provisions of this act.

13. That the provisions of this act shall become effective on October 1, 2021.