

VIRGINIA MINERAL MINE RECLAMATION LAWS AND REGULATIONS

2022 EDITION



Issued by
Department of Energy



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Reclamation Laws Reprinted from the Code of Virginia
and the 2022 Supplement

Reclamation Regulations Reprinted from the Virginia Administrative Code
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MINERAL MINE RECLAMATION LAWS OF VIRGINIA

TITLE 45.1.

MINES AND MINING.

Section

45.1-1 through 45.1-400.

§§ 45.1-1 through 45.1-400.

Repealed by Acts 2021, Sp. Sess. I, c. 387, cl. 11, effective October 1, 2021.

Cross references.

For present provisions as to Mines and Mining, see Title 45.2 (§ 45.2-100 et seq.).

Editor's note.

Acts 2021, Sp. Sess. I, c. 387 repealed and recodified former Titles 45.1 and 67 as Title 45.2. Where appropriate, the historical citations to former sections have been added to corresponding new sections.

At its 1966 session the General Assembly, by Acts 1966, c. 594, repealed Title 45 and enacted

in its place a new Title 45.1, comprising Chapters 1 (§ 45.1-1.1 et seq.) through 14 (§ 45.1-158 et seq.). Former Chapter 15 (§§ 45.1-162 through 45.1-179), also enacted at the 1966 session of the General Assembly, was codified in this title by the Virginia Code Commission.

Acts 1984, c. 590, which added Article 1 of Chapter 1 and Chapters 25 and 26 and enacted, amended, and repealed other sections of Title 45.1, are effective Jan. 1, 1985.

Chapters 1 through 14 of Title 45.1 were previously repealed by Acts 1994, c. 28.

TITLE 45.2.
MINES, MINERALS, AND ENERGY.

SUBTITLE I.
ADMINISTRATION.

CHAPTER 1.
ADMINISTRATION.

Article 1. Department of Energy.

Section

- 45.2-100. Definitions.
- 45.2-101. Certified mail; subsequent mail or notices may be sent by regular mail.
- 45.2-102. Department of Energy; appointment of Director.
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- 45.2-113. Immunity from prosecution for trespass.

Article 1.
Department of 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 Energy.

“*Department*” means the Department of Energy.

“*Director*” means the Director of the Department of Energy.

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

History.

1984, c. 590, § 45.1-1.2; 1994, c. 28, § 45.1-161.1; 2021, Sp. Sess. I, cc. 387, 532.

Transition provisions.

Acts 2021, Sp. Sess. I, c. 387 recodified former Titles 45.1 and 67 as Title 45.2. Where appro-

appropriate, the historical citations to former sections have been added to corresponding new sections. The case notes appearing under new sections were decided under corresponding former sections or under prior law. In addition to revision by Acts 2021, Sp. Sess. I, c. 387, Titles 45.1 and 67, were also amended by other acts passed at the 2021 Regular and Special Session I. As required by § 30-152, the Virginia Code Commission has incorporated the majority of these amendments into the new sections.

Acts 2021, Sp. Sess. I, c. 387, cl. 2 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 3 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 4 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 5 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 6 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 7 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 8 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 9 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 10 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 12 provides: “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.”

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.1 from which this section is derived. Pursuant to § 30-152, the 2021, Sp. Sess. I amendments have been given effect in this section by substituting “Department of Energy” for “Department of Mines, Minerals and Energy” throughout the section.

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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.

History.

2011, c. 566, § 45.1-161.1:1; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 45.2-102. Department of Energy; appointment of Director.

The Department of 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.

History.

1984, c. 590, § 45.1-1.1; 1994, c. 28, § 45.1-161.2; 2021, Sp. Sess. I, cc. 387, 532.

the amendment by c. 532 has been given effect in this section by substituting “Department of Energy” for “Department of Mines, Minerals and Energy.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.2 from which this section is derived. Pursuant to § 30-152,

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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.

History.

1984, c. 590, § 45.1-1.3; 1994, c. 28, § 45.1-161.3; 2014, c. 145; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1984, c. 590, § 45.1-1.4; 1994, c. 28, § 45.1-161.4; 2021, Sp. Sess. I, c. 387.

Editor's note.

Acts 2020, c. 973, cl. 1 provides: "That the Department of Mines, Minerals and Energy shall, in cooperation with the Department of Environmental Quality, the Department of Taxation, and the Department of Motor Vehicles, convene a working group to determine the feasibility of an electric vehicle rebate program. Other relevant stakeholders, including (i) automobile manufacturers, (ii) motor vehicle dealers, (iii) electric vehicle charging network representatives, (iv) electric vehicle manufacturers, (v) environmental organizations, and (vi) energy utility organizations, shall be invited to participate in such working group. Such working group shall (a) review potential methods of structuring and administering an electric vehicle rebate program, (b) review funding opportunities available to facilitate

such a rebate, (c) evaluate the vehicle sales data in states in which an electric vehicle rebate program has been implemented before and after such implementation, and (d) determine the ideal metrics for an electric vehicle rebate program. Any recommendations issued by such working group shall be guided by the following parameters: (1) no program shall authorize rebates of more than \$4,500 for individual consumer purchases of qualified zero-emission vehicles; (2) the program may include incentives for individuals with an income below 300 percent of the federal poverty guidelines; (3) the program shall allow both online and paper applications; and (4) the program, if properly funded, will be operational no later than December 30, 2021. The working group shall issue a report on the work completed by the working group and the recommendations of the working group to the General Assembly by November 1, 2020."

Effective date.

This section is effective October 1, 2021.

§ 45.2-104.1. Appointment of Chief Clean Energy Policy Advisor.

The Chief Clean Energy Policy Advisor shall be appointed by the Governor and shall be under the direction of and report to the Director.

History.

2021, Sp. Sess. I, c. 532.

Editor's note.

Acts 2021, Sp. Sess. I, c. 532, effective Octo-

ber 1, 2021, enacted § 45.1-161.4:1 from which this section is derived. Pursuant to § 30-152, the enactment by c. 532 has been given effect as this section.

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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 Repurposing, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, a Division of Renewable Energy and Energy Efficiency, and a Division of Offshore Wind. The Director may establish other divisions as he deems necessary. 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.

History.

1984, c. 590, § 45.1-1.5; 1990, c. 92; 1994, c. 28, § 45.1-161.5; 2008, c. 369; 2020, c. 794; 2021, Sp. Sess. I, cc. 387, 532.

in this section by substituting “Repurposing” for “Reclamation,” “Division of Renewable Energy and Energy Efficiency” for “Division of Energy” and “The Director” for “Except as provided in § 45.1-161.15 with respect to the Chief of the Division of Mines, the Director.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.5 from which this section is derived. Pursuant to § 30-152, the amendment by c. 532 has been given effect

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

OPINIONS OF THE ATTORNEY GENERAL

Compulsory pooling orders. —The Virginia Gas and Oil Board may issue compulsory pooling orders that permit deduction of post-production costs downstream of the wellhead when computing gas owners’ one-eighth royalty

interests. See opinion of Attorney General to Bradley C. Lambert, Chairman, Virginia Gas & Oil Board, Department of Mines, Minerals and Energy, 09-018, 2009 Va. AG LEXIS 26 (6/10/09).

§ 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.

History.

1984, c. 188, § 45.1-1.9; 1994, c. 28, § 45.1-161.6; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

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.

History.

1984, c. 590, § 45.1-383; 2008, c. 369; 2021, Sp. Sess. I, c. 387.

Editor's note.

Acts 1984, c. 590, cl. 3 provides: "That no provision of this act shall be construed as authorizing or establishing a program for the permitting of uranium mining."

Acts 1984, c. 590, cl. 5 provides: "That the Department of Mines, Minerals and Energy shall be deemed the successor in interest to the Division of Mined Land Reclamation and the Division of Mineral Resources [now the Division of Geology and Mineral Resources] in the Department of Conservation and Economic Development, the Division of Mines in the Department of Labor and Industry, and the State

Energy Office in the Office of Emergency Services [now Department of Emergency Management] to the extent that this act transfers powers and duties. All rightful title to and interest in any real or tangible personal property or records vested in those existing agencies shall be transferred to and taken as standing in the name of the Department of Mines, Minerals and Energy to the extent that this act transfers powers and duties."

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

Acts 2021, Sp. Sess. I, c. 532, amended § 45.1-383, from which this section is derived. Since the amendments had been incorporated by Acts 2021, Sp. Sess. I, c. 387, the amendments by c. 532 were not given effect.

§ 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.

History.

1984, c. 590, § 45.1-384; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1984, c. 590, § 45.1-385; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1984, c. 590, § 45.1-386; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

§ 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.

History.

1984, c. 590, § 45.1-387; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

§ 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.

History.

1984, c. 590, § 45.1-388; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

§ 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.

History.

1984, c. 590, § 45.1-389; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

Editor’s note.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

CHAPTER 4.

PRESUMPTIONS REGARDING OWNERSHIP.

Section

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

45.2-401. Actions to extinguish certain claims.

45.2-402. Presumption regarding use of underground space.

§ 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.

History.

1924, p. 719; 1930, p. 721; Michie Code 1942, § 6239a; 1944, p. 48; Code 1950, § 55-154; 1956, c. 642; 1964, c. 377; 1968, c. 319; 1970, c. 350; 1972, c. 306; 1973, c. 123; 1974, c. 238; 1977, c. 309; 1980, c. 310; 1981, c. 518; 1984, c. 452; 2019, c. 712, § 45.1-161.311-9; 2021, Sp. Sess. I, c. 387.

Editor's note.

Act 2019, cc. 712, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2019."

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

CASE NOTES

I. DECIDED UNDER PRIOR LAW.

Constitutionality. —This section is not special, local, private, and, therefore, arbitrary in its classification and operation. The legislation is general and impartial in its operation on all persons and lands similarly situated. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

The fact that a law applies only to certain territorial districts does not render it unconstitutional, provided it applies to all districts and all persons who are similarly situated, and to all parts of the State where like conditions exist. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

Exceptions to provision that presumption does not apply west of Blue Ridge are

unconstitutional. —Those provisions in this section which create exceptions to the general provision that the presumption concerning extinguishing mineral rights does not apply west of the Blue Ridge are unconstitutional, as a circuitous and disingenuous means of designating and providing local legislation. *Riddleberger v. Chesapeake W. Ry.*, 229 Va. 213, 327 S.E.2d 663 (1985).

This section is a procedural statute of a remedial nature. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

It is a statute of repose and limitation, founded upon a rule of convenience, policy and regard for the security of property. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

And it provides a rule of evidence for

setting at rest titles to land when its value is reduced because of a reservation of nonexisting values therein. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

This section was not intended to destroy or impair any ownership in existing property. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

And it takes nothing from anyone if the facts and circumstances establish the nonexistence of anything of value. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

Court may not find to contrary. —This section clearly implies that a court may not find to the contrary if there be any minerals or mineral substances of value actually in or on the land. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

§ 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.

History.

1924, p. 720; 1930, p. 721; Michie Code 1942, § 6239a; 1944, p. 49; Code 1950, § 55-155; 1977, c. 624; 2019, c. 712, § 45.1-161.311:11; 2021, Sp. Sess. I, c. 387.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

Editor's note.

Acts 2019, c. 712, recodified former § 55-155 as this section, effective October 1, 2019.

§ 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.

History.

1981, c. 291, § 55-154.2; 2012, c. 695; 2019, c. 712, § 45.1-161.311:10; 2021, Sp. Sess. I, c. 387.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

Editor's note.

Acts 2019, c. 712, recodified former § 55-154.2 as this section, effective October 1, 2019.

CASE NOTES

No retrospective application. —Presumption of mine void ownership did not apply to deeds executed before July 1, 1981, because

nothing in the statutory language indicated a manifest legislative intent to retroactively apply the presumption of mine void ownership to

deeds executed before the date the statute was enacted. *Bailey v. Spangler*, 289 Va. 353, 771 S.E.2d 684 (2015) (decided under prior law).

**SUBTITLE III.
MINERAL MINES.**

**PART A.
MINERAL MINES GENERALLY.**

**CHAPTER 12.
PERMITS FOR CERTAIN MINING OPERATIONS;
RECLAMATION OF LAND.**

Article 1. General Provisions.

Section

- 45.2-1200. Definitions.
- 45.2-1201. Construction of chapter.
- 45.2-1202. Authority of Director; enforcement of chapter by injunction.
- 45.2-1203. Exemption for restricted mining.

Article 2. Regulation of Mining Activity.

- 45.2-1204. Permit Fee Fund.
- 45.2-1205. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department.
- 45.2-1206. Operations plan; reclamation; policy of Director.
- 45.2-1207. Special Reclamation Fund.
- 45.2-1208. Bond of operator.
- 45.2-1209. Review of operations plan and reclamation provision by Director; issuance of permit.
- 45.2-1210. Application for permit; adjoining landowners; local official.
- 45.2-1211. Succession of one operator by another at uncompleted project.
- 45.2-1212. Additional bond to be posted annually; release of previous bond; report of reclamation work.
- 45.2-1213. Notice of noncompliance served on operator.
- 45.2-1214. Collection of debts.
- 45.2-1215. Commonwealth to have lien for reclamation work.
- 45.2-1216. Perfection of lien; waiver of lien.
- 45.2-1217. Recordation and indexing of lien; notice.
- 45.2-1218. Priority of lien.
- 45.2-1219. Hearing to determine amount of lien.
- 45.2-1220. Satisfaction of lien.
- 45.2-1221. Additional bond to cover amended estimate of land to be disturbed.
- 45.2-1222. Interference with reclamation unlawful; other mining operations on land.
- 45.2-1223. Penalty for violation of chapter, etc.
- 45.2-1224. Assistance of federal, state, and local agencies.
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Section

45.2-1226. Appeals from decisions of the Department.

45.2-1227. Local standards and regulations; waiver of application of chapter; review for strict compliance with chapter.

Article 3. Orphaned Lands.

45.2-1228. Orphaned Lands Reclamation Fund.

45.2-1229. Survey; priorities for reclamation.

45.2-1230. Agreements with owners or lessees; reclamation by Director.

45.2-1231. Contracts for reclamation.

45.2-1232. Acceptance of federal funds, gifts, etc.

Article 4. Minerals Reclamation Fund.

45.2-1233. Definition.

45.2-1234. Minerals Reclamation Fund.

45.2-1235. Membership in Fund; payments required.

45.2-1236. Release of bonds and other securities.

45.2-1237. Return of member payments.

45.2-1238. Revocation of permits; reclamation work.

45.2-1239. Collection of debt where cost of reclamation exceeds member's forfeited payments, etc.

45.2-1240. Decreases in size of Fund.

45.2-1241. Order of return of payments.

45.2-1242. Discontinuance of Fund.

45.2-1243. Construction of article; Fund used solely for reclamation.

Article 1.

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.

History.

1968, c. 734, § 45.1-180; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Cross references.

As to unlawful use of subaqueous beds, and penalty therefor, see § 28.2-1203.

Editor’s note.

This section was amended by Acts 1973, c. 471. The 1973 act, which was made effective July 1, 1974, and provided that it should expire

at midnight on that date unless earlier reenacted, was repealed by Acts 1974, c. 96, effective March 22, 1974, and therefore never went into effect.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-180 from which this section is derived. Since the amendment had already been incorporated in this section by Acts 2021, Sp. Sess. I, c. 387, the amendment by c. 532 was not given effect.

CASE NOTES

Legislative intent. —Examination of the definitions contained within this section plainly shows that the legislature did not intend to regulate the removal of dirt or soil. Commonwealth Dep’t of Mines, Minerals & Energy v. May Bros., 11 Va. App. 115, 396 S.E.2d 695, 7 Va. Law Rep. 499 (1990).

Sand is a mineral under Virginia law. Grant v. Rose (In re Tidewater Sand Co.), 174 B.R. 205 (Bankr. E.D. Va. 1994), rev’d, 82 F.3d 411 (4th Cir. 1996).

“Mineral” does not include dirt or soil.

—This section is not ambiguous and clearly does not include dirt or soil within the definition of mineral. Commonwealth Dep’t of Mines, Minerals & Energy v. May Bros., 11 Va. App. 115, 396 S.E.2d 695, 7 Va. Law Rep. 499 (1990).

The simple removal of dirt from a construction site, without more, does not constitute “mining” as contemplated by the legislature in this section. Commonwealth Dep’t of Mines, Minerals & Energy v. May Bros., 11 Va. App. 115, 396 S.E.2d 695, 7 Va. Law Rep. 499 (1990).

§ 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.

History.

1977, c. 312, § 45.1-180.2; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1977, c. 312, § 45.1-180.3; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1977, c. 312, § 45.1-180.4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

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.

History.

2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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
 Beginning July 1, 2022

\$22 per disturbed acre
 \$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.

History.

1968, c. 734, § 45.1-181; 1972, c. 206; 1974, c. 312; 1977, c. 312; 1983, c. 322; 1996, cc. 648, 659; 2003, cc. 542, 550; 2012, c. 695; 2019, c. 538; 2021, Sp. Sess. I, c. 387.

Editor’s note.

Acts 2003, cc. 542 and 550, cl. 2 provides: “The Virginia Gas and Oil Board shall increase the fee for filing an application for the establishment of units, spacing, or pooling orders, as provided for in 4 VAC 25-160-30, to \$130. Action by the Board to increase this fee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).”

Acts 2003, cc. 542 and 550, cl. 3 provides: “The Department of Mines, Minerals, and Energy shall increase the fee for filing an application to transfer gas or oil permit rights, as provided for in 4 VAC 25-150-120, to \$65. Action by the Department to increase this fee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).”

Acts 2012, c. 695, cl. 2 provides: “That the provisions of this act shall not be construed to affect any litigation pending in a court of competent jurisdiction on or before July 1, 2012.”

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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.

History.

1977, c. 312, § 45.1-182.1; 1984, c. 590; 2021,
Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-183; 1970, c. 245; 1972, c.
206; 1974, c. 312; 1977, c. 312; 2017, c. 4; 2021,
Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-184; 1974, c. 312; 1977, c. 312; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1977, c. 312, § 45.1-184.1; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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:
Beginning July 1, 2019

Permit Fee:
\$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.

History.

1977, c. 312, § 45.1-184.2; 1996, cc. 648, 659; 2003, cc. 542, 550; 2019, c. 538; 2021, Sp. Sess. I, c. 387.

Administrative Process Act (§ 2.2-4000 et seq.).”

Acts 2003, cc. 542 and 550, cl. 3 provides: “That the Department of Mines, Minerals, and Energy shall increase the fee for filing an application to transfer gas or oil permit rights, as provided for in 4 VAC 25-150-120, to \$65. Action by the Department to increase this fee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).”

Editor’s note.

Acts 2003, cc. 542 and 550, cl. 2 provides: “That the Virginia Gas and Oil Board shall increase the fee for filing an application for the establishment of units, spacing, or pooling orders, as provided for in 4 VAC 25-160-30, to \$130. Action by the Board to increase this fee shall be exempt from the provisions of the

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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.

History.

1968, c. 734, § 45.1-185; 1974, c. 312; 1977, c. 312; 2017, c. 4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1977, c. 312, § 45.1-186.1; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1981, c. 76, § 45.1-186.2; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.3; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.5; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.6; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.7; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

2017, c. 4, § 45.1-186.8; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-187; 1974, c. 312; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-188; 1974, c. 312; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-188; 1974, c. 312; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-192; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1977, c. 312, § 45.1-193.1; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-194; 1974, c. 312; 1979, c. 302; 1982, c. 117; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1968, c. 734, § 45.1-197; 1974, c. 312; 1977, c. 312; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

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.

History.

1978, c. 634, § 45.1-197.18; 1984, c. 590; 2017, c. 4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.5; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.6; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.7; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

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.

History.

2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.8; 2017, c. 4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.9; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.10; 2017, c. 4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.11; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.12; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.13; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.14; 2017, c. 4; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.15; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.16; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1978, c. 634, § 45.1-197.17; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

CHAPTER 13.

MINERAL MINING RETAINING DAMS; ADJACENT OWNERS.

Article 1. Mineral Mining Retaining Dams and Refuse Piles.

Section
45.2-1300. Definitions.

Section

45.2-1301. Dams and mine refuse piles; construction.

45.2-1302. Examination of dams and mine refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.

Article 2. Rights of Owners of Land Adjacent to Mineral Mines.

45.2-1303. Consent required before working mine near land of another.

45.2-1304. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

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.

History.

1997, c. 390, § 45.1-225.3; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1997, c. 390, § 45.1-225.1; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

Cross references.

As to definition of impounding structure, see § 10.1-604.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1997, c. 390, § 45.1-225.2; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

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.

History.

1997, c. 390, § 45.1-161.311:1; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

§ 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.

History.

1997, c. 390, § 45.1-161.311:2; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1, 2021.

SUBTITLE V.
OTHER SOURCES OF ENERGY; ENERGY POLICY.

CHAPTER 21.
NUCLEAR ENERGY.

Article 1. General Provisions.

Section

- 45.2-2100. Definitions.
- 45.2-2101. Nuclear energy; strategic plan.

Article 2. Virginia Nuclear Energy Consortium Authority.

- 45.2-2102. Virginia Nuclear Energy Consortium Authority established.
- 45.2-2103. Purposes; powers of Authority.
- 45.2-2104. Board of the Authority.
- 45.2-2105. Establishment of the Consortium.
- 45.2-2106. Moneys of Authority.
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Article 3. Exploration for Uranium Ore.

- 45.2-2108. Definitions.
- 45.2-2109. Regulations.
- 45.2-2110. Permit for exploration activity required; fee.
- 45.2-2111. Maps or plats of proposed exploration activity area.
- 45.2-2112. Abandoning exploration hole; affidavits required.
- 45.2-2113. Plugging.
- 45.2-2114. Developing an exploration hole as a water well.
- 45.2-2115. Right of inspection by Director.
- 45.2-2116. Uranium mining permit applications; uranium mining deemed to have significant effect on surface.
- 45.2-2117. State and local authority.
- 45.2-2118. Confidentiality of logs, surveys, and reports.
- 45.2-2119. Civil penalty.

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.

History.

2013, cc. 57, 394, § 67-1400; 2021, Sp. Sess.
I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

2020, cc. 657, 658, § 67-1700; 2021, Sp. Sess.
I, c. 387.

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.

History.

2013, cc. 57, 394, § 67-1401; 2021, Sp. Sess.
I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

2013, cc. 57, 394, § 67-1402; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

2013, cc. 57, 394, § 67-1403; 2021, Sp. Sess. I, c. 387.

Acts 2021, Sp. Sess. I, c. 532 amended former § 67-1403 from which this section is derived. Since the department name was deleted by Acts 2021, Sp. Sess. I, c. 387, the amendment by c. 532 was not given effect.

Editor’s note.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

§ 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.

History.

2013, cc. 57, 394, § 67-1404; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

2013, cc. 57, 394, § 67-1405; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

2013, cc. 57, 394, § 67-1406; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

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.

History.

1982, c. 269, § 45.1-273; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

OPINIONS OF THE ATTORNEY GENERAL

Enactment of laws. —The Constitution of Virginia must be amended prior to the enactment of any bill that would require a “super majority” vote to lift the moratorium on ura-

anium mining. See opinion of Attorney General to The Honorable Danny W. Marshall, III, Member, House of Delegates, 10-021, 2010 Va. AG LEXIS 14 (3/31/10).

§ 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.

History.

1982, c. 269, § 45.1-279; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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, re-drilling, 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.

History.

1982, c. 269, § 45.1-274; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

OPINIONS OF THE ATTORNEY GENERAL

Enactment of laws. —The Constitution of Virginia must be amended prior to the enactment of any bill that would require a “super majority” vote to lift the moratorium on ura-

anium mining. See opinion of Attorney General to The Honorable Danny W. Marshall, III, Member, House of Delegates, 10-021, 2010 Va. AG LEXIS 14 (3/31/10).

§ 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.

History.

1982, c. 269, § 45.1-275; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-276; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-277; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-278; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

OPINIONS OF THE ATTORNEY GENERAL

A locality currently cannot regulate uranium mining. —A locality currently cannot regulate uranium mining in any fashion because uranium mining is not a permitted activity within the Commonwealth. Should the General Assembly act to permit and provide for the regulation of uranium mining, a locality's authority related to uranium mining will depend

upon federal and state law in effect at that time, including the enabling legislation for uranium mining enacted by the General Assembly. See opinion of Attorney General to the Honorable Donald W. Merricks, Member, House of Delegates, 12-077, 2013 Va. AG LEXIS 87 (10/11/13).

§ 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.

History.

1982, c. 269, § 45.1-280; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-283; 1983, c. 3; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

CASE NOTES

Federal preemption. —In a case addressing § 45.1-283 in which plaintiffs sought a declaratory judgment that the Atomic Energy Act of 1954, as amended, preempted § 45.1-283 and defendants moved to dismiss, the Atomic Energy Act did not preempt § 45.1-283, the Virginia statute did not intrude into any Atomic Energy Act field; plaintiffs misread 42 U.S.C.S. § 2021(k). *Va. Uranium, Inc. v. McAuliffe*, 147 F. Supp. 3d 462 (W.D. Va. 2015), *aff'd*, 848 F.3d 590 (4th Cir. 2017).

State law banning conventional uranium mining was not preempted by federal law since regulating such mining was not an activity to protect against radiation hazards, and thus was not in any way regulated by the federal government outside of federal lands. *Va. Uranium, Inc. v. Warren*, 848 F.3d 590 (4th Cir. 2017), *aff'd*, 139 S. Ct. 1894, 204 L. Ed. 2d 377 (2019).

Ban on conventional uranium mining was not preempted by the federal regulation of uranium milling and tailings storage since the ban did not mention uranium milling or tailings storage and, in view of the ban, there was no purpose in constructing a mill and tailings-management complex in the state and transporting out-of-state uranium ore into the state. *Va. Uranium, Inc. v. Warren*, 848 F.3d 590 (4th Cir. 2017), *aff'd*, 139 S. Ct. 1894, 204 L. Ed. 2d 377 (2019).

Federal preemption did not apply to the state’s ban on conventional uranium mining since the federal objectives in regulating the safety of radiation hazards was not materially affected by the state ban. *Va. Uranium, Inc. v. Warren*, 848 F.3d 590 (4th Cir. 2017), *aff'd*, 139 S. Ct. 1894, 204 L. Ed. 2d 377 (2019).

CIRCUIT COURT OPINIONS

Constitutionality. —Application of § 45.1-283 damaged the landowners’ property within the meaning of Va. Const. art. 1, § 11, as it directly affected their ability to exercise their ownership and leasehold interest rights in a uranium deposit, and that affection caused a depreciation of the mineral estate’s value. *Va. Uranium, Inc. v. Commonwealth*, 105 Va. Cir. 421, 2020 Va. Cir. LEXIS 147 (Wise County July 30, 2020).

Section 45.1-283 affected a regulatory taking of the landowners’ property as the temporary moratorium precluded their ability to mine their mineral interest. *Va. Uranium, Inc. v.*

Commonwealth, 105 Va. Cir. 421, 2020 Va. Cir. LEXIS 147 (Wise County July 30, 2020).

Section 45.1-283 did not affect a total taking of the landowners’ mineral estate where the mining moratorium did no more than duplicate the result that could have been achieved under Virginia nuisance law. *Va. Uranium, Inc. v. Commonwealth*, 105 Va. Cir. 421, 2020 Va. Cir. LEXIS 147 (Wise County July 30, 2020).

Landowners were not entitled to an order declaring § 45.1-283 unconstitutional and enjoining the Commonwealth from complying with the statute because a moratorium on uranium mining, an inherently dangerous activity

with potentially dangerous indirect effects, achieved the Commonwealth’s rightful duty to protect the public from injury and to protect the health, safety, and welfare of the citizenry. Va.

Uranium, Inc. v. Commonwealth, 105 Va. Cir. 421, 2020 Va. Cir. LEXIS 147 (Wise County July 30, 2020).

OPINIONS OF THE ATTORNEY GENERAL

Enactment of laws. —The Constitution of Virginia must be amended prior to the enactment of any bill that would require a “super majority” vote to lift the moratorium on uranium mining. See opinion of Attorney General to The Honorable Danny W. Marshall, III, Member, House of Delegates, 10-021, 2010 Va. AG LEXIS 14 (3/31/10).

A locality currently cannot regulate uranium mining. —A locality currently cannot regulate uranium mining in any fashion because uranium mining is not a permitted activ-

ity within the Commonwealth. Should the General Assembly act to permit and provide for the regulation of uranium mining, a locality’s authority related to uranium mining will depend upon federal and state law in effect at that time, including the enabling legislation for uranium mining enacted by the General Assembly. See opinion of Attorney General to the Honorable Donald W. Merricks, Member, House of Delegates, 12-077, 2013 Va. AG LEXIS 87 (10/11/13).

§ 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.

History.

1982, c. 269, § 45.1-284; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-285; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

§ 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.

History.

1982, c. 269, § 45.1-282; 1984, c. 590; 2021, Sp. Sess. I, c. 387.

Effective date.

This section is effective October 1 2021.

VIRGINIA RECLAMATION REGULATIONS FOR MINERAL MINING

VIRGINIA ADMINISTRATIVE CODE

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TITLE 4

CONSERVATION AND NATURAL RESOURCES

V.A.C. Agency No. 25
Department of Energy

CHAPTER 31

RECLAMATION REGULATIONS FOR MINERAL MINING

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PART I**GENERAL PROVISIONS****4 VAC 25-31-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

“Acre-foot” means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

“Berm” means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

“Critical areas” means problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

“Dam break inundation zone” means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

“Department” means the Department of Energy.

“Director” means the Director of the Department of Energy or his designee.

“Division” means the Division of Mineral Mining.

“Fifty-year storm” means the storm magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 50-year, 24-hour storm occurs when the total 50-year storm rainfall occurs in a 24-hour period.

“Inert waste” means brick, concrete block, broken concrete, and uncontaminated minerals or soil.

“Intermittent stream” means a stream that contains flowing water for extended periods during a year, but does not carry flows at all times.

“Internal service roads” means roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

“Natural drainageway” means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

“One hundred-year storm” means the storm magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 100-year, 24-hour storm occurs when the total 100-year storm rainfall occurs in a 24-hour period.

“On-site generated mine waste” means the following items generated by mineral mining or processing activities taking place on the permitted mine site:

Drill steel	Tree stumps/land clearing debris
Crusher liners	Large off-road tires
Conveyor belting	Scrap wood or metal
Steel cable	Steel reinforced air hoses
Screen cloth	Broken concrete or block
Punch plate	V-belts

“Perennial stream” means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

“Permitted area” means the area within the defined boundary shown on the application map including all disturbed land area, and areas used for access roads and other mining-related activities.

“Principal access roads” means roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

“Probable maximum flood (PMF)” means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, National Oceanic and Atmospheric Administration. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

“Qualified person” means a person who is suited by training or experience for a given purpose or task.

“Regrade” or “grade” means to change the contour of any surface.

“Riparian buffer” means an area of trees, shrubs, or other vegetation that is managed to maintain the integrity of the stream channel and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

“Sediment” means undissolved organic or inorganic material transported or deposited by water.

“Sediment basin” means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

“Spillway design flood (SDF)” means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

“Stabilize” means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

“State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

“Ten-year storm” means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

“Top soil” means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Is-

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Volume 38, Issue 13, eff. March 31, 2022.

4 VAC 25-31-20. Scope.

This chapter establishes general and specific rules for mining permits, bonds, operations and reclamation procedures, roads, revegetation, and other matters related to mineral mining.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-30. Compliance.

The permittee shall comply fully with the requirements of Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia and this regulation and shall further ensure compliance by all employees, contractors, or other persons performing mining or reclamation activities.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-40. Modifications.

The division may approve modifications or amendments to any drainage, reclamation and operation plan required under Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia and provisions of these regulations. All modifications or amendments shall be valid only when approved in writing.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-50. (Repealed.)**Historical Notes**

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003; repealed, Vir-

ginia Register Volume 29, Issue 19, eff. July 4, 2013.

4 VAC 25-31-60. Other governmental agencies and laws.

Any mineral mining permit issued shall not supersede or otherwise affect or prevent the enforcement of other laws and regulations of federal, state, or local governments.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-70. Exemptions.

- A. These regulations shall not apply to:
1. Excavation or grading when conducted solely to aid on-site farming or construction;
 2. Mining of coal, unless the coal is mined incidental to the mining of minerals;
 3. Searching, prospecting, exploring or investigating for minerals by drilling; and

4. Excavation or grading when conducted by an agency or governmental unit of the Commonwealth, local government, or the federal government using government employees.

B. The surface extraction of minerals shall not constitute mineral mining unless:

1. The mineral is extracted for its unique or intrinsic characteristics or:
2. The mineral requires processing prior to its intended use.

C. When considering whether an operation is exempt, the director shall consider the length of time or duration of the activity, whether it is a one-time activity, and whether all necessary permits and approvals are in place before the activity begins.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

PART II

PERMIT STANDARDS

Article 1

Permits

4 VAC 25-31-80. Contiguous area.

Contiguous areas mined by a single operator shall be covered under one permit; however, the director may, at his discretion, combine noncontiguous areas into a single permit where such areas are close to each other and are part of the same operation.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-90. Operator conference with inspector.

Prior to approval of a permit application, all maps and plans shall be reviewed at the proposed mining site with the inspector.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-100. Mineral mining permits.

Permits shall be renewed annually, in a manner acceptable to the director, to continue to remain in effect. Paper filings shall be considered acceptable.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003; amended, Vir-

ginia Register Volume 30, Issue 6, eff. December 19, 2013.

4 VAC 25-31-110. Permit application.

Application for a mineral mining permit shall be made in a form prescribed by the director and shall be certified by the applicant or his authorized representative. Copies of the application shall be submitted to the division in a manner acceptable to the director. Paper filings shall be considered acceptable.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-120. Permit fee and bond.

A. Permit fees for the initial permit application and permit renewal shall be submitted upon receipt of a billing notice from the director and before the permit is issued or renewed. Fees shall be paid in accordance with § 45.2-1205 of the Code of Virginia.

B. Permit fees for the transfer of a mine permit shall be submitted upon receipt of a billing notice from the director and before the transferred permit is issued. Fees shall be paid in accordance with § 45.2-1211 of the Code of Virginia.

C. All fees shall be in the form of cash, check, money order, or other form of payment acceptable to the director.

D. A bond is required as set forth in Part III of this regulation. Bonding shall be provided once the permit application is deemed complete.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-130. Mineral mining plans.

Mineral mining plans shall be attached to the application and consist of the following:

1. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse, and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall address plans for the storage and disposal of scrap metal, scrap tires, used lubricants, coolants, and other equipment service products, batteries, process chemicals, trash, debris, and other hazardous materials. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of § 45.2-1301 A of the Code of Virginia, plans shall be provided as required under 4 VAC 25-31-180 and 4 VAC 25-31-500.

2. The drainage plan shall consist of a description of the drainage system to be constructed before, during, and after mining; a map or overlay showing the natural drainage system; and all sediment and drainage control structures to be installed along with all related design and construction data.

3. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading; removal of metal, lumber, and debris, including processing equipment; buildings; and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified. Reclamation plans for underground mines shall include plans for closing or securing all entrances to underground workings.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4 VAC 25-31-330 et seq.) of this chapter and Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation land use permit for roads that connect to public roads.

6. If mining below the water table is to take place, the following conditions apply:

a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area for review and approval.

b. A plan for the minimization of adverse effects on water quality or quantity shall be prepared based on the assessment in subdivision 6 a of this section and included in the application.

c. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep or otherwise constructed in a manner acceptable to the director.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Is-

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Volume 35, Issue 21, eff. July 25, 2019; Volume 38, Issue 13, eff. March 31, 2022.

4 VAC 25-31-140. Marking of permit boundaries.

A. The permit boundary of the mine shall be clearly marked with identifiable markings when mine related land disturbing activities are within 100 feet of the permit boundary.

B. This section is not applicable to lands disturbed prior to September 11, 2003.

C. Maintenance of permit boundary markers is not required after completion of construction, completion of final disturbances, or completion of final reclamation unless the area is being redisturbed by mining.

D. Separate boundary markings are not required if clear, readily identifiable features, such as streams, permanent roads, or permanent power lines coincide with the permit boundary.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-150. Maps.

A. Maps shall be supplied as described in §§ 45.2-1205 and 45.2-1206 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "I hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the Department of Energy."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within 500 feet of the permit boundary including state waters, cemeteries, oil and gas wells, underground mine workings, public utilities and utility lines, buildings, roads, schools, churches, and occupied dwellings shall be shown.

5. All properties, and their owners, within 1,000 feet of the permit boundary shall be identified in the initial application.

6. Wetlands that have been previously delineated shall be shown within the permit boundary.

7. Riparian buffers that have been previously delineated shall be shown within the permit boundary.

C. Map code and legend.

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Errata 30:7 VA.R. 982 December 2, 2013; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-160. Legal right.

A. A statement of the source of the legal right of the applicant to enter and conduct operations on the land proposed to be covered by the permit as noted in § 45.2-1205 of the Code of Virginia shall be submitted to the division. In addition, the applicant shall submit proof of right of entry, which shall consist

of a copy of the lease or deed, or names of parties to the lease or deed, date of execution, and recording information.

B. On the permit application, the applicant shall disclose any type of mining permit, revocations, security deposited in lieu of bond that has been revoked or forfeited, and bond forfeitures in Virginia or any other state with which he or any individual, corporation, trust, partnership, association, or other legal entity with which he has or has had control or common control.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-170. Permit application notifications.

A. The applicant shall notify the following parties of a new permit application via certified mail:

1. Property owners within 1,000 feet of the permit boundary.
2. The Chief Administrative Official of the local political subdivision where the prospective mining operation would take place.
3. All public utilities on or within 500 feet of permit boundary.

B. All notifications shall contain:

1. The name of the permit applicant issuing notice and the date of notification;
2. The permit applicant's address, phone number, and other contact information as available;
3. The name and address of the property owner, chief administrative official, or utility receiving the notification;
4. A statement as required by § 45.2-1210 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a mining and reclamation permit from the Department of Energy. The statement shall also note that the mining permit must address department requirements for regrading, revegetation, and erosion controls of mineral mine sites;
5. The location of the proposed mine, the city or county in which it is located, the distance of the nearest town or other easily identified landmark, and the tax map identification number of the parcels to be permitted; and
6. A notice that informs property owners within 1,000 feet of the permit boundary that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the division. The current address for the division shall be provided on the notification.

C. No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

D. Copies of all permit notifications shall be submitted to the division at the time they are mailed to the parties identified in subsection A of this section.

E. Documentation of certified mail receipts of the notifications described in this section shall be included with the permit application.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Is-

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. Decem-

ber 19, 2013; Volume 35, Issue 21, eff. July 25, 2019; Volume 38, Issue 13, eff. March 31, 2022.

4 VAC 25-31-180. Impoundments.

The design data and construction plans and specifications for impoundments meeting the criteria set forth in Chapter 13 (§ 45.2-1300 et seq.) of Title 45.2 of the Code of Virginia shall be submitted to the director prior to initiation of construction activities. Such a plan shall be certified as prepared by, or under the supervision of, a registered professional engineer and shall include:

1. Design and construction specifications;
2. Examination and monitoring;
3. Emergency procedures; and
4. Closure and abandonment plans.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-190. Availability of permits.

Mineral mining permits, a copy of the permit application, and a copy of the approved mineral mining plan shall be kept on-site while mining is underway.

Statutory Authority
§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-200. Exemption for restricted mining.

Any operator engaging in mining and disturbing less than a total of one acre of land and removing less than a total of 500 tons of minerals, is exempt from all mining permit fees, renewal fees and bonding requirements in this chapter. The mining operator shall submit an application for a permit, a sketch of the mining site, and an operations plan, which shall be adhered to in accordance with §§ 45.2-1205 and 45.2-1206 of the Code of Virginia.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

Article 2

Permit Renewal and Surety Adjustments

4 VAC 25-31-210. Annual renewal.

A. If a permitted mineral mine operator wishes to continue operations, the mineral mining permit shall be renewed each year within 10 days of the

anniversary date. If the time requirements set forth herein are not met, the permit shall expire 10 days following the anniversary date.

B. A renewal fee in the amount of \$16 per acre for previous acres disturbed plus estimated additional acres to be disturbed in the next 12 months shall accompany the permit renewal submitted to the director.

C. The permit renewal shall be submitted on a form prescribed by the director. The renewal shall be signed by the applicant or his legal representative. The permit renewal and maps must be received by the anniversary date and meet the requirements in 4 VAC 25-31-100 through 4 VAC 25-31-220.

D. If in a given year there are no changes to the map required in 4 VAC 25-31-150, the operator may submit a certification instead of the map for the year. The certification shall read as follows: "I, the undersigned, hereby certify that no changes have been made in the different areas or in other map features since the last annual permit renewal or modification."

E. If at renewal time, bond or other surety is less than the required coverage, the director will notify the operator in writing of the amount required. The operator shall submit the required bond according to the requirements in 4 VAC 25-31-220 through 4 VAC 25-31-270 before the area is disturbed.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

PART III

BONDING

4 VAC 25-31-220. Requirements for bonding of mineral mines.

A. Once the permit application is deemed complete, the applicant shall submit a bond or bonds on a form meeting the requirements in 4 VAC 25-31-220 through 4 VAC 25-31-270, made payable to the department and conditioned upon the satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

B. The bond or bonds shall cover the entire area presently disturbed by mining plus the estimated number of acres to be disturbed in the upcoming year.

C. As additional areas outside the bonded acreage are to be disturbed to facilitate the mining operation, the permittee shall file a bond or bonds to cover the acreage with the division.

D. Bond shall be posted and accepted by the division prior to disturbing an area for mining-related activity.

E. Permitted operators shall certify annually with the permit renewal the type, current insurer or bank, and the amount of all reclamation bonds.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-230. Period of liability.

A. The bond liability shall be for the duration of the mineral mining operation and for the period following reclamation, which is necessary to demonstrate the success of the final reclamation.

B. In lieu of the requirements of 4 VAC 25-31-240 through 4 VAC 25-31-270, a permittee accruing five years of satisfactory operation under Chapter 12 (§ 45.2-1200 et seq.) of Title 45.1 of the Code of Virginia shall be required to enter the Minerals Reclamation Fund as established in Article 4 (§ 45.2-1234 et seq.) of Chapter 12 of Title 45.2 of the Code of Virginia and 4 VAC 25-31-320. All performance bonds will be released upon acceptance in the Minerals Reclamation Fund and payment of required fees.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-240. Bond amount.

A. Bond shall be set in accordance with § 45.2-1208 of the Code of Virginia.

B. The minimum bond for a mineral mining permit shall be \$3,000, except for restricted permits and Minerals Reclamation Fund participants.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-250. General terms and conditions of bond.

A. The bond shall be of the form and amount as specified by the division.

B. The performance bond shall be payable to the department.

C. The performance bond shall be conditioned upon satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-260. Form of performance bond.

The bond shall be submitted in the form of cash, check, certificate of deposit, insurance surety bond, or irrevocable letter of credit.

A. Certificates of deposit.

1. Certificates of deposit must be made payable to the Treasurer of Virginia, Division of Mineral Mining.

2. The amount of the certificate of deposit must include the maximum early withdrawal penalty rounded up to the next higher hundred dollars.

3. The original certificate of deposit shall be submitted to the division and held by the division throughout the bond liability period.

4. Certificates of deposit must be automatically renewable.

5. The certificate of deposit must be from a bank located in the Commonwealth of Virginia or approved as an allowable bank depository by the Virginia Department of Treasury.

6. Interest accrued on certificates of deposit may be deposited to the permittee's individual account and is free of encumbrance by bond liability.

7. In the event of forfeiture of a certificate of deposit, the face value of the deposit plus any accrued interest that has been rolled back into the certificate principal will be subject to bond liability and expenditure in the performance of the reclamation obligation.

B. Surety bonds.

1. All bonds shall be in a form acceptable to the director. Bonds shall be executed by the permittee, and a corporate surety and agent licensed to do business in the Commonwealth.

2. Surety bonds shall not be canceled during their term except that surety bond coverage for lands not disturbed may be canceled with the prior consent of the division. The division shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

C. Irrevocable letter of credit.

1. The director may accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the Commonwealth. The letter of credit shall be irrevocable and unconditional, shall be payable to the division on demand, and shall afford to the division protection equivalent to a corporate surety bond. The issuer of the letter of credit shall give prompt notice to the permittee and the division of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements 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 its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the division. Upon the incapacity of an issuer by reason of bankruptcy, insolvency, or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the division, and the division shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease mineral extraction and mineral processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mineral extraction and mineral processing operations shall not resume until the division 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 division may suspend the permit until acceptable bond is posted.

2. The letter of credit shall be provided on the form and in the format established by the director.

3. Nothing contained in this section shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-270. Replacement of bonds.

A. The division may allow a permittee to replace existing bonds with other bonds that provide equivalent coverage.

B. The division shall not release existing performance bonds until the permittee has submitted and the division has approved acceptable replacement performance bonds. Replacement of a performance bond pursuant to this section shall not constitute a release of bond.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-280. Release of bond.

The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation covered by the bond or portion thereof has been accomplished in accordance with this chapter, the approved permit, and Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-290. Intensive agricultural use.

If the post-mining use is to be intensive agriculture, then planting and harvesting of a normal crop yield is required to meet the regulatory requirements for full or partial bond release. A normal yield for a particular crop is equal to the five-year average for the county. If crop yield data is unavailable, then other methods to determine suitability for bond release may be utilized as acceptable to the director. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-300. Inspections for adequacy of vegetation and bond release.

A. Final inspection for bond release shall be made no sooner than two growing seasons after the last seeding.

B. Final inspection for bond release shall require:

1. No noncritical areas larger than one-half acre shall be allowed to exist with less than 75% ground cover. Vegetation shall exhibit growth characteristics for long-term survival.

2. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

3. Bond release inspections for industrial, residential, or commercial post-mining use shall ensure that:

a. All areas not redisturbed by implementation of the post-mining use are reclaimed and satisfactorily stabilized.

b. All areas associated with construction of buildings or residential dwellings for post-mining use are covered by appropriate plans approved by the local governing body, i.e., erosion and sediment control plans, building permits, and development plans.

c. All areas not covered by such approved local government plans shall be reclaimed and stabilized in accordance with subdivisions 1 and 2 of this subsection prior to release of bond.

4. Bond release inspections for other post-mining uses will ensure that all areas not directly used by the post-mining use are stabilized in accordance with subdivisions 1 and 2 of this subsection and that the post-mining use is implemented.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-310. Bond forfeiture.

A. If the permittee refuses or is unable to comply with an order by the director under § 45.2-1213 of the Code of Virginia, fails to comply with the terms of the permit, or defaults on the conditions under which the bond was accepted, the division shall take the following action to revoke the permit and forfeit the bond or bonds for the permit area or a portion of the permit area:

1. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond informing them of the decision to revoke the permit and forfeit all or part of the bond, and the reasons for this action.

2. Advise the permittee and surety of the conditions under which forfeiture may be avoided. Such conditions may include:

a. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule acceptable to the division, which meets the conditions of the permit and the reclamation plan, and demonstrates that such party has the ability to satisfy the conditions; or

b. The division may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the division may approve partial release, no surety liability shall be released until successful completion of all reclamation under the terms of the permit.

B. In the event forfeiture of the bond is required, the division shall:

1. Proceed to collect the forfeited amount as provided by Virginia law for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, if any rights of appeal have not been exercised within a time established by the division, or if such appeal is unsuccessful.

2. Use funds collected from bond forfeiture to complete the reclamation plan on the permit area.

C. Upon default the division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Reclamation costs in excess of the forfeited bond amount will constitute a debt of the operator to the Commonwealth of Virginia and shall be collected in accordance with § 45.2-1214 of the Code of Virginia.

E. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the division to the party from whom they were collected.

F. Appeal of bond forfeiture decisions may be made by the operator by providing notice of appeal to the director in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. If the operator files a notice of appeal, then the director's orders revoking the permit and declaring forfeiture shall be held in abeyance until the appeal is determined.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 28, Issue 21, eff. July 18, 2012; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-320. Minerals Reclamation Fund (MRF).

A. Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter 12 (§ 45.2-1200 et seq.) of Title 45.2 of the Code of Virginia shall become a member of the fund by making an initial payment to the fund of \$50 for each acre currently disturbed and each acre estimated to be affected by mining operations during the next year. Thereafter the member shall make an annual payment of \$12.50 for each acre currently disturbed plus each acre estimated to be affected during the next ensuing year. No annual Minerals Reclamation Fund deposits will be collected from members where the permit Minerals Reclamation Fund deposits divided by the number of bonded acres in the next ensuing year is equal to or greater than \$500.

B. Entry into the Minerals Reclamation Fund shall be mandatory for all eligible permittees.

C. Operator deposits into the Minerals Reclamation Fund shall be released or retained under the following conditions:

1. When the operation and reclamation are complete and the reclaimed area is suitable for bond release, Minerals Reclamation Fund deposits for the reclaimed area shall be returned to the operator.

2. When the mining permit is transferred to another permittee and division approval is granted, Minerals Reclamation Fund deposits for the permit may be returned to the transferring permittee.

3. When a mining permit is completely relinquished to another operator, other than in a permit transfer, all of the Minerals Reclamation Fund deposits for the permit shall be returned to the relinquishing operator upon division approval of the relinquishment.

4. After bond release applications are approved by the division, Minerals Reclamation Fund deposits for the permit shall be held or retained according to the following formulas:

a. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is equal to or greater than \$500, Minerals Reclamation Fund deposits for the permit will be released so that the remaining deposits equal \$500 per acre for the acres remaining under bond.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$4,000;

Minerals Reclamation Fund balance ÷ remaining bonded acres = \$500;
 $\$4,000 \div (10-2) \text{ acres} = \$500.$

b. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is less than \$500, the bond release amount will be determined by dividing the permit Minerals Reclamation Fund deposit by the number of bonded acres including the acres to be released and then multiplying by the number of acres to be released.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = \$3,000;

Minerals Reclamation Fund balance ÷ total bonded acres = Release amount \$ per acre;

$\$3,000 \div 10 \text{ acres} = \$300 \text{ per acre};$

Release amount = $\$300 \text{ per acre} \times 2 \text{ acres} = \$600.$

D. Moneys available in the Minerals Reclamation Fund may be less than the total of all operator deposits due to expenditures for bond forfeiture as required by § 45.2-1238 of the Code of Virginia. Minerals Reclamation Fund refunds are subject to availability of moneys in the Minerals Reclamation Fund and shall be suspended if the fund decreases below \$250,000. Payments to the fund are then proportionately assessed until the fund returns to a minimum, \$250,000 or bond or other securities are posted as required by the director in accordance with § 45.2-1240 of the Code of Virginia.

E. Minerals Reclamation Fund deposits will be transferred to the successor operator when a permit transfer occurs due to a change in organization status or restructuring that does not involve a complete change of ownership.

Statutory Authority
 § 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
 Derived from Virginia Register Volume 19, Is-

PART IV
PERFORMANCE STANDARDS

4 VAC 25-31-330. Protected structures and sensitive features.

Mining activities shall be conducted in a manner that protects state waters, cemeteries, oil and gas wells, underground mine workings, public utilities, and utility lines, buildings, roads, schools, churches, and occupied dwellings.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-340. Signs.

A permanent sign shall be installed on the mining site adjacent to the principal access road and shall be visible and legible to access road traffic. The name of the permittee and the permit number shall be on the marker.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-350. Roads.

A. Internal service roads and principal access roads shall be planned to minimize the impact of traffic, dust, and vehicle noise on developed areas outside the mining site.

B. Construction standards.

1. The integrity of drainageways shall be maintained. If natural drainageways are altered or relocated during construction, adjoining landowners shall be protected from damage resulting from construction.

2. Drainage structures shall be required in order to cross a stream channel. Such structures shall be constructed with consideration for surrounding drainage acreage and culvert size, and slope so as not to restrict the flow of the stream, i.e., the bridge or culverts shall be of adequate size to permit stream flow throughout the seasonal periods during the life of the mine permit. Temporary stream crossings for pioneer roads shall be for infrequent use, stable, only used in low flow times, and shall not contribute to sedimentation off-site.

3. Roads shall be located away from streams wherever possible.

4. Road surfaces and ditches shall be stabilized. Side slopes shall be constructed in a stable manner to minimize erosion and sedimentation.

5. Ditches shall be constructed where necessary, with consideration for surrounding drainage acreage and slope and shall have sufficient capacity to control surface run-off.

6. Culverts shall be installed in accordance with the following standards:

a. Relief culverts shall be installed at intervals to prevent overloading of ditches.

b. Culverts shall be placed on a minimum grade to ensure free drainage and be covered by compacted fill as specified by the manufacturer.

c. The inlet end shall be protected by a headwall of a suitable material such as a concrete retaining wall, sand bags, rock riprap, or other approved material.

d. The outlet end shall discharge onto an apron of rock riprap or other approved material. Where practical, the outlet end shall be placed below the toe of the fill. At no time should run-off be allowed to flow over an unprotected fill slope.

e. All culverts shall have the capacity to carry storm run-off and shall be properly maintained.

7. Sediment control shall be provided for roads to minimize sediment that leaves the disturbed area.

8. Dust from roads shall be adequately controlled.

9. Roads shall be surfaced and maintained to prevent the depositing of mud and debris on public roads.

10. Roads shall not be surfaced with any acid producing material or any material that will introduce a high concentration of suspended solids into surface drainage.

C. Maintenance is required to ensure the proper functioning of the road and drainage system. Maintenance of the road system shall consist of inspecting, repairing and cleaning of roadways, ditches, and culverts as necessary. Particular attention shall be given to removing debris from culvert inlets.

D. When a road is abandoned, steps shall be taken to minimize erosion and establish the post-mining use in accordance with the reclamation plan.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-360. Operation and reclamation.

A. Mining operations shall be conducted to minimize adverse effects on the environment and facilitate integration of reclamation with mining operations according to the special requirements of individual mineral types and the approved operation, drainage, and reclamation plans. Mining shall be conducted to minimize the acreage that is disturbed, and reclamation shall be conducted simultaneously with mining to the extent feasible.

B. Open pit mining of unconsolidated material shall be performed in such a way that extraction and reclamation are conducted simultaneously.

C. Mining activities shall be conducted so that the impact on water quality and quantity are minimized. Mining below the water table shall be done in accordance with the mining plan under 4 VAC 25-31-130.

D. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep, or otherwise constructed in a manner acceptable to the director.

E. Excavation shall be done in such a manner as to keep storm drainage flowing toward sediment control structures. Diversions shall be used to minimize storm runoff over disturbed areas.

F. The mining operation shall be planned to enhance the appearance to the public during mining and to achieve simultaneous and final reclamation.

G. At the completion of mining, all entrances to underground mines shall be closed or secured and the surface area reclaimed in accordance with the mineral mining plan.

H. Reclamation shall be completed to allow the post-mining land use to be implemented. After reclamation, the post mining land use shall be achievable

and compatible with surrounding land use. All necessary permits and approvals for the post-mining land use shall be obtained prior to implementation.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-370. Slopes.

A. The grade of completed slopes shall be as described in the mineral mining plan. Long uninterrupted slopes shall be provided with drainage control structures, such as terraces, berms, and waterways, to minimize erosion due to surface run-off.

B. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering, and shall not be eroded.

C. Constructed cut or fill slopes shall not extend closer than 25 feet to any property boundary without the written permission of the adjoining property owner and the approval of the director.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-380. Treatment of acid material.

All acid material encountered during the mining operation shall be properly controlled to prevent adverse impacts on surface or groundwater quality. Upon completion of mining, acid materials shall be covered with a material capable of shielding them and supporting plant cover in accordance with the approved reclamation plan. Unless otherwise specified by the director, the minimum cover shall be four feet in depth.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-390. Handling of spoil piles and stockpiles of minerals.

A. All spoil piles will be graded in accordance with the mineral mining plan in such a manner as to minimize sediment run-off.

B. Stockpiles of minerals shall be removed to ground level and the area shall be scarified and planted in accordance with the approved mineral mining plan. The director shall allow a reasonable time for sale of stockpiles.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-400. Overburden, refuse, spoil and waste fills.

A. Overburden, refuse, spoil and waste disposal fills with the capability to impound water, sediment or slurried tailings, slimes or refuse in a liquid, or semi-liquid state, shall be designed and constructed in accordance with 4 VAC 25-31-500.

B. Overburden, refuse, spoil and waste disposal fills that do not have the capability to impound water or other liquid or semi-liquid materials, shall meet the requirements of this section.

C. Fills that are not impoundments shall be designed to meet the requirements of this section and use current, prudent engineering practices.

D. The plans and specifications for fills shall consist of an engineering design report that includes engineering calculations, drawings, and specifications. These shall take into account the size, location, and hazard potential of the fill and will include the following as necessary:

1. A site plan showing the location of the structure, associated access, surface and subsurface drainage systems, sediment control structures, and the proposed fill configuration.

2. Cross sections and profiles showing the original ground, proposed fill profile, location of terraces and constructed slopes.

3. Design details for all surface and subsurface drainage control structures.

4. A narrative description of site preparation, foundation evaluation and preparation, materials placement, material handling, and sequencing of construction.

5. A closure and final reclamation plan for the fill and associated structures.

E. Fills shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout the life of the fill.

F. Fills shall be constructed with slopes no steeper than two horizontal to one vertical for predominantly clay soils and no steeper than three horizontal to one vertical for predominantly sandy soils or must exhibit a static safety factor of 1.5 for other steeper slopes.

G. Fills shall be constructed, maintained and inspected to ensure protection of adjacent properties, preservation of public safety, and to provide prompt notice of any potentially hazardous or emergency situation.

H. Fills shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-405. Disposal of waste.

On-site generated mine waste shall not be disposed of within the permitted mine area without prior approval. On-site generated mine waste is approved for use as fill on the mining site provided they are capped with an adequate cover and seeding is established per the approved reclamation plan. Off-site generated inert waste shall not be brought onto the mine permitted area or disposed of on the mine permitted area without prior approval.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 6, eff. December 19, 2013; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 30, Is-

4 VAC 25-31-410. Storage of top soil.

A. Top soil required for reclamation shall be stored with a maximum slope of 2:1 and in such a manner as to remain available for reclamation. The operator shall retain a minimum quantity sufficient to cover all disturbed areas to be reclaimed with six inches of top soil or as specified in an approved operations plan. Top soil will be needed for future reclamation and shall not be removed from the permitted area unless authorized by the division.

B. The stockpiled top soil shall be seeded with quick growing grasses or legumes for stabilization until used in final reclamation.

C. The provisions of this section shall not apply to sand and gravel operations in the Coastal Plain physiographic province.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-420. Screening.

A. Screening shall be provided for sound absorption and to improve the appearance of the mining site from public roads, public buildings, recreation areas, and occupied dwellings.

B. If screening is to be undisturbed forest, a distance of 100 feet must be left undisturbed within the permit boundary. Less than 100 feet may be approved if the natural vegetation provides the needed screening benefits between the mining operation and the adjacent property. Planted earth berms, tree plantings, natural topography, or appropriately designed fences or walls may be used if approved in the mineral mining plan.

C. On permanent berms for screening, the spoils shall be initially placed on the proposed berm area, and top soil shall be spread over the berm, not less than six inches in thickness, and if possible, 12 inches in thickness. The remaining top soil shall be placed in a designated area for future spreading on other areas that need top dressing. The screening berm shall be seeded or planted in accordance with the approved reclamation plan.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-430. Completion of active mining.

A. Except as provided in subsection B of this section and with the director's approval, a mining operation where no mineral has been removed or overbur-

den removed or regraded, or where no substantial mine-related activity has been conducted for a period of 12 consecutive months shall be declared complete, and total reclamation shall begin.

B. At the option of the operator and with the director's approval, an operation may remain under permit for an indefinite period during which no mineral or overburden is removed if the following conditions are met to the director's satisfaction:

1. All disturbed areas are reclaimed or adequately stabilized, or all erosion and sediment control systems are maintained in accordance with mining plans and proper engineering practices.

2. All drainage structures are constructed and maintained in accordance with mining plans and proper engineering practices.

3. All vegetation is maintained, including reseeded if necessary.

4. All improvements on site, including machinery and equipment, are maintained in a state of good repair and condition.

If the conditions listed in this subsection are not met, the permit may be revoked by the director in accordance with § 45.2-1213 of the Code of Virginia.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-440. Drainage and sediment control.

All mining operations shall have adequate drainage, erosion, and sediment control measures installed and maintained in accordance with the approved drainage plan or as acceptable to the division. Drainage from disturbed areas shall be directed into a sediment control structure before it is discharged from the permitted area. If adequate drainage, erosion, and sediment control measures cannot be provided, the permit for the affected portion or the entire mine may be denied.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-450. Sediment basins.

Sediment basins shall be located as close to the disturbed area as possible. Sediment basins shall not be located in perennial streams. Sediment control measures shall be installed prior to land disturbing activities within the drainage area controlled by the sediment basin. Each primary sediment basin shall provide at least 0.125 acre feet of storage capacity for each acre of disturbed land draining to it. Storage basins shall be cleaned as necessary to ensure proper functioning before they reach 60% capacity. Alternate sediment control measures that are as effective as sediment basins may be approved. The measures may include reduced basin storage capacity for small short-term disturbances, sediment channels, check dams, or mining methods that incorporate sediment control.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 35, Issue 21, eff. July 25, 2019.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-460. Intermittent or perennial streams.

All intermittent or perennial streams shall be protected from spoil by natural or constructed barriers. Stream channel diversions shall safely pass the peak run-off from a 10-year, 24-hour storm. Stream channel diversions shall be at least equal to the capacity of the unmodified stream channel immediately upstream and downstream of the diversion.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-470. Natural drainageways.

Drainageways shall be identified on the map submitted with the application. If it is necessary for the operation to cross or fill such a drainageway, properly engineered drainage structures shall be provided to allow free-flowing drainage and minimize erosion. Where necessary, water-retarding structures shall be placed in drainageways.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-480. Diversions.

Surface water diversions shall be installed as necessary where run-off has the potential for damaging property, causing erosion, contributing to water pollution, flooding or interfering with the establishment of vegetation. Diversions that will be removed in 18 months or less shall convey the peak run-off of a 1-year, 24-hour storm. Diversions that function more than 18 months shall be able to convey the peak run-off of a 10-year, 24-hour storm.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-490. Water quality.

The pH of all water discharge resulting from the mining of minerals shall be between pH 6.0 and pH 9.0 unless otherwise approved by the director. In addition, discharges shall be in compliance with applicable standards established by the Department of Environmental Quality (9 VAC 25-260-20).

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-500. Water impoundments.

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter 13 (§ 45.2-1300 et seq.) of Title 45.2 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

Class of Impoundment*	Spillway Design Flood (SDF)**	Minimum Threshold for Incremental Damage Analysis***
High Hazard	PMF	0.50 PMF
Significant Hazard	0.50 PMF	100-year storm
Low Hazard	100-year storm	50-year storm
*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.		
**The complete definitions of hazard potential are those contained in 4 VAC 50-20-40.		
***The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.		

Reductions in the SDF may be evaluated by use of incremental damage analysis described in 4 VAC 50-20-52. Note that future development downstream may increase the required SDF.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified professional engineer licensed in Virginia and experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification shall include a device to permit draining of the impoundment within a reasonable period of time, and at a minimum shall be able to lower the pool level six vertical inches per day, as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of high, significant, or low shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter 13 (§ 45.2-1300 et seq.) of Title 45.2 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under § 45.2-1302 of the Code of Virginia. Records of the inspections shall be kept and certified by the operator or his agent.

i. The operator will prepare an emergency action plan (EAP) that includes the following information:

(1) A notification chart of persons or organizations to be notified, the person or persons responsible for notification, and the priority in which notifications are issued. Notifications shall include at a minimum the division, the local government authority responsible for emergency response, and the Virginia Department of Emergency Management.

(2) A discussion of the procedures used for timely and reliable detection, evacuation, and classification of emergency situations considered to be relevant to the structure and its setting.

(3) Designation of responsibilities for EAP related tasks. Also, the EAP shall designate the responsible party for making a decision that an emergency situation no longer exists at the impounding structure. Finally, the

EAP shall include the responsible party and the procedures for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by a failure of the impounding structure.

(4) A section describing actions to be taken in preparation for impoundment emergencies, both before and during the development of emergency conditions.

(5) Dam break inundation maps. Each sheet of such maps for high and significant potential hazard classification structures shall be prepared and sealed by a professional engineer. Where possible, inundation mapping in the EAP should be provided on sheets no larger than 11 inches by 17 inches to facilitate copying for emergency response.

(6) Appendices containing information that supports and supplements the material used in the development of the EAP, including plans for training, exercising, and updating the EAP.

(7) A section that identifies all parties with assigned responsibilities in the EAP and signed certification by all of those parties that a copy of the EAP has been received.

(8) Times periods for review or revision acceptable to the director.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers;

b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service;

c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation;

d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service;

e. The design procedures, manuals and criteria used by the United States Federal Energy Regulatory Commission;

f. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised;

g. Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted April 2004; FEMA 94 or as revised; or

h. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the postmining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

1. Be designed and constructed using prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Be designed and constructed with outlet facilities capable of:

a. Protecting public safety;

b. Maintaining water levels to meet the intended use; and

c. Being compatible with regional hydrologic practices.

4. Be closed and abandoned to ensure continued stability and compatibility with the postmining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

Statutory Authority
§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-505. Reporting impoundment failures.

If upon examination an operator determines that any water impounding structure in the permitted area has failed partially or completely, the incident must be reported to the division immediately.

Statutory Authority
§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes
Derived from Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

4 VAC 25-31-510. Alternative methods of stabilization.

Riprap shall be used for the control of erosion on those areas where it is impractical to establish vegetation or other means of erosion control or in any areas where rock riprap is an appropriate means of reclamation. Placing of rock riprap shall be in accordance with drainage standards and the approved mineral mining plan. Other methods of stabilization may include gabions, concrete, shotcrete, geotextiles, and other means acceptable to the director.

Statutory Authority
§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes
Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-520. Revegetation.

Disturbed land shall be stabilized as quickly as possible after it has been disturbed with a permanent protective vegetative cover. The Mineral Mine Operator's Manual provides guidance in the revegetation of surface mined areas. Exposed areas subject to erosion on an active mining site shall be protected by a vegetative cover or by other approved methods. Simultaneous revegetation shall be incorporated into the mineral mining plan. Reclamation shall be completed on areas where mining has ceased.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-530. Process in revegetation.

A. Slopes shall be graded in keeping with good conservation practices acceptable to the division. Slopes shall be provided with proper structures such as terraces, berms, and waterways, to accommodate surface water where necessary and to minimize erosion due to surface run-off. Slopes shall be stabilized, protected with a permanent vegetative or riprap covering and not be in an eroded state at the time reclamation is complete.

B. Crusted and hard soil surfaces shall be scarified prior to revegetation. Steep graded slopes shall be tracked (running a cleated crawler tractor or similar equipment up and down the slope).

C. Application of lime and fertilizer shall be performed based on soil tests and the revegetation requirements in the approved reclamation plan.

D. Vegetation shall be planted or seeded and mulched according to the mixtures and practices included in the approved reclamation plan.

E. The seed used must meet the purity and germination requirements of the Virginia Department of Agriculture and Consumer Services. The division may, at its discretion, take samples for laboratory testing. Noncritical vegetated areas shall achieve adequate cover so that no areas larger than one-half acre shall exist with less than 75% cover after two growing seasons. Seeded portions of critical areas shall have adequate vegetative cover so the area is completely stabilized.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 30, Issue 6, eff. December 19, 2013.

Historical Notes

Derived from Virginia Register Volume 19, Is-

4 VAC 25-31-540. Trees and shrubs.

Trees and shrubs shall be planted according to the specific post-mining land use, regional adaptability, and planting requirements included in the approved reclamation plan. For forest and wildlife post-mining land uses, at least 400 healthy plants per acre shall be established after two growing seasons.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003; amended, Vir-

ginia Register Volume 30, Issue 6, eff. December 19, 2013.

4 VAC 25-31-550. (Repealed.)

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003; repealed, Vir-

ginia Register Volume 29, Issue 19, eff. July 4, 2013.

PART V

ORDERS

4 VAC 25-31-560. Informal review.

Orders of the director may be reviewed through informal processes in accordance with § 2.2-4019 of the Code of Virginia.

Statutory Authority

§§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 19, Issue 24, eff. September 11, 2003.

4 VAC 25-31-570. Formal review.

Orders of the director, which are final agency actions for which no further informal resolution is available, shall be appropriately identified and may be appealed in accordance with § 45.2-1226 of the Code of Virginia.

Statutory Authority

§ 45.2-103 of the Code of Virginia.

sue 24, eff. September 11, 2003; amended, Virginia Register Volume 28, Issue 21, eff. July 18, 2012; Volume 38, Issue 13, eff. March 31, 2022.

Historical Notes

Derived from Virginia Register Volume 19, Is-

