

HOUSE BILL NO. 1129

Offered January 11, 1985

A BILL to amend and reenact §§ 32.1-227, 32.1-229, 32.1-236, 32.1-237 and 32.1-238 of the Code of Virginia, and to amend the Code of Virginia by adding in Title 45.1 a chapter numbered 25, consisting of sections numbered 45.1-383 through 45.1-391; a chapter numbered 26, consisting of articles numbered 1 through 7, containing sections numbered 45.1-402 through 45.1-428, a chapter numbered 27, consisting of sections numbered 45.1-442 through 45.1-455, a chapter numbered 28, consisting of a section numbered 45.1-459, and a chapter numbered 29, consisting of sections numbered 45.1-460 through 45.1-465, and to repeal Chapter 21 of Title 45.1 of the Code of Virginia, consisting of sections numbered 45.1-272 through 45.1-285, the amended, added and repealed sections relating to uranium exploration, mining and milling in the Commonwealth; penalties.

Patrons—Council, Watkins, Smith, Ball, and Marks; Senators: Nolen and Bird

Referred to the Committee on Mining and Mineral Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-227, 32.1-229, 32.1-236, 32.1-237 and 32.1-238 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 45.1 a chapter numbered 25, consisting of sections numbered 45.1-383 through 45.1-391, a chapter numbered 26, consisting of articles numbered 1 through 7, containing sections numbered 45.1-402 through 45.1-428, a chapter numbered 27, consisting of sections numbered 45.1-442 through 45.1-455, a chapter numbered 28, consisting of a section numbered 45.1-459, and a chapter numbered 29, consisting of sections numbered 45.1-460 through 45.1-465 as follows:

§ 32.1-227. Definitions.—As used in this article unless the context requires a different meaning:

1. "By-product material" means (i) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material ; and (ii) the tailings or wastes produced by or resulting from the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content .

2. "Ionizing radiation" means gamma rays and X rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

3. "Person" includes, in addition to the entities enumerated in paragraph 4 of § 32.1-3, an institution, agency and political subdivision of this Commonwealth and of any other state but does not include the United States Nuclear Regulatory Commission or any successor thereto or any federal government agencies licensed by the United States Nuclear Regulatory Commission or any successor thereto.

4. "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to the safety and health of any citizen of this Commonwealth.

5. "Radioactive material" means any material that emits ionizing radiation

1 spontaneously.

2 6. "Source material" means (i) uranium, thorium, or any other material which the  
3 United States Nuclear Regulatory Commission, or any successor thereto, has determined to  
4 be source material; or (ii) ores containing one or more of the foregoing materials in  
5 concentrations determined by the United States Nuclear Regulatory Commission or any  
6 successor thereto to be source material.

7 7. "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in  
8 the isotope 233 or in the isotope 235, and any other material which the United States  
9 Nuclear Regulatory Commission or any successor thereto has determined to be such but  
10 does not include source material; or (ii) any material artificially enriched by any of the  
11 foregoing but not including source material.

12 § 32.1-229. General powers of Board.—The Board is authorized to:

13 1. Establish a program of effective regulation of sources of ionizing radiation for the  
14 protection of the public health and safety.

15 2. Establish a program to promote the orderly regulation of ionizing radiation within the  
16 Commonwealth, among the states and between the federal government and the  
17 Commonwealth and to facilitate intergovernmental cooperation with respect to use and  
18 regulation of sources of ionizing radiation to the end that duplication of regulation may be  
19 minimized.

20 3. Establish a program to permit maximum utilization of sources of ionizing radiation  
21 consistent with the public health and safety.

22 4. Adopt regulations providing for (i) licenses to use, manufacture, produce, transfer,  
23 receive, acquire, own or possess quantities of, or devices or equipment utilizing, by-product,  
24 source, special nuclear materials, or other radioactive material occurring naturally or  
25 produced artificially ; ; (ii) registration of the possession of a source of ionizing radiation  
26 and of information with respect thereto ~~and~~ ; (iii) regulation of by-product, source and  
27 special nuclear material ; and (iv) *implementation of the Virginia Uranium Mining and*  
28 *Milling Regulatory Act of 1985 (§ 45.1-383 et seq.) and the responsibilities of the Board as*  
29 *provided therein .*

30 5. Encourage, participate in and conduct studies, investigations, training, research and  
31 demonstrations relating to control of sources of ionizing radiation.

32 6. Develop programs for responding adequately to radiation emergencies and coordinate  
33 such programs with the State Office of Emergency Services.

34 § 32.1-236. Authority of Board to enter into agreements with federal government, other  
35 states or interstate agencies; training programs for personnel.—A. The Board, with the prior  
36 approval of the Governor, is authorized to enter into an agreement or agreements with the  
37 federal government, other states or interstate agencies, whereby this Commonwealth will  
38 perform, on a cooperative basis with the federal government, other states or interstate  
39 agencies, inspections or other functions relating to control of sources of ionizing radiation.

40 B. The Board, from funds provided by law, may institute programs for the purpose of  
41 training personnel to carry out the provisions of this article *and the Virginia Uranium*  
42 *Mining and Milling Regulatory Act of 1985 (§ 45.1-383 et seq.)* and, with the prior approval  
43 of the Governor, may make such personnel available for participation in any program or  
44 programs of the federal government, other states or interstate agencies in furtherance of

1 this article and the Virginia Uranium Mining and Milling Regulatory Act of 1985 (§  
2 45.1-383 et seq.) .

3 § 32.1-237. Effect upon local ordinances, etc.— Ordinances, resolutions or regulations,  
4 now or hereafter in effect, of the governing body of a county or city relating to by-product,  
5 source and special nuclear materials shall not be superseded by this article or the Virginia  
6 Uranium Mining and Milling Regulatory Act of 1985 (§ 45.1-383 et seq.) , provided that  
7 such ordinances or regulations are and continue to be consistent with the provisions of this  
8 article and the Virginia Uranium Mining and Milling Regulatory Act of 1985 (§ 45.1-383 et  
9 seq.) , amendments thereto and regulations thereunder.

10 § 32.1-238. Impounding sources of ionizing radiation.— The Commissioner is authorized,  
11 in the event of an emergency constituting a hazard to the public health and safety, to  
12 impound or order the impounding of sources of ionizing radiation in the possession of any  
13 person who is not equipped to observe or fails to observe the provisions of this article or  
14 the Virginia Uranium Mining and Milling Regulatory Act of 1985 (§ 45.1-383 et seq.) or  
15 any regulations issued thereunder.

#### 16 CHAPTER 25.

#### 17 GENERAL PROVISIONS.

18 § 45.1-383. Short title.—This chapter and Chapters 26, 27, 28, and 29 shall be known as  
19 the "Virginia Uranium Mining and Milling Regulatory Act of 1985."

20 § 45.1-384. Findings.—The General Assembly finds and declares that:

21 A. It is in the public interest to ensure the availability and orderly development of  
22 domestic uranium resources now and in the future. The mining and milling of uranium  
23 resources within the Commonwealth are activities that can further the public interest and  
24 bring economic benefits to the citizens of the Commonwealth, but only if these activities  
25 are controlled and regulated to minimize potential adverse effects on health and the  
26 environment. Uncontrolled mining and milling of uranium can adversely affect health and  
27 the environment through the immediate and prolonged release of various forms of  
28 pollution, the temporary or permanent destruction of habitable areas, and the destruction  
29 or disruption of various environmental patterns. While it is not practicable to extract and  
30 process uranium without disturbing the surface of the earth and producing waste  
31 materials, it is essential to conduct such mining and milling in a way that will minimize  
32 their adverse effects on health and the environment.

33 B. The proper control of the exploration for and the mining and milling of uranium, so  
34 as to prevent or minimize adverse effects, requires (i) thorough planning in the selection of  
35 appropriate uranium mining and milling sites, methods of mining and milling, and  
36 reclamation procedures; (ii) consideration of the impact of uranium mining and milling  
37 upon the ecology and land use of surrounding areas as well as upon the disturbed land of  
38 the uranium mining and milling sites; and (iii) careful and continuing evaluation of the  
39 methods of uranium mining and milling and of the available and appropriate control  
40 techniques and reclamation procedures.

41 C. The regulation of the uranium industry within the Commonwealth should be  
42 administered through a state regulatory program, including the licensing and monitoring of  
43 any uranium mill under an agreement with the Nuclear Regulatory Commission. It is in  
44 the best interest of the Commonwealth that the development, administration and

1 enforcement of the provisions of this Act be carried out by state officials and  
2 instrumentalities pursuant to a state regulatory program that can encompass the whole  
3 impact of the uranium industry on the Commonwealth.

4 D. The development and execution of a state regulatory program requires carefully  
5 coordinated action by state agencies with authority to protect the public health and  
6 environment. The work of the Uranium Task Force which studied uranium development  
7 during 1984 exemplifies the type of executive branch agency coordination essential to a  
8 comprehensive state regulatory program. The continuation of the Uranium Task Force to  
9 assist in the coordination of budget estimates, agreement status negotiations, and initial  
10 implementation of the state regulatory program is an essential component of overall state  
11 regulation of uranium development.

12 E. Due to its unique character or location, some land within the Commonwealth may  
13 be unsuitable for all or certain uranium mining and milling operations.

14 F. The requirements of this Act for the regulation of the uranium industry and the  
15 reclamation and maintenance of affected land are necessary for the public health and  
16 safety and thus constitute a valid application of the police power of the Commonwealth.

17 § 45.1-385. Purposes.—A. The purposes of this Act are to do the following:

18 1. Authorize and enable the designated state agencies to develop a state regulatory  
19 program pursuant to this Act and provide for the implementation and enforcement of this  
20 Act and the regulations promulgated hereunder and any amendments thereto, as the same  
21 may be or become effective at any time or from time to time.

22 2. Exercise the police power of the Commonwealth in a state regulatory program to: (i)  
23 limit and control the adverse effects of uranium mining and provide for the reclamation of  
24 disturbed lands to ensure the protection of the public welfare and safety and (ii) limit and  
25 control the adverse effects of uranium milling and provide a program to regulate uranium  
26 milling and the mill tailings produced during uranium ore processing at active mill  
27 operations and after termination of such operations to ensure the protection of the public  
28 welfare and safety.

29 3. Promote an orderly regulatory pattern and avoid unnecessary duplication of  
30 regulation within the Commonwealth, and between the federal government and the  
31 Commonwealth, with respect to the regulation of uranium mining, milling and mill tailings  
32 by means of appropriate state agency agreements and an agreement between the  
33 Governor and the Nuclear Regulatory Commission entered into pursuant to § 274(b) of the  
34 Atomic Energy Act of 1954, as amended, and § 32.1-235 of the Code of Virginia.

35 4. Assure that the rights of surface landowners and other persons with a legal interest  
36 in the land or appurtenances to the land are protected through proper regulation of  
37 uranium mining and milling operations.

38 5. Assure that uranium mining and milling operations are not conducted where  
39 reclamation as required by this Act is not possible.

40 6. Assure that uranium mining and milling operations are conducted in a manner that  
41 will prevent any degradation of land and water resources.

42 7. Assure that reclamation of all uranium-mined land is accomplished as  
43 contemporaneously as practicable with the uranium mining.

44 8. Create special remedies at law for injuries resulting from releases of radioactive

1 materials from uranium mining and milling operations.

2 B. Nothing in this Act is intended, nor shall be construed, to limit, impair, abridge,  
3 create, enlarge, or otherwise affect, substantially or procedurally, the rights of any person  
4 in any dispute involving property rights, including interests in water resources, or the  
5 right of any person to damage or other relief on account of injury to persons or property,  
6 including interests in water resources, or to maintain any action or other appropriate  
7 proceeding therefor, except as is otherwise specifically provided in this Act; nor to affect  
8 the powers of the Commonwealth to initiate, prosecute and maintain actions to abate  
9 public nuisances.

10 § 45.1-386. Definitions.—The following words and phrases when used in this Act shall  
11 have the meanings respectively ascribed to them in this section except where the context  
12 clearly requires a different meaning.

13 “Combined uranium mining and milling operation” or “combined operation” means a  
14 uranium mining operation and a uranium milling operation conducted in an  
15 interdependent manner within the same county or upon contiguous sites. The first  
16 uranium mining operation and the first uranium milling operation which are licensed  
17 under this Act shall be licensed only as part of a combined operation.

18 “Environment” means any surface water, groundwater, drinking water supply, land  
19 surface or subsurface strata, or ambient air within the Commonwealth of Virginia or  
20 under the jurisdiction of the Commonwealth of Virginia.

21 “Mill tailings” means by-product material as defined in paragraph 1 (ii) of § 32.1-227.

22 “Operator” means the individual or the entity that is to engage or that is engaged in  
23 a uranium mining, milling or combined operation, including any individual or entity whose  
24 license has expired or has been suspended or revoked.

25 “Person” means any individual, partnership, association, joint venture, trust, company,  
26 firm, joint stock company, corporation, or any other group or combination acting as a  
27 unit, or any other legal entity.

28 “State regulatory program” means the total program established and authorized by this  
29 Act and meeting the requirements of this Act for the regulation of uranium mining and  
30 milling operations within the Commonwealth.

31 “Uranium milling operation” means: (i) activities conducted to process uranium ore and  
32 to refine it for further use. Such activities include all processing steps at the milling site  
33 including ore sorting stations, the loading of processed uranium for shipment or delivery  
34 from the milling site, the transportation of the mill tailings to the tailings management  
35 area, and the depositing of and subsequent management of mill tailings in the mill tailings  
36 area; and

37 (ii) the areas upon which such activities occur or where such activities disturb the  
38 natural land surface. Such areas shall also include any adjacent land the use of which is  
39 incidental to any such activities, all lands affected by the construction of new roads or the  
40 improvement or use of existing roads to gain access to the site of such activities and for  
41 haulage, and excavations, workings, impoundments, dams, refuse banks, dumps, stockpiles,  
42 mill tailings areas, holes or depressions, repair areas, storage areas, processing areas,  
43 shipping or loading areas, and other areas upon which are sited structures, facilities, or  
44 other property or materials, resulting from or incident to such activities.

1     *"Uranium mining operation" means: (i) activities conducted on the surface of lands in*  
2 *connection with a surface uranium mine or, subject to the requirements of § 45.1-416,*  
3 *operations and impacts incident to an underground uranium mine. Such activities include*  
4 *excavation for the purpose of obtaining uranium, the use of explosives and blasting, the*  
5 *preparation, loading and hauling of uranium for delivery to a uranium milling operation,*  
6 *the reclamation of land affected by mining operations; and (ii) the areas upon which such*  
7 *activities occur or where such activities disturb the natural land surface. These areas shall*  
8 *also include any adjacent land which is being used incidentally to these activities, all*  
9 *lands affected by the construction of new roads or the improvement or use of existing*  
10 *roads to gain access to the site of such activities and for loading and haulage, and areas*  
11 *upon which are sited structures, facilities or other property resulting from or incident to*  
12 *such activities.*

13     *The terms "by-product material," "source material," and "special nuclear material" are*  
14 *defined for purposes of this Act as stated in § 32.1-227.*

15     § 45.1-387. *Required licenses and permits.—No person shall begin construction of any*  
16 *uranium mining operation or of any uranium milling operation prior to the obtaining of*  
17 *all licenses and permits which are required by the state regulatory program and by law.*

18     *The Department of Health shall be responsible for the final determination that all the*  
19 *licenses and permits required by law have been acquired and will be effective before*  
20 *construction may begin at any combined uranium mining and milling operation or at any*  
21 *uranium milling operation. The Department of Mines, Minerals and Energy shall be*  
22 *responsible for the final determination that all the necessary licenses and permits required*  
23 *by law have been acquired and will be effective before construction may begin at any*  
24 *uranium mining operation subject only to the further determination of the Department of*  
25 *Health for a combined uranium mining and milling operation.*

26     § 45.1-388. *Environmental impact analyses.—*

27     A. *Prior to the issuance, amendment or renewal of any license by the Department of*  
28 *Mines, Minerals and Energy to permit a uranium mining operation or by the Department*  
29 *of Health to permit a uranium milling operation, and if the licensing Department shall*  
30 *determine that the license, amendment or renewal will have a significant impact on the*  
31 *human environment, then that Department shall prepare or secure the preparation of a*  
32 *written analysis that shall be available to the public for written comment at least thirty*  
33 *days before the beginning of the hearing on the license, amendment or renewal, shall be*  
34 *made a part of the record, and shall include:*

35         1. *An assessment of the radiological and nonradiological impacts on the public health*  
36 *of the operation;*

37         2. *An assessment of any impact on any waterway and groundwater resulting from the*  
38 *operation;*

39         3. *Consideration of alternatives, including but not limited to alternative sites and*  
40 *engineering methods, to the operation to be conducted under the license; and*

41         4. *Consideration of the long-term impacts, including decommissioning, decontamination,*  
42 *and reclamation impacts, associated with the operation to be conducted under the license,*  
43 *including, in the case of a uranium milling operation, the management of mill tailings*  
44 *which will remain on the site after such decommissioning, decontamination and*

1 reclamation.

2 B. If an environmental impact analysis is required under subsection A of this section  
3 for the issuance, amendment or renewal of a license for any part of a combined operation,  
4 the analysis shall assess and consider the combined impacts of the entire operation.

5 C. The Administrator of the Council on the Environment is authorized and directed to  
6 assist the Department of Mines, Minerals and Energy and the Department of Health in the  
7 securing of the written analyses required by this section and in coordinating analyses of  
8 combined operations.

9 § 45.1-389. Coordinated state regulatory program; Council on the Environment.—A.  
10 Unless this Act expressly provides to the contrary, (i) all state statutes and permitting and  
11 regulatory programs, including but not limited to those administered by the State Air  
12 Pollution Control Board and the State Water Control Board, shall continue in full force  
13 and effect and (ii) this Act shall not preclude the implementation or enforcement of such  
14 statutes and permitting and regulatory programs that may be applicable to uranium  
15 mining and milling operations or the imposition of penalties as provided therein.

16 B. By agreement of any two or more state agencies with statutory authority to issue  
17 licenses and permits required by law for any uranium mining operation, uranium milling  
18 operation, or combined operation, there may be established a joint hearing schedule,  
19 combined record, and joint procedural policy. Any such agency may participate in a joint  
20 hearing and utilize a combined record, and the requirements of the Administrative Process  
21 Act (§ 9-6.14:1 et seq.) shall not be construed to prohibit joint hearing and combined  
22 record procedures so long as there is evidence in the record relevant to the basic law  
23 under which the agency operates to support its findings.

24 C. The Administrator of the Council on the Environment is authorized to provide  
25 assistance to the Department of Health and to the Department of Mines, Minerals and  
26 Energy in the administration of the state regulatory program. He shall be notified of any  
27 agreement authorized under subsection B of this section and shall assist the agencies in  
28 the consolidation and expediting of the administrative processing of licensing and  
29 permitting activities in accordance with the terms of the agreement.

30 D. The Administrator of the Council on the Environment shall serve as chairman of a  
31 task force of state agency representatives to coordinate the implementation of the state  
32 regulatory program. Members of the task force shall include, in addition to the  
33 administrator, representatives of the Department of Agriculture and Consumer Services,  
34 the Department of Health, the Department of Labor and Industry, the Department of  
35 Mines, Minerals and Energy, the State Air Pollution Control Board, and the State Water  
36 Control Board. The task force shall meet on the call of the chairman. The task force shall  
37 (i) coordinate the administration of the state regulatory program, (ii) coordinate budget  
38 estimates and requests to initiate and implement the state regulatory program, (iii) foster  
39 the use of agreements pursuant to subsection B of this section, (iv) seek to eliminate  
40 duplication of costs and regulatory provisions, and (v) coordinate monitoring and  
41 enforcement efforts of the agencies. The task force shall report to the Governor and the  
42 General Assembly on the status of the state regulatory program by December 1 of each  
43 year from 1985 to 1990.

44 Every effort shall be made to ensure that Virginia reaches agreement state status

1 within two years of the effective date of this Act.

2 The Administrator of the Council on the Environment, along with the task force, shall  
3 oversee the activity schedule of the various state agencies for the purpose of assuring that  
4 an agreement is negotiated between the Commonwealth and the Nuclear Regulatory  
5 Commission by that date.

6 § 45.1-390. State policy and performance standards applicable to uranium operations.—

7 A. In the issuance of state licenses and permits and their subsequent amendments and  
8 renewals, it shall be the policy of the Commonwealth to require that persons licensed  
9 under the state regulatory program shall make every reasonable effort to reduce radiation  
10 exposures and releases of radioactive materials in unrestricted areas to levels as low as  
11 are reasonably achievable.

12 B. The following state performance standards on radiation hazards shall be applicable  
13 to any uranium mining, milling or combined operation: (i) the annual dose equivalent shall  
14 not exceed twenty-five millirems above established existing background to the whole body  
15 or any critical organ of any member of the public as a result of exposures to planned  
16 discharges of radioactive materials, radon and its daughters excepted, from any such  
17 operation and to radiation from any such operation; and (ii) there shall be no release of  
18 radon and its daughters in any concentration in excess of one picocurie per liter above  
19 established existing background at any time measured at the most exposed habitable  
20 structures.

21 The Board of Health, through its regulations, will establish and maintain a monitoring  
22 program and will establish a threshold level for radon less than the one picocurie per liter  
23 standard. Such regulations shall further provide for a process of administrative review to  
24 take place when the threshold radiation level is reached.

25 C. The following additional performance standards shall be applicable:

26 1. The permitting authority shall ensure that any uranium mining milling, or combined  
27 operation shall comply with the anti-degradation policy expressed in § 62.1-44.4 and in the  
28 state water quality standards. There shall, however, be no variance from amendment to or  
29 cancellation of the anti-degradation policy to provide necessary economic or social  
30 development.

31 2. The uranium milling operation shall not result in either a point or nonpoint  
32 discharge to surface waters or a well of any process wastewater.

33 "Process wastewater" means any water which, during manufacturing or processing,  
34 comes into direct contact with or results from the production or use of any raw material,  
35 intermediate product, finished product, by-product, or waste products, including leachate  
36 from mill tailings.

37 3. In addition to the foregoing, the disposal facility for mill tailings shall meet  
38 performance standards promulgated pursuant to hazardous waste management regulations  
39 including, but not limited to those promulgated for land disposal facilities.

40 D. Mining waste rock determined by the Board of Health to constitute a hazardous  
41 waste shall be subject to hazardous waste management regulations.

42 E. Prior to the final determination pursuant to § 45.1-387 that all licenses and permits  
43 required by law have been acquired and prior to the issuance of a license for a uranium  
44 mining or uranium milling operation, the Department of Mines, Minerals and Energy, in



1 the case of a uranium mining operation, and the Department of Health, in the case of a  
2 uranium milling operation, shall determine that such licenses and permits contain  
3 conditions, and require adequate monitoring and reporting, to ensure compliance with the  
4 performance standards contained in this section.

5 F. Each violation of any of the conditions of such a license or permit embodying the  
6 performance standards contained in this section shall be subject to a mandatory civil  
7 penalty of \$10,000. Each day of violation shall constitute a separate offense.  
8 Notwithstanding any provision of law to the contrary, the state agency responsible for the  
9 enforcement of the license or permit condition shall seek the mandatory civil penalty  
10 hereby imposed for a violation of the performance standards contained in this section.

11 § 45.1-391. Confidentiality of certain information.—Information submitted pursuant to  
12 the provisions of this Act and regulations adopted pursuant to this Act concerning mineral  
13 deposits, test borings, core samplings, or trade secrets or privileged commercial or  
14 financial information relating to the competitive rights of the applicant and specifically  
15 identified as confidential by the applicant, if not essential for public review as determined  
16 by the state agency receiving the application, shall not be disclosed by any member,  
17 agent, or employee of the agency, notwithstanding any other provision of state law.

18 Information so determined not to be essential for public review shall be deleted by the  
19 agency from documentation made available for public inspection.

20 § 45.1-392 to § 45.1-401. (Reserved).

## 21 CHAPTER 26.

### 22 URANIUM MINING CONTROL AND RECLAMATION.

#### 23 Article 1.

#### 24 General and Administrative Provisions.

25 § 45.1-402. Definitions.—The following words and phrases when used in this chapter  
26 shall have the meaning respectively ascribed to them in this section except where the  
27 context clearly requires a different meaning. The Director of the Department of Mines,  
28 Minerals and Energy shall have the power to adopt by regulation such other definitions as  
29 may be deemed necessary to carry out the intent of this chapter.

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

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

32 "Imminent danger to the health and safety of the public" means the existence of any  
33 condition or practice, or any violation of a permit or other requirement of this chapter in  
34 a uranium mining operation, which condition, practice or violation could reasonably be  
35 expected to involve danger to the public life and health as determined by the Director.

36 "License" means a license issued by the Director for uranium mining pursuant to this  
37 chapter.

38 "License area" means the land indicated on the approved map submitted by the  
39 operator with his application, which area of land shall be covered by the bond as required  
40 by § 45.1-414 and shall be readily identifiable by appropriate markers on the site. The  
41 license area shall include, as a minimum, all areas which are or shall be disturbed by the  
42 uranium mining operation over the life of the license.

43 "Licensee" means a person holding a license or required to hold a license issued by  
44 the Director for uranium mining pursuant to § 45.1-405.

1     *"State mining regulatory program" means the program established and authorized by*  
2 *this chapter meeting the requirements of this chapter for the regulation of uranium mining*  
3 *operations within the Commonwealth.*

4     *"Unwarranted failure to comply" means the failure of a licensee to prevent the*  
5 *occurrence of any violation of his license or any requirement of this chapter due to*  
6 *indifference, lack of diligence, or lack of reasonable care, or the failure to abate any*  
7 *violation of such license or this chapter due to indifference, lack of diligence, or lack of*  
8 *reasonable care.*

9     § 45.1-403. *Authority and duties of Director and the Division.—A. The authority to*  
10 *publish and promulgate such regulations as may be necessary to carry out the purposes*  
11 *and provisions of this chapter is hereby vested in the Director. In promulgating such*  
12 *regulations, the Director shall provide an opportunity for public comment, both oral and*  
13 *written, and shall give public notice of proposed regulations, in accordance with the*  
14 *Administrative Process Act (§ 9-6.14:1 et seq.), at least thirty days in advance of the date*  
15 *specified for public comment. The Director shall formally and finally adopt regulations to*  
16 *implement this chapter and create the state mining regulatory program mandated by this*  
17 *chapter no later than July 1, 1986.*

18     *The state mining regulatory program shall take effect on whichever of the following*  
19 *two dates occurs last: July 1, 1986, or the effective date of an agreement between the*  
20 *Governor and the Nuclear Regulatory Commission entered into pursuant to § 274(b) of the*  
21 *Atomic Energy Act of 1954, as amended, which agreement provides for the discontinuance*  
22 *of regulatory authority of the Commission with respect to by-product materials as defined*  
23 *in § 11 (e) (2) of the Act (mill tailings) and source materials processed in uranium mills,*  
24 *and with respect to such other materials as the agreement may specify.*

25     *B. In addition to the adoption of regulations under this chapter, the Director may at*  
26 *his discretion issue or distribute to the public interpretative, advisory or procedural*  
27 *bulletins or guidelines pertaining to license applications or to matters reasonably related*  
28 *thereto without following any of the procedures set forth in the Administrative Process*  
29 *Act (§ 9-6.14:1 et seq.). The materials shall be clearly designated as to their nature, shall*  
30 *be solely for purposes of public information and education, and shall not have the force of*  
31 *regulations under this chapter or under any provision of this Code.*

32     *C. The authority to administer and enforce the provisions of this chapter is hereby*  
33 *vested in the Director. In administering and enforcing the provisions of this chapter, the*  
34 *Director shall exercise the following powers in addition to any other powers conferred*  
35 *upon him by law:*

36     1. *To supervise the administration and enforcement of this chapter; to make*  
37 *investigations and inspections necessary to ensure compliance with this chapter; to*  
38 *conduct hearings, administer oaths, issue subpoenas and compel the attendance of*  
39 *witnesses and production of written or printed material as provided for in this chapter; to*  
40 *issue orders and notices of violation; to review and vacate or modify or approve orders*  
41 *and decisions; and to order the suspension, revocation, or withholding of any license for*  
42 *failure to comply with any of the provisions of this chapter or any rules and regulations*  
43 *adopted thereunder;*

44     2. *To encourage and conduct investigations, research, experiments, and demonstrations*

1 and to collect and disseminate information relating to uranium mining and reclamation of  
2 lands and waters affected by uranium mining;

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

5 D. The Division shall have the responsibilities as the Director may assign, or as may  
6 be provided for in regulations promulgated by the Director.

7 Article 2.

8 Regulation of Uranium Exploration Activities.

9 § 45.1-404. Uranium exploration operations.—A. Uranium exploration activities shall  
10 include but not be limited to drilling, the excavation of pits, shafts, adits, or other  
11 openings in the ground; the removal of any material other than hand samples; the conduct  
12 of vibroseis or other seismic surveys off of state highway right-of-way or other roads; the  
13 conducting of any other surveys or investigations that change the ground surface; the  
14 construction of access roads; and the cutting of trees, brush, or other vegetation to  
15 establish investigation sites or survey lines. Exploration activities which are not ground  
16 disturbing activities are not subject to the requirements of this section.

17 B. Uranium exploration activities shall be conducted in accordance with exploration  
18 regulations promulgated by the Director. Such regulations shall include, at a minimum, (i)  
19 the requirement that prior to conducting any exploration under this section, any person  
20 must file with the Director an application for a license to explore and such application  
21 shall include a description and map of the exploration area, a description of the  
22 exploration and reclamation operations, and the period of exploration; (ii) provisions for  
23 reclamation in accordance with the performance standards established pursuant to §  
24 45.1-415 of all lands disturbed in exploration, including excavations, roads, drill holes, and  
25 the removal of facilities and equipment; (iii) provisions for an exploration fee not to  
26 exceed \$250; and (iv) provisions requiring a bond to accompany the application, payable  
27 to the Commonwealth, with surety acceptable to the Director. The bond shall be set by  
28 the Director in such amount as may be deemed reasonable and necessary. The license for  
29 exploration activities shall be valid for a period of one year, and may be renewed for a  
30 like period of time.

31 C. Any person who conducts any uranium exploration activities which disturb the  
32 natural land surface in violation of this section or regulations issued pursuant thereto shall  
33 be subject to the provisions of § 45.1-419.

34 D. No person shall engage in any uranium exploration operations except in compliance  
35 with a written uranium exploration license issued by the Director.

36 Article 3.

37 Regulation of Mining Activity.

38 § 45.1-405. Licenses required; time for application and action of Director thereon; term;  
39 transfer; etc.—A. On and after the effective date of the state mining regulatory program,  
40 no person shall engage in or carry out any uranium mining operations except in  
41 compliance with a license to engage in such operations issued by the Director, in  
42 accordance with the state mining regulatory program which shall include any  
43 environmental impact analysis required by § 45.1-388.

44 B. Uranium mining licenses issued pursuant to the requirements of this chapter shall

1 be for a term not to exceed five years. The rights granted under a license shall not be  
2 transferred, assigned or sold without the written approval of the Director in accordance  
3 with regulations promulgated by him.

4 C. A license may be issued for a longer term if the applicant demonstrates that a  
5 specified longer term is reasonably needed to allow the applicant to obtain necessary  
6 financing for equipment and the opening of the operation and if the application is full and  
7 complete for such specified longer term.

8 D. A successor in interest to a licensee who applies for a new license within thirty  
9 days of succeeding such interest and who is able to obtain the bond coverage of the  
10 original licensee, as well as the written approval of the Director, may continue uranium  
11 mining and reclamation operations according to the approved mining and reclamation plan  
12 of the original licensee until such successor's application is granted or denied.

13 E. A license shall terminate if the licensee has not commenced the mining operations  
14 covered by such license within three years of the issuance of the license; however, the  
15 Director may grant reasonable extensions of time upon a showing that such extensions  
16 are necessary by reason of litigation precluding such commencement or threatening  
17 substantial economic loss to the licensee, or by reason of conditions beyond the control  
18 and without the fault or negligence of the licensee.

19 § 45.1-406. Form and contents of license application; fee.—A. Application for a uranium  
20 mining license shall be made to the Division in the format required by the Director and  
21 shall be signed and verified under oath by the person, or his legal representative,  
22 intending to engage in the mining of uranium.

23 B. The Director shall prescribe and collect license fees, license revision fees, license  
24 renewal fees, and annual license anniversary fees.

25 1. The license fee, license revision fee and license renewal fee shall be established by  
26 Department regulations in amounts not to exceed the actual expenses incurred: (i) in  
27 processing applications for a license; and (ii) for amendments to or renewals of licenses.

28 2. An annual license anniversary fee shall be required of each licensee and the amount  
29 shall be established by Department regulations in amounts not to exceed the actual  
30 expenses incurred annually: (i) for making inspections of licensees; and (ii) for enforcement  
31 of this chapter and regulations, orders and licenses hereunder. Fees collected by the  
32 Director under this section shall be deposited in the general fund of the state treasury.

33 C. The application shall contain all information required by regulations adopted by the  
34 Director and shall include:

35 1. The names and addresses of (i) the license applicant; (ii) every legal owner of record  
36 of the property, both surface and mineral, to be mined; (iii) the holders of record of any  
37 leasehold interest in the property; (iv) any purchaser of record of the property under a  
38 real estate contract; (v) the operator if he is a person different from the applicant; and (vi)  
39 if any of these are business entities other than a single proprietor, the names and  
40 addresses of the principals, officers, and resident agent;

41 2. The names and addresses of the owners of record of all surface and subsurface  
42 areas adjacent to any part of the license area;

43 3. A statement of any current or previous uranium mining licenses in the United  
44 States held by the applicant and the license identification and each pending application;

- 1     4. If the applicant is a partnership, corporation, association, or other business entity,  
2     the following where applicable: the names and addresses of every officer, partner, director  
3     or person performing a function similar to a director, of the applicant, together with the  
4     name and address of any person owning, of record, ten percent or more of any class of  
5     voting stock of the applicant and a list of all names under which the applicant, partner,  
6     or principal shareholder previously operated a uranium mining operation within the United  
7     States within the five-year period preceding the date of submission of the application;
- 8     5. A statement of whether the applicant, any subsidiary, affiliate, or persons controlled  
9     by or under common control with the applicant, has ever held a federal or state uranium  
10    mining license which in the five-year period prior to the date of submission of the  
11    application has been suspended or revoked or has had a mining bond or similar security  
12    deposited in lieu of bond forfeited and, if so, a brief explanation of the facts involved;
- 13    6. A copy of the applicant's advertisement which shall be published in a newspaper of  
14    general circulation in the locality of the proposed site at least once a week for four  
15    successive weeks, and which includes the ownership, a description of the exact location  
16    and boundaries of the proposed site sufficient so that the proposed operation is readily  
17    locatable by local residents, and the location of where the application is available for  
18    public inspection;
- 19    7. A description of the type and method of mining operation that exists or is proposed,  
20    the engineering techniques proposed or used, and the equipment used or proposed to be  
21    used;
- 22    8. The anticipated or actual starting and termination dates of each phase of the  
23    mining operation and number of acres of land to be affected;
- 24    9. As an attachment to the application, an accurate map or plan, to an appropriate  
25    scale, which clearly shows the land to be affected as of the date of the application, the  
26    area of land within the license area upon which the applicant has the legal right to enter  
27    and commence mining operations, and a statement of those documents upon which the  
28    applicant bases his legal right to enter and commence mining operations on the area  
29    affected, and whether that right is the subject of pending court litigation; provided, that  
30    nothing in this chapter shall be construed as vesting in the Director the jurisdiction to  
31    adjudicate property title disputes;
- 32    10. The name of the watershed and location of the surface stream or tributary into  
33    which any surface and pit drainage will be discharged;
- 34    11. A determination of the probable hydrologic consequences of the mining and  
35    reclamation operations, both on and off the mine site, with respect to the hydrologic  
36    regime, quantity and quality of water in surface and ground water systems including the  
37    dissolved and suspended solids and radioactive materials under seasonal flow conditions  
38    and the collection of sufficient data for the mine site and surrounding areas so that an  
39    assessment can be made by the Director of the probable cumulative impacts of all  
40    anticipated mining in the area upon the hydrology of the area and particularly upon  
41    water availability;
- 42    12. When requested by the Director, the climatological factors that are peculiar to the  
43    locality of the land to be affected, including the average seasonal precipitation, the  
44    average direction and velocity of prevailing winds, and the seasonal temperature ranges;

1       13. As attachments to the application, accurate maps to an appropriate scale, which  
2 clearly show (i) the land to be affected as of the date of application and (ii) all types of  
3 information set forth on topographical maps of the United States Geological Survey of a  
4 scale of 1:24,000 or 1:25,000 or larger, including all manmade features and significant  
5 known archaeological sites existing on the date of application. Such maps or plans shall  
6 show all boundaries of the land to be affected, the boundary lines and names of present  
7 owners of record of all surface areas abutting the license area, the location of all buildings  
8 within 1,000 feet of the license area and such other information as may be required by  
9 the Director;

10       14. As attachments to the application, cross-section maps or plans of the land to be  
11 affected including the actual area to be mined, prepared by or under the direction of and  
12 certified by a qualified registered professional engineer, or a certified professional geologist,  
13 with assistance from experts in related fields such as land surveying and landscape  
14 architecture, showing pertinent elevation and location of test borings or core samplings  
15 and depicting the following information: the nature and depth of the various strata of  
16 overburden; the location of subsurface water, if encountered, and its quality; the nature of  
17 the stratum immediately beneath the lowest ore zone to be mined; the structural geology  
18 of the ore body to be mined; existing or previous surface mining limits; the location and  
19 extent of known workings of any underground mines, including mine openings to the  
20 surface; the location of aquifers; the estimated elevation of the water table; the location of  
21 spoil, waste, or tailings areas and topsoil preservation areas; the location of all  
22 impoundments for waste or erosion control; any settling or water treatment facility;  
23 constructed or natural drainways and the location of any actual or potential discharges to  
24 any state waters on the area of land to be affected or adjacent thereto; and profiles at  
25 appropriate cross-sections of the anticipated final surface configuration that will be  
26 achieved pursuant to the operator's proposed reclamation plan;

27       15. A statement of the result of test borings or core samplings from the license area,  
28 including logs of the drill holes; the thickness and areal extent of the ore body; an  
29 analysis of the chemical properties of the ore; chemical analysis of potentially acid, or  
30 toxic forming sections of the overburden; and chemical analysis of the stratum lying  
31 immediately underneath the lowest strata to be mined; and

32       D. Each applicant for a uranium mining license shall file a copy of his application for  
33 public inspection at an appropriate public office approved by the Director where the  
34 mining is proposed to occur.

35       § 45.1-407. Operations and reclamation plans.—A. Each application for a uranium  
36 mining license pursuant to the state mining regulatory program shall include an operations  
37 plan and a reclamation plan, in such form and containing such information as the  
38 Director shall require and meeting the requirements of this chapter and regulations  
39 adopted by the Director. Operations plans shall include underground workings. The  
40 operations and reclamation plans as approved by the Director shall be an integral part of  
41 the terms and conditions of the uranium mining license.

42       B. Each reclamation plan shall include, in the degree of detail necessary to  
43 demonstrate that reclamation required by this chapter can be accomplished, a statement  
44 of:

- 1     1. The identification of the lands subject to uranium mining operations over the  
2     estimated life of those operations and the size, sequence, and timing of the subareas for  
3     which it is anticipated that individual licenses for mining will be sought;
- 4     2. The condition of the land to be covered by the license prior to any mining  
5     including:
  - 6       a. The uses existing at the time of the application, and if the land has a history of  
7       previous mining, the uses which preceded any mining;
  - 8       b. The capability of the land prior to any mining to support a variety of uses giving  
9       consideration to soil and foundation characteristics, topography, and vegetative cover; and
  - 10      c. The productivity of the land prior to mining, including appropriate classification as  
11      prime farmlands, as well as the average yield of food, fiber, forage, or wood products  
12      from such lands obtained under high levels of management;
- 13    3. The use which is proposed to be made of the land following reclamation, including a  
14    discussion of the utility and capacity of the reclaimed land to support a variety of  
15    alternative uses and the relationship of such use to existing land use policies and plans,  
16    and the comments of any owner of the surface, state and local governments or agencies  
17    thereof which would have to initiate, implement, approve or authorize the proposed use of  
18    the land following reclamation;
- 19    4. A detailed description of how the proposed postmining land use is to be achieved  
20    and the necessary support activities which may be needed to achieve the proposed land  
21    use;
- 22    5. The engineering techniques proposed to be used in mining and reclamation and  
23    description of the major equipment; a plan for the control of surface water drainage and  
24    of water accumulation; a plan, where appropriate, for backfilling, soil stabilization, and  
25    compacting, grading, and appropriate revegetation; a plan for soil reconstruction,  
26    replacement, and stabilization, pursuant to the performance standards in § 45.1-415;
- 27    6. An estimate of the costs of the reclamation, including a statement as to how the  
28    licensee plans to comply with each of the requirements set out in § 45.1-415;
- 29    7. The consideration which has been given to the best use and conservation of the  
30    mineral resource being recovered so that future disturbance of the land can be minimized;
- 31    8. A detailed estimated timetable for the accomplishment of each major step in the  
32    reclamation plan;
- 33    9. The consideration which has been given to making the mining and reclamation  
34    operations consistent with surface owner plans, and applicable state and local land use  
35    plans and programs;
- 36    10. The steps to be taken to comply with the provisions of § 45.1-390, applicable air  
37    quality laws and regulations and any applicable health and safety standards;
- 38    11. The consideration which has been given to developing the reclamation plan in a  
39    manner consistent with local physical, environmental, and climatological conditions;
- 40    12. All lands, interests in lands, or options on such interests held by the applicant or  
41    pending bids on interests in lands by the applicant, which lands are contiguous to the  
42    area to be covered by the license;
- 43    13. A detailed description of the measures to be taken during the mining and  
44    reclamation process to assure compliance with the provisions of § 45.1-390 and the State

1 Water Control Board's water quality laws and regulations, and to assure the protection of:  
2 a. The quantity and quality of surface and ground water systems, both on- and off-site,  
3 from adverse effects of the mining and reclamation process and to provide alternative  
4 sources of water in the event there is a failure to so comply and protect surface and  
5 groundwater systems; and

6 b. The rights of present users to such water; and

7 c. The health and safety of water users.

8 14. A detailed description of alternative sources of water which could be provided in  
9 the event of a failure to protect the quantity and quality of surface and groundwater  
10 systems.

11 15. Such other requirements as the Director shall prescribe by regulation.

12 § 45.1-408. Liability insurance.—Each applicant for a uranium mining license shall be  
13 required to submit to the Division as a part of the license application a certificate issued  
14 by an insurance company authorized to do business in the Commonwealth, certifying that  
15 the applicant has a public liability insurance policy in force for the uranium mining and  
16 reclamation operations for which such license is sought. Such policy shall provide for  
17 personal and economic injury as well as property and natural resource damage protection  
18 in an amount set by rule or regulation promulgated by the Director as adequate to  
19 compensate any persons damaged as a result of uranium mining and reclamation  
20 operations, including use of explosives, and entitled by law to compensation under  
21 applicable provisions of law including the liability sections in Chapter 29 of this Act. Such  
22 policy shall be maintained in full force and effect during the terms of the license or any  
23 renewal, and including the length of all reclamation operations. The Director is authorized  
24 to promulgate regulations which provide for the submission by the applicant of evidence  
25 of self-insurance, meeting the requirements of this section, in lieu of a certificate of a  
26 public liability insurance policy.

27 § 45.1-409. Revision of licenses.—A.1. During the term of the license the licensee may  
28 submit an application for a revision of the license, together with a revised operations plan  
29 and reclamation plan, to the Director.

30 2. An application for a revision of a license shall not be approved unless the Director  
31 finds that reclamation as required by the state mining regulatory program can be  
32 accomplished under the revised reclamation plan. The Director shall establish, by  
33 regulation, the period of time within which the revision shall be approved or disapproved,  
34 as well as guidelines for a determination of the scale or extent of a revision request for  
35 which all license application information requirements and procedures, including notice and  
36 hearings, shall apply; however, any revisions which propose significant alterations in the  
37 operations plan and reclamation plan shall, at a minimum, be subject to notice and  
38 hearing requirements.

39 3. Any extension to the area covered by the license, except insignificant boundary  
40 revisions, must be made by application for another license.

41 B. The Director shall, within a time limit prescribed in regulations promulgated, review  
42 outstanding licenses and may require reasonable revision or modification of the license  
43 provisions during the term of such license. Such revision or modification shall be based  
44 upon a written finding and subject to notice and hearing requirements.



1     § 45.1-410. Approval or denial of license or revision application.—A. Upon the basis of a  
2 complete mining application and reclamation plan or a revision or renewal thereof, as  
3 required by the state mining regulatory program, including public notification and  
4 opportunity for public hearing, the Director shall grant, require modification of, or deny  
5 the application for a license in a reasonable time established by regulation and shall notify  
6 the applicant in writing.

7     The applicant shall have the burden of establishing that the application is in  
8 compliance with all requirements of the state mining regulatory program. Within ten days  
9 after the granting of a license the Director shall notify the government officials in the city  
10 or county in which the area of land to be affected is located that a license has been  
11 issued and shall describe the location of the land.

12     B. No license or revision application shall be approved unless the application  
13 affirmatively demonstrates, and the Director finds in writing on the basis of the  
14 information set forth in the application or from information otherwise available which will  
15 be documented in the approval and made available to the applicant, that:

16     1. The license application is accurate and complete and that all the requirements of  
17 the state mining regulatory program have been complied with;

18     2. The radiological standards set forth in paragraphs A, B, and C3 of § 45.1-390 have  
19 been met and the Department of Health concurs in this finding;

20     3. The applicant has demonstrated that reclamation as required by the state mining  
21 regulatory program can be accomplished under the reclamation plan contained in the  
22 license application;

23     4. The assessment of the probable cumulative impact of all anticipated mining in the  
24 area on the hydrologic balance has been made by the Director in accordance with  
25 regulations and the proposed operation has been designed to prevent material damage to  
26 the hydrologic balance outside the license area;

27     5. The area proposed to be mined is not included within an area designated unsuitable  
28 for uranium mining pursuant to Chapter 28 nor is it within an area under study for such  
29 designation in an administrative proceeding commenced pursuant to that chapter.

30     6. In cases where the private mineral estate has been severed from the private surface  
31 estate, the applicant has submitted to the Director:

32     a. The written consent of the surface owner to the extraction of uranium by surface  
33 mining methods; or

34     b. A conveyance that expressly grants or reserves the right to extract the uranium by  
35 surface mining methods; or

36     c. If the conveyance does not expressly grant the right to extract uranium by surface  
37 mining methods, the surface-subsurface legal relationship shall be determined in accordance  
38 with the laws of this Commonwealth. However, nothing herein shall be construed to  
39 authorize the Director to adjudicate property rights disputes.

40     C. The applicant shall file with his license application a schedule listing any and all  
41 notices of violations of this chapter and any law, rule or regulation of the United States  
42 or of this Commonwealth or of any department or agency in the United States, Canada,  
43 or any state in the United States pertaining to air or water quality or environmental  
44 protection, incurred by the applicant in connection with any uranium mining operation

1 during the three-year period preceding the date of application. The schedule shall only  
2 indicate those violation notices which are unresolved as of the date of the application and  
3 those which have been upheld through all administrative or judicial appeals. Where the  
4 schedule or other information available to the Director indicates that any uranium mining  
5 operation owned or controlled by the applicant is currently or alleged to be in violation of  
6 the laws referred to in this subsection, the license shall not be issued until the applicant  
7 submits proof that such violation has been corrected or is in the process of being  
8 corrected to the satisfaction of the authority, department or agency which has jurisdiction  
9 over such violation, and no license shall be issued to an applicant after a finding by the  
10 Director after opportunity for a hearing, that the applicant, or the operator specified in  
11 the application, controls or has controlled mining operations with a demonstrated pattern  
12 of violations of this chapter or other state or national laws with resulting damage to the  
13 environment.

14 § 45.1-411. Public participation in process of issuing or revising licenses.—A. The  
15 Director shall establish, by regulation, procedures for the notification of and participation  
16 by the public and appropriate federal, state and local governmental authorities in the  
17 process for issuing or revising uranium mining licenses.

18 B. At the time of submission of an application for a uranium mining and reclamation  
19 license, or revision of an existing license, pursuant to the provisions of this chapter, the  
20 applicant shall submit to the Director a copy of his advertisement of the ownership,  
21 precise location, and boundaries of the land to be affected. At the time of submission such  
22 advertisement shall be placed by the applicant in a local newspaper of general circulation  
23 in the locality of the proposed operation at least once a week for four consecutive weeks.  
24 The Director shall notify various local governmental bodies, planning agencies, and sewage  
25 and water treatment authorities, or water companies in the locality in which the proposed  
26 surface mining will take place, notifying them of the operator's intention to surface mine  
27 a particularly described tract of land and indicating the applicant's license number and  
28 where a copy of the proposed mining and reclamation plan may be inspected. These local  
29 bodies, agencies, authorities, or companies may submit written comments within a  
30 reasonable period established by the Director on the mining applications with respect to  
31 the effect of the proposed operation on the environment which are within their area of  
32 responsibility. Such comments shall immediately be transmitted to the applicant by the  
33 Director and shall be made available to the public at the same locations as are the  
34 mining applications.

35 C. Any residents or property owners of the surrounding area, or the officer or head of  
36 any federal, state or local governmental agency or authority shall have the right to file  
37 written objections to the proposed initial or revised application for a license for a uranium  
38 mining operation with the Director within thirty days after the last publication of the  
39 applicant's notice required by the regulation promulgated pursuant to subsection B hereof.  
40 If written objections are filed and an informal hearing requested, the Director shall then  
41 hold an informal hearing in the manner and location prescribed by regulation, unless all  
42 the parties requesting the informal hearing stipulate agreement prior to the requested  
43 informal hearing and withdraw their request therefor.

44 § 45.1-412. Decision of Director upon license application; hearing; appeal.—A. The

1 Director shall notify the applicant for a license within a reasonable time, as set forth in  
2 regulations, taking into account the time needed for proper investigation of the site, the  
3 complexity of the license application, and such written objections as may have been filed,  
4 of his written decision to approve or disapprove the application, in whole or in part,  
5 except that if an informal hearing has been held pursuant to § 45.1-411, the Director shall  
6 issue to the applicant and the parties to the hearing his written decision within sixty days  
7 of such hearings.

8 B. If the application is approved the license shall be issued. If the application is  
9 disapproved, specific reasons therefor shall be set forth in the notification. Within thirty  
10 days after the applicant is notified of the final decision of the Director on the license  
11 application, the applicant, or any person with an interest which is or may be adversely  
12 affected, may request a hearing on the reasons for the final determination. The Director  
13 shall hold a formal adjudicatory hearing in accordance with the Administrative Process  
14 Act (§ 9-6.14:1 et seq.), and within thirty days thereafter issue to the applicant and all  
15 persons who participated in the hearing the written decision of the Director granting or  
16 denying the license in whole or in part and stating the reasons therefor. No person who  
17 presided at an informal hearing under § 45.1-411 shall preside at the formal adjudicatory  
18 hearing or participate in the decision therein or any administrative appeal therefrom.

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

22 1. All parties to the proceeding have been notified and given an opportunity to be  
23 heard on a request for temporary relief;

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

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

28 D. Any applicant, or any person with an interest which is or may be adversely  
29 affected and who has participated in the formal hearing as an objector, aggrieved by the  
30 decision of the Director or by the failure of the Director to act within the time limits  
31 specified in this chapter shall have a right to judicial review in accordance with the  
32 provisions of the Administrative Process Act and the Rules of the Supreme Court of  
33 Virginia promulgated pursuant thereto.

34 § 45.1-413. Renewal of licenses.—A. A valid license issued pursuant to this chapter shall  
35 carry with it the right of successive renewal upon expiration with respect to areas within  
36 the boundaries of the existing license. The holder of a license may apply for renewal and  
37 such renewal shall be issued on the basis of the following requirements and written  
38 findings by the Director that:

39 1. The terms and conditions of the existing license are being satisfactorily met;

40 2. The present uranium mining and reclamation operation is in compliance with the  
41 environmental protection standards of this chapter;

42 3. The renewal requested does not jeopardize the operator's continuing responsibility on  
43 existing license areas;

44 4. The operator has provided evidence that the performance bond in effect for said

1 operation will continue in full force and effect for any renewal requested in such  
2 application as well as any additional bond the Director might require pursuant to §  
3 45.1-414;

4 5. The notice required under § 45.1-411B has been provided with respect to the  
5 application for renewal;

6 6. Any additional revised or updated information required by the Director has been  
7 provided.

8 Prior to the approval of any renewal of license the Director shall provide notice to the  
9 appropriate public authorities.

10 B. If an application for renewal of a valid license includes a proposal to extend the  
11 mining operation beyond the boundaries authorized in the existing license, the portion of  
12 the application for renewal of a valid license which addresses any new land areas shall be  
13 subject to the full standards applicable to new applications under this chapter.

14 C. Any license renewal shall be for a term not to exceed the period of the original  
15 license established by this chapter. Application for license renewal shall be made at least  
16 120 days prior to the expiration of the valid license.

17 Article 4.

18 Performance Bond and Standards.

19 § 45.1-414. Performance bonds.—A. After a uranium mining license application has been  
20 approved, but before such license is issued, the applicant shall file with the Director on a  
21 form prescribed and furnished by the Director, a bond for performance payable to the  
22 Commonwealth and conditioned upon faithful performance of all the requirements of this  
23 chapter and the license. The bond shall cover that area of land within the license area  
24 upon which the operator will initiate and conduct uranium mining operations within the  
25 initial term of the license. As succeeding increments of mining and reclamation operations  
26 are initiated and conducted within the license area, the licensee shall file with the Director  
27 an additional bond or bonds to cover such increments in accordance with this section. The  
28 amount of the bond required for each bonded area shall depend upon the reclamation  
29 requirements of the approved license, shall reflect the probable difficulty of reclamation  
30 giving consideration to such factors as topography, geology of the site, hydrology, and  
31 revegetation potential, and shall be determined by the Director. The amount of the bond  
32 shall be sufficient to assure the completion of the reclamation plan if the work has to be  
33 performed by the Director in the event of forfeiture.

34 B. Liability under the bond shall be for the duration of the uranium mining operation  
35 and for a period coincident with the operator's responsibility for revegetation as required  
36 under regulations promulgated pursuant to § 45.1-415. The bond shall be executed by the  
37 operator and a corporate surety licensed to do business in the Commonwealth, except that  
38 the operator may elect to deposit cash, negotiable bonds of the United States Government  
39 or of the Commonwealth, or negotiable certificates of deposit of any bank organized for  
40 transacting business in the United States. The cash deposit or market value of such  
41 securities shall be equal to or greater than the amount of the bond required for the  
42 bonded area.

43 C. Cash or securities so deposited shall be deposited upon the same terms as the terms  
44 upon which surety bonds may be deposited. Such securities shall be security for the

1 repayment of such negotiable certificate of deposit.

2 D. The amount of the bond or deposit required and the terms of each acceptance of  
3 the applicant's bond shall be adjusted by the Director from time to time as affected land  
4 acreages are increased or decreased or where the cost of future reclamation changes.

5 § 45.1-415. Performance standards.—A. The Director shall, by regulation, establish  
6 performance standards which shall be applicable to all uranium mining operations, except  
7 as otherwise provided in this chapter.

8 B. Any license issued pursuant to this chapter to conduct uranium mining operations  
9 shall require that such operations meet all applicable performance standards established by  
10 the Director.

11 C. General performance standards shall be applicable to all uranium mining operations  
12 and shall require the operation as a minimum to:

13 1. Conduct mining operations so as to maximize the utilization and conservation of the  
14 resource being recovered so that re-affecting the land in the future through mining can be  
15 minimized;

16 2. Restore the land affected to a condition capable of supporting the uses which it was  
17 capable of supporting prior to any mining, or such other beneficial uses as approved by  
18 the Director, so long as such uses do not present any actual or probable hazard to public  
19 health or safety or pose any actual or probable threat of water diminution or pollution,  
20 and the license applicants' declared proposed land use following reclamation is not deemed  
21 to be (i) impractical or unreasonable, (ii) inconsistent with applicable land use policies and  
22 plans, (iii) characterized by unreasonable delay in implementation, or (iv) violative of  
23 federal, state, or local law;

24 3. Backfill, compact, where advisable, to ensure stability or to prevent leaching of toxic  
25 radioactive materials, and grade in order to restore the land to the approximate premining  
26 condition, with all highwalls, spoil piles, and depressions eliminated unless small  
27 depressions are needed in order to retain moisture to assist revegetation or as otherwise  
28 authorized pursuant to this chapter;

29 4. Stabilize and protect all surface areas including spoil piles affected by the mining  
30 operation to effectively control erosion and attendant air and water pollution;

31 5. Remove the topsoil from the land in a separate layer, replace it on the backfill area,  
32 or if not utilized immediately, segregate it in a separate pile from other spoil and when  
33 the topsoil is not replaced on a backfill area within a time short enough to avoid  
34 deterioration of the topsoil, maintain a successful cover by quick-growing plants or other  
35 means thereafter so that the topsoil is preserved from wind and water erosion, remains  
36 free of any contamination by other acid, radioactive, or toxic material, and is in a usable  
37 condition for sustaining vegetation when restored during reclamation, except if topsoil is  
38 of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can  
39 be shown to be more suitable for vegetation requirements, then the operator shall remove,  
40 segregate, and preserve in a like manner such other strata which are best able to support  
41 vegetation;

42 6. Restore the topsoil or the best available subsoil which is best able to support  
43 vegetation;

44 7. Create, if authorized in the approved mining and reclamation plan and license,

1 permanent impoundments of water on mining sites as part of reclamation activities only  
2 when it is adequately demonstrated that:

3 a. The size of the impoundment is adequate for its intended purposes;

4 b. The impoundment dam construction will be so designed as to achieve necessary  
5 stability with an adequate margin of safety compatible with that of structures constructed  
6 under Public Law 83-566 (16 U.S.C. § 1006) and applicable state law;

7 c. The quality of impounded water will be suitable on a permanent basis for its  
8 intended use and that discharges from the impoundment will not degrade the water  
9 quality;

10 d. The level of water will be reasonably stable;

11 e. Final grading will provide adequate safety and access for proposed water users; and

12 f. Such water impoundments will not result in the diminution of the quality or  
13 quantity of water, available to adjacent or surrounding landowners for agricultural,  
14 industrial, recreational, domestic or other beneficial uses;

15 8. Minimize the disturbances of the prevailing hydrologic balance at the mine site and  
16 in associated off-site areas and to the quality and quantity of water in surface and  
17 groundwater systems both during and after mining operations and during reclamation by:

18 a. Requiring compliance with any water quality permits issued by the State Water  
19 Control Board and in addition imposing any other condition determined by the Director  
20 for:

21 (1) Preventing or removing water from contact with acid, radiation emitting, or toxic  
22 producing deposits;

23 (2) Treating drainage to reduce acid, radiation emitting, or toxic content which  
24 adversely affects downstream water upon being released to water courses;

25 (3) Casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid,  
26 radiation emitting, or other toxic drainage from entering ground and surface waters;

27 b. (1) Conducting mining operations so as to comply with all applicable state water  
28 quality permits and any further conditions imposed by the Director to control additional  
29 contributions of suspended solids to streamflow, or runoff outside the permit area, but in  
30 no event shall contributions be in excess of requirements set by applicable state or federal  
31 law;

32 (2) Constructing any siltation structures pursuant to paragraph b(1) of this subsection  
33 prior to commencement of mining operations, such structures to be certified by a qualified  
34 registered engineer to be constructed as designed and as approved in the reclamation  
35 plan;

36 c. Cleaning out and removing temporary or large settling ponds or other siltation  
37 structures from drainways after disturbed areas are revegetated and stabilized; and  
38 depositing the silt and debris at a site and in a manner approved by the Director;

39 d. Restoring recharge capacity of the mined area to approximate premining conditions;

40 e. Avoiding channel deepening or enlargement in operations requiring the discharge of  
41 water from mine; and

42 f. Such other actions as the Director may prescribe;

43 9. With respect to surface disposal of mine wastes, processing wastes, and other  
44 wastes in areas other than the mine workings or excavations, stabilize all waste piles in

1 designated areas through construction according to accepted geotechnical engineering  
2 standards including compacted layers and the use of incombustible and impervious  
3 materials if necessary and assure that any leachate will not degrade state waters, assure  
4 compliance with NPDES and other applicable permits and assure the final contour of the  
5 waste accumulation will be compatible with natural surroundings and that the site is  
6 stabilized and revegetated according to the provisions of this chapter;

7 10. Refrain from mining within 500 feet from active and abandoned underground mines  
8 in order to prevent breakthroughs and to protect health or safety of miners; provided, that  
9 the Director may license an operator to mine near, through or partially through an  
10 abandoned underground mine or closer to an active underground mine if (i) the nature,  
11 timing, and sequencing of the approximate coincidence of specific surface mine activities  
12 with specific underground mine activities are jointly approved by the Director and the  
13 regulatory authorities concerned with the health and safety of underground miners, and (ii)  
14 such operations will result in improved resource recovery, abatement of water pollution, or  
15 elimination of hazards to the health and safety of the public;

16 11. Design, locate, construct, operate, maintain, enlarge, modify, and remove or  
17 abandon, in accordance with applicable permits and the standards and criteria developed  
18 pursuant to this chapter, all mine waste piles consisting of mine wastes, or other liquid  
19 and solid wastes, or embankments;

20 12. Ensure that all debris, acid-forming materials, radioactive materials, toxic materials,  
21 or materials constituting a fire hazard are treated or buried and compacted or otherwise  
22 disposed of in a manner consistent with permit requirements and designed to prevent  
23 contamination of ground or surface waters and that contingency plans are developed to  
24 identify and correct ground or surface water contamination in violation of this chapter  
25 and to prevent sustained combustion;

26 13. Ensure that explosives are used only in accordance with existing state and federal  
27 law and the regulations promulgated according to this chapter, which shall include  
28 provisions to:

29 a. Provide adequate advance written notice to local governments and residents who  
30 might be affected by the use of such explosives by publication of the planned blasting  
31 schedule in a newspaper of general circulation in the locality and by mailing a copy of  
32 the proposed blasting schedule to every resident living within one-half mile of the  
33 proposed blasting site and by providing daily notice to residents/occupiers in such areas  
34 prior to any blasting;

35 b. Maintain for a period of at least three years and make available for public  
36 inspection upon request a log detailing the location of the blasts, the pattern and depth of  
37 the drill holes, the amount of explosives used per hole, and the order and length of delay  
38 in the blasts;

39 c. Limit the type of explosives and detonating equipment, and the size, timing and  
40 frequency of blasts based upon the physical conditions of the site so as to prevent (i)  
41 injury to persons, (ii) damage to public and private property outside the permit area, (iii)  
42 adverse impacts on any underground mine, and (iv) change in the course, channel, or  
43 availability of ground or surface water outside the permit area;

44 d. Require that all blasting operations be conducted by trained and competent persons;

1 e. Provide that upon the request of a resident or owner of a manmade dwelling or  
2 structure within one-half of any portion of the licensed area, the applicant or licensee shall  
3 conduct a pre-blasting survey of such structures and submit the survey to the Director  
4 and a copy to the resident or owner making the request. The area of the survey shall be  
5 decided by the Director.

6 14. Ensure that all reclamation efforts proceed in an environmentally sound manner  
7 and as contemporaneously as practicable with the mining operations; provided, that where  
8 the applicant proposed to combine surface mining operations with underground mining  
9 operations to assure maximum practical recovery of the mineral resources, the Director  
10 may grant a variance for specific areas within the reclamation plan from the requirement  
11 that reclamation efforts proceed as contemporaneously as practicable to permit  
12 underground mining operations prior to reclamation:

13 a. If the Director finds in writing that:

14 (1) The applicant has presented, as part of the license application, specific, feasible  
15 plans for the proposed underground mining operations;

16 (2) The proposed underground mining operations are necessary or desirable to assure  
17 maximum practical recovery of the mineral resource and will avoid multiple disturbances  
18 of the surface;

19 (3) The applicant has satisfactorily demonstrated that the plan for the underground  
20 mining operations conforms to requirements for underground mining in the jurisdiction and  
21 that licenses necessary for the underground mining operations have been issued by the  
22 appropriate authority;

23 (4) The areas proposed for the variance have been shown by the applicant to be  
24 necessary for the implementing of the proposed underground mining operations;

25 (5) No substantial adverse environmental damage, either on-site or off-site, will result  
26 from the delay in completion of reclamation as required by this chapter;

27 (6) Provisions for the off-site storage of spoil will comply with § 45.1-415 C20;

28 b. Provided that variances granted under the provisions of this subsection are to be  
29 reviewed by the Director not more than three years from the date of issuance of the  
30 license; and

31 c. Further provided that liability under the bond filed by the applicant with the  
32 Director pursuant to this chapter shall be for the duration of the underground mining  
33 operations and until the requirements of § 45.1-420 have been fully complied with.

34 15. Ensure that the construction, maintenance, and postmining conditions of access  
35 roads into and across the site of operations will control or prevent erosion and siltation,  
36 pollution of water, damage to fish or wildlife or their habitat, or public or private  
37 property;

38 16. Refrain from the construction of roads or other access ways up a stream bed or  
39 drainage channel or in such proximity to such channel so as to seriously alter the normal  
40 flow of water;

41 17. Establish on the regraded areas, and all other lands affected, a diverse, effective,  
42 and permanent vegetative cover of the same seasonal variety native to the area of land  
43 to be affected and capable of self-regeneration and plant succession at least equal in  
44 extent of cover to the natural vegetation of the area; however, introduced species may be



1 used in the revegetation process where desirable and necessary to achieve the approved  
2 postmining land use plan;

3 18. Assure the responsibility for successful revegetation, as required by paragraph 17  
4 above, for a period of five full years after the last year of augmented seeding, fertilizing,  
5 irrigation, or other work in order to assure compliance with paragraph 17 above;  
6 provided, that when the Director approves a long-term intensive agricultural postmining  
7 land use, the applicable five year period of responsibility for revegetation shall commence  
8 at the date of initial planting for such long-term intensive agricultural postmining land  
9 use;

10 19. Protect offsite areas from slides or damage occurring during the uranium mining  
11 and reclamation operations, and not deposit spoil material or locate any part of the  
12 operations or waste accumulations outside the permit area;

13 20. Place all excess spoil material resulting from uranium mining and reclamation  
14 activities in such a manner that:

15 a. Spoil is transported and placed in a controlled manner in position for concurrent  
16 compaction and in such a way to assure mass stability and to prevent mass movement;

17 b. The areas of disposal are within the bonded permit areas and all organic matter  
18 shall be removed immediately prior to spoil placement;

19 c. Appropriate surface and internal drainage systems and diversion ditches are used so  
20 as to prevent spoil erosion and movement;

21 d. The disposal area does not contain springs, natural water courses or wet weather  
22 seeps unless lateral drains are constructed from the wet areas to the main underdrains in  
23 such manner that filtration of the water into the spoil pile will be prevented;

24 e. If placed on a slope, the spoil is placed upon the most moderate slope among those  
25 upon which, in the judgment of the Director, the spoil could be placed in compliance with  
26 all the requirements of this chapter, and shall be placed, where possible, upon, or above, a  
27 natural terrace, bench, or berm, if such placement provides additional stability and  
28 prevents mass movement;

29 f. Where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient  
30 size to prevent mass movement, is constructed;

31 g. The final configuration is compatible with the natural drainage pattern and  
32 surroundings and suitable for intended uses;

33 h. Design of the spoil disposal area is certified by a qualified registered professional  
34 engineer in conformance with professional standards; and all other provisions of this  
35 chapter are met.

36 21. Meet such other criteria as are necessary to achieve reclamation in accordance  
37 with the purposes of this chapter, taking into consideration the physical, climatological,  
38 and other characteristics of the site; and

39 22. To the extent possible using the best technology currently available, minimize  
40 disturbances and adverse impacts of the operation such as to assure compliance with  
41 water quality standards and assure the protection of fish, wildlife, and related  
42 environmental values, and achieve enhancement of such resources where practicable.

43 Article 5.

44 Surface Effects of Underground Uranium Mining Operations.

1     § 45.1-416. *Surface effects of underground uranium mining operations.*—A. *The Director*  
2 *shall promulgate regulations directed toward the surface effects of underground uranium*  
3 *mining operations. The provisions of this chapter relating to licenses, bonds, inspections*  
4 *and enforcement, public review, and administrative and judicial review shall be applicable*  
5 *to surface operations and surface impacts incident to an underground mine with such*  
6 *modifications to the license application requirements, license approval or denial procedures,*  
7 *and bond requirements as are necessary to accommodate the distinct difference between*  
8 *surface and underground mining;*

9     B. *For each license relating to underground mining, the operator shall:*

10     1. *Adopt measures consistent with known technology in order to prevent subsidence*  
11 *causing material damage to the extent technologically and economically feasible, maximize*  
12 *mine stability, and maintain the value and reasonably foreseeable use of such surface*  
13 *lands, except in those instances where the mining technology used requires planned*  
14 *subsidence in a predictable and controlled manner; provided, that nothing in this*  
15 *subsection shall be construed to prohibit the standard method of room and pillar mining;*

16     2. *Seal all portals, entryways, drifts, shafts, or other openings between the surface and*  
17 *underground mine working when no longer needed for the conduct of the mining*  
18 *operations;*

19     3. *Fill or seal exploratory holes no longer necessary for mining, maximizing to the*  
20 *extent technologically and economically feasible return of mine and processing waste, and*  
21 *any other waste incident to the mining operation, to the mine workings or excavations;*

22     4. *With respect to surface disposal of mine wastes and other wastes in areas other*  
23 *than the mine workings or excavations, stabilize all waste piles in designated areas*  
24 *through construction according to accepted geotechnical engineering standards, including*  
25 *compacted layers and the use of incombustible and impervious materials if necessary, and*  
26 *assure compliance with NPDES and other applicable permits and water quality standards*  
27 *established pursuant to applicable federal and state law surface or ground waters. The*  
28 *final contour of the waste accumulation shall be compatible with natural surroundings and*  
29 *the site shall be stabilized and revegetated according to the provisions of this section;*

30     5. *Design, locate, construct, operate, maintain, enlarge, modify, and remove, or*  
31 *abandon, in accordance with NPDES permits, other permits and the standards and criteria*  
32 *developed pursuant to this chapter, all mine waste piles consisting of mine wastes, or*  
33 *other liquid and solid wastes and used either temporarily or permanently as dams or*  
34 *embankments;*

35     6. *Establish on the regraded areas and all other lands affected, a diverse, effective, and*  
36 *permanent vegetative cover capable of self-regeneration and plant succession and at least*  
37 *equal in extent of cover to the natural vegetation of the area;*

38     7. *Protect off-site areas from damages which may result from such mining operations;*

39     8. *Eliminate fire hazards and otherwise eliminate conditions which constitute a hazard*  
40 *to health and safety of the public;*

41     9. *Minimize the disturbances of the prevailing hydrologic balance at the minesite and*  
42 *in associated off-site areas and to the quality and quantity of water in surface and ground*  
43 *water systems both during and after mining operations and during reclamation by:*

44     a. *Avoiding acid, radioactive, or other toxic mine drainage by complying with any*

1 water quality permits issued by the State Water Control Board, and by such measures as,  
2 but not limited to:

3 (1) preventing or removing water from contact with acid, radioactive, or toxic  
4 producing deposits;

5 (2) treating drainage to reduce acid, radioactive, or toxic content which adversely  
6 affects downstream water upon being released to water courses;

7 (3) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid,  
8 radioactive, or other toxic drainage from entering ground and surface waters; and

9 b. Conducting mining operations in accordance with NPDES and other permits so as  
10 to prevent additional contributions of suspended solids to streamflow, or runoff outside the  
11 license area, but in no event shall such contributions be in excess of requirements set by  
12 applicable state or federal law, and avoiding channel deepening or enlargement in  
13 operations requiring the discharge of water from mines;

14 10. With respect to other surface impacts not specified in this subsection including the  
15 construction of new roads or the improvement or use of existing roads to gain access to  
16 the site of such activities and for haulage, repair areas, storage areas, shipping areas, and  
17 other areas upon which are sited structures, facilities, or other property or materials on  
18 the surface, resulting from or incident to such activities, operate in accordance with the  
19 standards established under § 45.1-415 for such effects which result from surface mining  
20 operations; however, the Director shall make such modifications in the requirements  
21 imposed by this subparagraph as are necessary to accommodate the distinct difference  
22 between surface and underground mining;

23 11. To the extent possible using the best technology currently available, minimize  
24 disturbances and adverse impacts of the operation such as to assure compliance with  
25 water quality standards and assure the protection of fish, wildlife, and related  
26 environmental values, and achieve enhancement of such resources where practicable;

27 12. Locate openings for all mines in such a manner as to prevent a gravity discharge  
28 of water from the mine.

29 C. In order to protect the stability of the land, the Director shall suspend underground  
30 mining under urbanized areas, cities, towns and communities, and adjacent to industrial or  
31 commercial buildings, major impoundments, or permanent streams if he finds imminent  
32 danger to the inhabitants of the urbanized areas, cities, towns and communities.

33 Article 6.

34 Monitoring and Enforcement.

35 § 45.1-417. Inspections and monitoring.—A. For the purpose of administering and  
36 enforcing any license issued under this chapter or of determining whether any person is in  
37 violation of any requirement of this chapter or any regulation promulgated hereunder:

38 1. The Director shall require any licensee to (i) establish and maintain appropriate  
39 records, (ii) make monthly reports to the Division, (iii) install, use and maintain any  
40 necessary monitoring equipment or methods, (iv) evaluate results in accordance with such  
41 methods, at such locations, intervals, and in such manner as the Director shall prescribe,  
42 and (v) provide such other information relative to the uranium mining operations as the  
43 Director deems reasonable and necessary;

44 2. For those uranium mining operations which remove or disturb strata that serve as

1 *aquifers which significantly ensure the hydrologic balance of water use either on or off the*  
2 *mining site, the Director shall specify those (i) monitoring sites to record the quantity and*  
3 *quality of surface drainage above and below the mine site as well as in the potential zone*  
4 *of influence, and to record level, amount, and samples of ground water and aquifers*  
5 *potentially affected by mining and also directly below the deepest strata to be mined, and*  
6 *to record precipitation; and (ii) records of well logs and borehole data to be maintained.*  
7 *The monitoring data collection and analysis required by this section shall be conducted*  
8 *according to standards and procedures set forth in regulations promulgated by the*  
9 *Director in order to assure their reliability and validity; and*

10 *3. The authorized representative of the Director, without advance notice and upon*  
11 *presentation of appropriate credentials, (i) shall have the right of entry to, upon, or*  
12 *through any uranium mining operations; and (ii) shall have the right to inspect any*  
13 *monitoring equipment, method of operation, method of exploration or any records required*  
14 *by this chapter, and shall have the right to copy any such records.*

15 *B. The inspections by the Director shall (i) occur on an irregular basis averaging not*  
16 *less than one partial inspection per month and one complete inspection per calendar*  
17 *quarter for the uranium mining operations covered by each license; (ii) occur without prior*  
18 *notice to the licensee or his agents or employees except for necessary on-site meetings*  
19 *with the licensee; and (iii) include the filing of inspection reports adequate to enforce the*  
20 *requirements of and to carry out the terms and purposes of this chapter.*

21 *C. Each licensee shall conspicuously maintain at the entrance to the uranium mining*  
22 *operation a clearly visible sign setting forth such information as shall be prescribed by*  
23 *regulation.*

24 *D. Each inspector, upon detection of each violation of any requirement of this chapter*  
25 *or of the regulations promulgated hereunder, shall forthwith inform the operator in writing*  
26 *and shall report in writing any such violation to the Director.*

27 *§ 45.1-418. Enforcement of chapter generally.—A. Whenever the Director or his*  
28 *authorized representative determines that any condition or practices exist, or that any*  
29 *licensee is in violation of any requirement of this chapter or of any regulations*  
30 *promulgated hereunder or of any condition of any licenses or applicable air or water*  
31 *quality permit, which condition, practice or violation also creates an imminent danger to*  
32 *the health or safety of the public, or is causing or can reasonably be expected to cause*  
33 *significant, environmental harm to land, air or water resources, the Director or his*  
34 *authorized representative shall immediately order a cessation of uranium mining*  
35 *operations or the portion thereof relevant to the condition, practice or violation. Such*  
36 *cessation order shall remain in effect until the Director or his authorized representative*  
37 *determines that the condition, practice or violation has been abated, or until modified,*  
38 *vacated or terminated by the Director or his authorized representative. Whenever the*  
39 *Director or his authorized representative finds that the ordered cessation of uranium*  
40 *mining operations, or any portion thereof, will not completely abate the imminent danger*  
41 *to health or safety of the public or the significant imminent environmental harm to land,*  
42 *air or water resources, the Director shall, in addition to the cessation order, impose*  
43 *affirmative obligations on the operator and require him to take whatever steps the*  
44 *Director or his authorized representative determines necessary to abate the imminent*

1 *danger or the significant environmental harm.*

2 *B. Whenever the Director or his authorized representative determines that any licensee*  
3 *is in violation of any requirement of this chapter or any regulation thereunder, or any*  
4 *license condition, but such violation does not create an imminent danger to the health or*  
5 *safety of the public, or cannot reasonably be expected to cause significant, imminent*  
6 *environmental harm to land, air or water resources, the Director or his authorized*  
7 *representative shall issue a notice of violation to the licensee or his agent setting a*  
8 *reasonable time for the abatement of the violation and provide an opportunity for public*  
9 *hearing.*

10 *If, upon expiration of the period of time as originally set or subsequently extended for*  
11 *good cause shown upon the written finding of the Director or his authorized*  
12 *representative, the Director or his authorized representative finds that a violation has not*  
13 *been abated, he shall immediately order a cessation of uranium mining operations or the*  
14 *portion thereof relevant to the violation. Such cessation order shall remain in effect until*  
15 *the Director or his authorized representative determines that the violation has been*  
16 *abated, or until modified, vacated or terminated by the Director or his authorized*  
17 *representative pursuant to subsection D of this section. The Director or his authorized*  
18 *representative shall include in the cessation order the necessary measures to abate the*  
19 *violation in the most expeditious manner possible.*

20 *C. Whenever the Director or his authorized representative determines that a pattern of*  
21 *violations of the requirements of this chapter, or regulations promulgated thereunder, or*  
22 *any license conditions exist or have existed, and if the Director or his authorized*  
23 *representative also finds that such violations are caused by the unwarranted failure of the*  
24 *licensee to comply with any such requirements, or that such violations are willfully caused*  
25 *by the licensee, the Director or his authorized representative shall forthwith issue an order*  
26 *to the licensee to show cause as to why the license should not be suspended or revoked*  
27 *and shall provide opportunity for a formal public hearing. If a hearing is requested the*  
28 *Director shall inform all interested parties of the time and place of the hearing. Upon the*  
29 *licensee's failure to show cause as to why the license should not be suspended or revoked,*  
30 *the Director or his authorized representative shall forthwith suspend or revoke the license.*

31 *D. Notices and orders issued pursuant to this section shall set forth with reasonable*  
32 *specificity the nature of the violation and the remedial action required, the period of time*  
33 *established for abatement, and a reasonable description of the portion of the uranium*  
34 *mining operation to which the notice or order applies. Each notice or order shall be given*  
35 *promptly to the licensee or his agent by the Director or his authorized representative*  
36 *issuing such notice or order, and all such notices and orders shall be in writing and*  
37 *signed by such authorized representatives. Any notice or order issued pursuant to this*  
38 *section may be modified, vacated or terminated by the Director or his authorized*  
39 *representative. Any notice or order issued pursuant to this section which requires*  
40 *cessation of mining by the operator shall expire within sixty days of actual notice to the*  
41 *operator unless an informal public hearing, unless waived by the operator, is held at the*  
42 *site or close enough to the site to allow viewings thereof during the course of the public*  
43 *hearing.*

44 *E. The Director may institute a civil action for injunctive or other relief in any court*

1 of competent jurisdiction whenever any licensee or his agent, or any other person:

2 1. Violates, fails or refuses to comply with any order or decision issued by the  
3 Director; or

4 2. Interferes with, hinders or delays the Director in carrying out the provisions of this  
5 chapter or the regulations thereunder; or

6 3. Refuses to admit such authorized representative to the mine; or

7 4. Refuses to permit inspection of the mine; or

8 5. Refuses to furnish any information or report requested by the Director pursuant to  
9 the provisions of this chapter or the regulations thereunder; or

10 6. Refuses to permit access to, and copying of, such records as the Director determines  
11 necessary in carrying out the provisions of this chapter or the regulations thereunder; or

12 7. Conducts uranium mining or exploration operations without first obtaining a license,  
13 or after a license has lapsed, or in violation of a license or after suspension or revocation  
14 of a license.

15 § 45.1-419. Civil and criminal penalties.—A. Except as provided in § 45.1-390 F, any  
16 licensee who violates any license condition or any other provision of this chapter or the  
17 regulations thereunder shall be assessed a civil penalty by the Director in an amount not  
18 to exceed \$10,000 for each violation. Each day of continuing violation may be deemed a  
19 separate violation for the purposes of assessing penalties. In determining the amount of  
20 the penalty, consideration shall be given to the licensee's history of previous violations at  
21 the particular uranium mining operation; the seriousness of the violation, including any  
22 irreparable harm to the environment and any hazard to the health or safety of the public;  
23 whether the licensee was negligent; and the demonstrated good faith of the licensee  
24 charged in attempting to achieve rapid compliance after notification of the violation.

25 B. A civil penalty may be assessed by the Director only after the person charged with  
26 a violation has been given an opportunity for a public hearing. Where such a public  
27 hearing has been held, the Director shall make findings of fact and issue a written  
28 decision as to the occurrence of the violation and the amount of the penalty which is  
29 warranted, incorporating, when appropriate, an order therein requiring that the penalty be  
30 paid. When appropriate, the Director shall consolidate such hearings with other  
31 proceedings pursuant to the provisions of this chapter. Any hearing under this section  
32 shall be a formal adjudicatory hearing in accordance with the Administrative Process Act  
33 (§ 9-6.14:1 et seq.). When the person charged with such a violation fails to avail himself of  
34 the opportunity for a public hearing, a civil penalty shall be assessed by the Director after  
35 the Director determines that a violation has occurred and the amount of the penalty  
36 warranted, and issues an order requiring that the penalty be paid.

37 C. Upon the issuance of a notice or order charging that a violation described under  
38 subsection A of this section has occurred, the Director shall inform the licensee within  
39 thirty days of the proposed amount of the penalty. The licensee charged with the penalty  
40 shall then have thirty days to pay the proposed penalty in full or if the licensee wishes to  
41 contest either the amount of the penalty or the fact of the violation, request  
42 administrative review. If through administrative or judicial review of the proposed penalty,  
43 the full or a lesser penalty is upheld, the licensee shall within thirty days of that  
44 determination remit the appropriate amount to the Director. Failure to request review

1 within thirty days shall result in a waiver of all legal rights to contest the violation or the  
2 amount of the penalty.

3 D. If a licensee who is required to pay a civil penalty fails to do so, the Director may  
4 transmit a true copy of the final order assessing such penalty to the clerk of the court of  
5 any county or city wherein it is ascertained that the licensee owing the penalty has any  
6 estate; and the clerk to whom such copy is so sent shall record it, as a judgment is  
7 required by law to be recorded, and shall index the same as well in the name of the  
8 Commonwealth as of the person owing the penalty, and thereupon there shall be a lien in  
9 favor of the Commonwealth on the property of the licensee within such county or city in  
10 the amount of the penalty. The Director may collect civil penalties which are owed in the  
11 same manner as provided by law in respect to judgment of a court of record. All civil  
12 penalties shall be paid into a special fund in the State Treasurer's office to be used by the  
13 Director for enhancing conservation and recreational opportunities in the  
14 uranium-producing counties of the Commonwealth.

15 E. Any person who willfully and knowingly (i) conducts uranium mining or exploration  
16 operations without first obtaining a license, or after a license has lapsed, or after  
17 suspension or revocation of a license; or (ii) violates a condition of a license issued  
18 pursuant to this chapter; or (iii) disregards, fails or refuses to comply with the regulations  
19 or orders promulgated or issued pursuant to the provisions of this chapter, except an  
20 order incorporated in a decision under subsection B of this section, shall, upon conviction,  
21 be punished by a fine of not more than \$10,000, by confinement in jail for not more than  
22 twelve months, or both.

23 F. Whenever a corporate licensee violates a condition of a license or disregards, fails,  
24 or refuses to comply with any order issued under this chapter, except an order  
25 incorporated in a decision issued under subsection B of this section, any director, officer,  
26 or agent of such corporation who willfully and knowingly authorized, ordered, or carried  
27 out such violation, failure or refusal shall be subject to the same civil penalties, fines and  
28 confinement in jail that may be imposed upon a person under subsections A and E of this  
29 section.

30 G. Whoever knowingly makes any false statement, representation or certification, or  
31 knowingly fails to make any required statement, representation or certification, in any  
32 application, objection, record, report, plan or other document filed or required to be  
33 maintained pursuant to this chapter, the regulations promulgated thereunder, or any order  
34 or decision issued by the Director under this chapter shall, upon conviction thereof, be  
35 punished by a fine of not more than \$10,000, or by confinement in jail for not more than  
36 twelve months, or both.

37 H. Any operator who fails to correct a violation for which a notice or order has been  
38 issued within the period permitted for its correction, which period shall not end until the  
39 entry of a final order by the Director, in the case of any review proceedings initiated by  
40 the operator wherein the Director orders after an expedited hearing the suspension of the  
41 abatement requirements of the notice or order after determining that the operator will  
42 suffer irreparable loss or damage from the application of those requirements, or until entry  
43 of an order of the court, in the case of any review proceedings initiated by the operator  
44 wherein the court orders the suspension of the abatement requirements, shall be assessed

1 a civil penalty of not less than \$750 for each day during which such failure or violation  
2 occurs.

3 § 45.1-420. Forfeiture or release of performance bond.—A. The Director shall promulgate  
4 regulations establishing procedures, conditions, criteria, and schedules for the forfeiture or  
5 release of performance bonds or deposits required under this chapter.

6 B. The licensee may file a request with the Director for the release of all or part of a  
7 performance bond or deposit. Within thirty days after any application for bond or deposit  
8 release has been filed, the operator shall submit a copy of an advertisement placed at  
9 least once a week for four successive weeks in a newspaper of general circulation in the  
10 locality of the mining operation. Such advertisement shall be considered part of any bond  
11 release application and shall contain a notification of the precise location of the land  
12 affected, the number of acres, the permit and the date approved, the amount of the bond  
13 filed and the portion sought to be released, and the type and appropriate dates of  
14 reclamation work performed, and a description of the results achieved as they relate to  
15 the operator's approved reclamation plan. In addition, as part of any bond release  
16 application, the applicant shall submit copies of letters which he has sent to adjoining  
17 property owners, local governmental bodies, planning agencies, and sewage and water  
18 treatment authorities, or water companies in the locality in which the uranium mining  
19 operations took place, notifying them of his intention to seek release from the bond.

20 C. Upon receipt of the notification and request, the Director shall within thirty days  
21 conduct an inspection and evaluation of the reclamation work involved. Such evaluation  
22 shall consider, among other things, the degree of difficulty to complete any remaining  
23 reclamation, whether pollution of surface and subsurface water is occurring, the  
24 probability of continuance of future occurrence of such pollution, and the estimated cost  
25 of abating such pollution. The Director shall notify the licensee in writing of his decision  
26 to release all or part of the performance bond or deposit within sixty days from the filing  
27 of the request, if no public hearing is held pursuant to this section and if there has been  
28 a public hearing held pursuant to this section, within thirty days thereafter.

29 D. The Director may release in whole or in part said bond or deposit if the authority  
30 is satisfied the reclamation covered by the bond or deposit or portion thereof has been  
31 accomplished as required by this chapter according to the following schedule:

32 1. When the operator completes the backfilling, regrading, and drainage control of a  
33 bonded area in accordance with his approved reclamation plan, the release of sixty  
34 percent of the bond or collateral for the applicable license area.

35 2. After revegetation has been established on the regraded mined lands in accordance  
36 with the approved reclamation plan. When determining the amount of bond to be released  
37 after successful revegetation has been established, the Director shall retain that amount of  
38 bond for the revegetated area which would be sufficient for a third party to cover the  
39 cost of reestablishing revegetation and for the period specified for operator responsibility  
40 in § 45.1-415 of reestablishing revegetation. No part of the bond or deposit shall be  
41 released under this paragraph so long as the lands to which the release would be  
42 applicable are contributing suspended solids to streamflow or runoff outside the license  
43 area in excess of the requirements set by § 45.1-415. Where a silt dam is to be retained  
44 as a permanent impoundment pursuant to § 45.1-415, the portion of bond may be released



1 under this paragraph so long as provisions for sound future maintenance by the operator  
2 or the landowner have been made with the Director.

3 3. When the operator has completed successfully all uranium mining operations  
4 including reclamation activities, the release of the remaining portion of the bond, but not  
5 before the expiration of the period specified for operator responsibility in § 45.1-415;  
6 however, no bond shall be fully released until all reclamation requirements of this chapter  
7 are fully met.

8 E. If the Director disapproves the application for release of the bond or portion  
9 thereof, he shall notify the licensee, in writing, stating the reasons for disapproval and  
10 recommending corrective actions necessary to secure said release and allowing opportunity  
11 for public hearing.

12 F. When any application for total or partial bond release is filed with the Director, he  
13 shall notify the municipality in which a uranium mining operation is located by certified  
14 mail at least thirty days prior to the release of all or a portion of the bond.

15 G. Any person with a valid legal interest which might be adversely affected by release  
16 of the bond, or the responsible officer or head of any federal, state or local governmental  
17 agency which has jurisdiction by law or special expertise with respect to any  
18 environmental, social or economic impact involved in the operation, or is authorized to  
19 develop and enforce environmental standards with respect to such operations, shall have  
20 the right to file written objections to the proposed release from bond by the Director  
21 within thirty days after the last publication of notice, as required by regulation. If written  
22 objections are filed, and a hearing requested, the Director shall inform all interested  
23 parties of the time and place of the hearing and hold a public hearing in the locality of  
24 the uranium mining operation proposed for bond release, or in the locality of the  
25 operation or at the Department's central office at the option of the objector, within thirty  
26 days of the request for such hearing.

27 H. Without prejudice to the rights of the objectors, the applicant, or the responsibilities  
28 of the Director pursuant to this section, the Director may establish an informal conference,  
29 in accordance with regulations promulgated pursuant to § 45.1-411 C, to resolve written  
30 objections.

31 I. For the purpose of such hearing the Director is authorized to administer oaths,  
32 subpoena witnesses or written or printed materials, compel the attendance of witnesses or  
33 production of materials, and take evidence including but not limited to inspections of the  
34 land affected or other uranium mining operations carried on by the applicant in the  
35 general vicinity. A verbatim record of each public hearing shall be made and a transcript  
36 made available on the motion of any party or by order of the Director.

37 § 45.1-421. Performance of reclamation operations by Director.—In the event of  
38 forfeiture of a performance bond, in whole or in part, the Director shall deposit the  
39 proceeds in the State Treasurer's office in a special fund to be used by the Director to  
40 complete the reclamation plan and other regulatory requirements pertaining to the  
41 operation for which the forfeited bond had been posted. The Director may use the  
42 resources and facilities of the Division or he may enter into contracts for performance of  
43 such reclamation with any individual, corporation, partnership, association, or any other  
44 legal entity, any soil conservation district, or any agency of the state or federal

1 government. After completion of the reclamation and payment of all costs and  
2 administrative expenses associated with the completion of reclamation, any additional  
3 funds from the forfeiture of the bond shall be returned.

4 § 45.1-422. Administrative review of notice or order issued under § 45.1-418.—A. A  
5 licensee who is issued a notice or order pursuant to § 45.1-418, or any person having an  
6 interest which is or may be adversely affected by such notice or order by any  
7 modification, vacation, or termination of such notice or order, may apply to the Director  
8 for the review of the notice or order within thirty days of the receipt thereof or within  
9 thirty days of its modification, vacation, or termination. Upon receipt of such application,  
10 the Director shall cause investigation to be made as he deems appropriate, which shall  
11 include an opportunity for a public formal hearing, at the request of the applicant or the  
12 person having an interest which is or may be adversely affected, to enable the applicant  
13 or such person to present information relating to the issuance and continuance of such  
14 notice or order or the modification, vacation or termination thereof. The filing of an  
15 application for review under this subsection shall not operate as a stay of any order or  
16 notice.

17 B. Upon receiving the report of such investigation, the Director shall make findings of  
18 fact, and shall issue a written decision, incorporating therein an order, vacating, affirming,  
19 modifying, or terminating the notice or order complained of and incorporate his findings  
20 therein. When the application for review concerns an order for cessation of uranium  
21 mining and reclamation operations issued pursuant to the provisions of subsections A or B  
22 of § 45.1-418, the Director shall issue the written decision within thirty days of the receipt  
23 of the application for review unless temporary relief has been granted by the Director  
24 pursuant to subsection C of this section or by a court pursuant to § 45.1-424.

25 C. Pending completion of the hearing required by this section, the applicant may file  
26 with the Director a written request that the Director grant temporary relief from any  
27 notice or order issued under § 45.1-418, together with a detailed statement giving reasons  
28 for granting such relief. The Director shall issue an order granting or denying such relief  
29 expeditiously; provided, that where the applicant requests relief from an order for  
30 cessation of uranium mining and reclamation operations issued pursuant to subsections A  
31 or B of § 45.1-418, the order on such a request shall be issued within five days of its  
32 receipt. The Director may grant such relief, under such conditions as he may prescribe, if:

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

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

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

39 D. Following the issuance of an order to show cause as to why a license should not be  
40 suspended or revoked pursuant to § 45.1-418, the Director shall hold a public formal  
41 hearing, unless waived by the licensee, after giving written notice of the time, place and  
42 date thereof. Within sixty days following the formal hearing, the Director shall issue and  
43 furnish to the licensee and all other parties to the hearing a written decision concerning  
44 suspension or revocation of the license and reasons therefor. If the Director revokes the

1 license, the licensee shall immediately cease uranium mining operations on the license area  
2 and shall complete reclamation within a period specified by the Director or the Director  
3 shall declare as forfeited the performance bonds for the operation.

4 E. The Director is authorized to promulgate regulations providing for the award of  
5 costs and expenses, to any party to any administrative proceedings under this chapter,  
6 incurred by such person in connection with his participation in such proceedings and to  
7 assess such costs and expenses against any other party, as may be proper. For the  
8 purpose of this subsection, the term "party" shall include the Commonwealth or any of its  
9 agents, officers or employees.

10 § 45.1-423. Hearings officers.—All formal hearings shall be conducted in accordance with  
11 § 9-6.14:12 unless the parties consent to informal proceedings.

12 § 45.1-424. Judicial review of final order or decision.—A. Any party aggrieved by a final  
13 order or decision issued by the Director, after exhaustion of the administrative remedies  
14 provided for in this chapter, shall have the right to the judicial review thereof in the  
15 circuit court of the county or city in which the land or a major portion thereof is located,  
16 in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), and the rules of the  
17 Supreme Court of Virginia promulgated pursuant thereto.

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

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

24 2. The person requesting such relief shows that there is a strong likelihood that he will  
25 prevail on the merits of the final determination of the proceedings; and

26 3. Such relief will not adversely affect the public health, safety or the environment.

27 Article 7.

28 Miscellaneous Provisions.

29 § 45.1-425. Training and certification of blasters.—In order to ensure that explosives are  
30 used only in accordance with applicable state laws, the Director is authorized to  
31 promulgate regulations requiring the training, examination and certification of persons  
32 engaging in or directly responsible for blasting or the use, storage and handling of  
33 explosives in uranium mining operations.

34 § 45.1-426. Impeding, etc., Director or agents a misdemeanor.—It shall be a  
35 misdemeanor, punishable by a fine of not more than \$5,000 or by confinement in jail for  
36 not more than one year, or both, for any person, except as permitted by law, to willfully  
37 resist, prevent, impede, or interfere with the Director or any of his agents in the  
38 performance of duties pursuant to this chapter.

39 § 45.1-427. Replacement of water supply.—The operator of any uranium mining  
40 operation shall replace the water supply of an owner of interest in real property who  
41 obtains all or part of his supply of water for domestic, agricultural, industrial, or other  
42 legitimate use from an underground or surface source where such supply has been  
43 affected by contamination, diminution, or interruption proximately resulting from such  
44 uranium mining operation.

1     § 45.1-428. *Applicability of chapter to public agencies, utilities and corporations.*—Any  
2     agency, unit, or instrumentality of the Commonwealth, or of federal or local government,  
3     including any publicly owned utility or publicly owned corporation of federal, state or  
4     local government, which proposes to engage in uranium mining operations which are  
5     subject to the requirements of this chapter shall comply with the provisions of this  
6     chapter.

7     §§ 45.1-429 through 45.1-441. (Reserved).

8                                     CHAPTER 27.

9                     URANIUM MILLING AND MILL TAILINGS

10    § 45.1-442. *Definitions.*—The following words and phrases when used in this chapter  
11    shall have the meaning respectively ascribed to them in this section except where the  
12    content clearly requires a different meaning. The State Board of Health shall have the  
13    power to adopt by regulation such other definitions it deems necessary to carry out the  
14    intent of this chapter.

15    “Board” means the State Board of Health.

16    “Commission” means the United States Nuclear Regulatory Commission or any  
17    successor to that agency.

18    “Commissioner” means the State Health Commissioner.

19    “Department” means the State Department of Health.

20    “License” or “milling license” means a license, issued after application, to produce,  
21    transfer, receive, acquire, own, possess, process, or dispose of quantities of source and to  
22    produce, possess, or dispose of quantities of mill tailings, material, as defined in §§  
23    32.1-227 and 45.1-386 and to produce, possess, or dispose of quantities of mill tailings, in  
24    the context of a uranium milling operation.

25    “State milling regulatory program” means the program established and authorized by  
26    this chapter and meeting the requirements of this chapter for the regulation of uranium  
27    milling operations, including mill tailings, within the Commonwealth.

28    § 45.1-443. *Powers and duties of the Board.*—In addition to those powers and duties  
29    enumerated in Title 32.1, the Board shall:

30    1. Adopt, promulgate and enforce regulations and rules which shall provide for the  
31    implementation of the state milling regulatory program and the standards set forth in §  
32    45.1-390 A, B, and C3. The standards applicable to uranium milling operations, including  
33    mill tailings, shall be equivalent to, or more stringent than, standards applicable under  
34    federal law;

35    2. Issue or provide for the issuance of such orders or modifications thereof as may be  
36    necessary in connection with proceedings under this chapter;

37    3. Advise, consult, and cooperate with other agencies of the Commonwealth, the  
38    federal government, local governments, and with groups concerned with control and  
39    regulation of uranium milling operations; and

40    4. Have authority to accept and administer loans, grants or other funds or gifts,  
41    conditional or otherwise, in furtherance of its functions, from the federal government and  
42    from other sources, public or private.

43    § 45.1-444. *Milling licenses.*—

44    A. The Board shall provide by regulation for the issuance of milling licenses. Such

1 regulations shall provide for issuance, amendment, suspension, or revocation of licenses.

2 Such regulations shall provide that:

3 1. Each application for a license shall be in writing and shall state such information as  
4 the Board by regulation may determine to be necessary to decide the technical, insurance  
5 and financial qualifications or any other qualification of the applicant as the Board may  
6 deem reasonable and necessary to protect the public health and safety and the  
7 environment. The Board or its designee may at any time after the filing of the application,  
8 and before the expiration of the license, require further written statements and may make  
9 such inspections as it may deem necessary in order to determine whether the license  
10 should be granted or denied or whether the license should be modified, suspended, or  
11 revoked. All applications and statements shall be signed by the applicant or licensee. The  
12 Board may require any applications or statements to be made under oath or affirmation;

13 2. Each license shall be in such form and contain such terms and conditions as the  
14 Board or its designee may prescribe;

15 3. No license issued under authority of this chapter shall be assigned, or in any way  
16 disposed of, except to persons qualified pursuant to regulations of the Board and unless  
17 the Board or its designee shall, after securing full information, find that the transfer is in  
18 accordance with the provisions of this chapter and give consent in writing; and

19 4. The terms and conditions of all licenses shall be subject to amendment, revision, or  
20 modification by regulations or orders issued in accordance with the provisions of this  
21 chapter.

22 B. The Board shall provide by regulation (i) for any additional information as part of  
23 the license application that is necessary to evaluate environmental impacts and (ii) for any  
24 environmental impact analysis required by § 45.1-388.

25 C. Each applicant for a license or for the renewal of a license shall demonstrate to the  
26 Board or its designee, before the issuance or renewal of a license that the applicant is  
27 financially qualified to conduct the licensed activity, including any required  
28 decontamination, decommissioning, reclamation, and disposal. The licensee shall submit  
29 proof of its financial qualifications at such intervals as may be required by rule or in the  
30 license. The qualifications of and security provided by a license under subsection D of this  
31 section and §§ 45.1-445 and 45.1-449, shall be reevaluated at least annually by the Board  
32 or its designee in accordance with regulations promulgated by the Board pursuant to §§  
33 45.1-453 and 45.1-454.

34 D. A licensee shall be required to submit the closure and post-closure care plans and  
35 establish financial assurance for closure and post-closure care in accordance with the  
36 regulations promulgated by the Board pursuant to §§ 45.1-453 and 45.1-454.

37 E. Each applicant for a license shall be required to submit as a part of the license  
38 application a certificate issued by an insurance company authorized to do business in the  
39 Commonwealth, certifying that the applicant has a public liability insurance policy in force  
40 for the uranium milling and tailings operations for which such license is sought. Such  
41 policy shall provide for personal and economic injury as well as property and natural  
42 resource damage protection in an amount set by regulation adopted by the Board, as  
43 adequate to compensate any persons damaged as a result of uranium milling and tailings  
44 operations, and entitled by law to compensation under applicable provisions of law

1 including the liability sections in Chapter 29 of this Act. Such policy shall be maintained  
2 in full force and effect during the terms of the license or any renewal. The Board is  
3 authorized to promulgate regulations which provide for the submission by the applicant of  
4 evidence of self-insurance, meeting the requirements of this section, in lieu of a certificate  
5 of a public liability insurance policy.

6 F. In making the determination of whether to grant, deny, amend, revoke, suspend, or  
7 restrict a license or registration, the Board or its designee may consider those aspects of  
8 an applicant's or licensee's background that, in its judgement, bear materially on ability to  
9 fulfill the obligations of licensure, including but not limited to technical competency and  
10 its record in areas involving uranium milling.

11 G. In any proceeding to issue a license, the Board shall provide:

12 1. An opportunity, after public notice, for written comments and a public hearing, with  
13 a transcript;

14 2. An opportunity for cross examination; and

15 3. A written determination of the action to be taken which is based on findings  
16 included in the determination and on evidence presented during the public comment  
17 period.

18 § 45.1-445. Additional license requirements.—A. A license issued or renewed after the  
19 effective date of this Act shall minimize and to the extent practicable eliminate the need  
20 for long-term maintenance and monitoring and shall contain terms and conditions the  
21 Board or its designee determines to be necessary to assure that before termination of the  
22 license:

23 1. The licensee will comply with decontamination, decommissioning, reclamation, and  
24 disposal standards prescribed by the Board, as part of the closure and post-closure care  
25 plans required by § 45.1-453, which shall be equivalent to or more stringent than those of  
26 the Commission for uranium milling operations; and

27 2. Subject to the provisions of subsections B through F of this section, the ownership  
28 of any mill tailings disposal site and mill tailings resulting from the licensed activity shall  
29 be transferred either to the Commonwealth of Virginia or to the United States if the  
30 Commonwealth declines to acquire the site and mill tailings.

31 B. The Board or its designee shall require by regulation or order that before the  
32 termination of a license that is issued pursuant to this chapter, title to the land, including  
33 any affected interests in the land, other than land held in trust by the United States for  
34 any Indian tribe or owned by an Indian tribe subject to a restriction against alienation  
35 imposed by the United States, or land already owned by the United States or by the  
36 Commonwealth, that is used for the disposal of mill tailings pursuant to the license, shall  
37 be transferred to the United States or the Commonwealth, unless the Commission  
38 determines, before the termination, that transfer of title to the disposal site and mill  
39 tailings is not necessary to protect the public health, safety, or welfare or to minimize  
40 danger to life or property. The Governor shall determine, prior to termination of a license,  
41 whether to exercise the Commonwealth's option to assume ownership of the disposal site  
42 and mill tailings subject to the license.

43 C. If transfer to the Commonwealth of title to the disposal site and mill tailings is  
44 required, the Board shall maintain the site and mill tailings in a manner that will protect

1 the public health, safety, and the environment.

2 D. The Board is authorized to undertake in connection with the disposal site and mill  
3 tailings for which it has assumed custody under this chapter any monitoring, maintenance,  
4 and emergency measures necessary to protect the public health and safety and the  
5 environment.

6 E. The transfer of title to the disposal site and mill tailings does not relieve any  
7 licensee of liability for any fraudulent or negligent acts done before the transfer.

8 F. Except for administrative and legal costs incurred in carrying out the transfer,  
9 disposal sites and mill tailings and land transferred to the United States or the  
10 Commonwealth under this chapter shall be transferred without cost to the United States  
11 or to the Commonwealth.

12 § 45.1-446. Inspection of uranium mills and tailings areas; inter-agency agreements.—A.  
13 The Board or its designee, without advance notice and upon presentation of appropriate  
14 credentials, (i) shall have the right of entry to, upon, or through any uranium milling  
15 operation; and (ii) shall have the right to inspect any monitoring equipment, any method  
16 of operation, or any records required by this chapter, and shall have the right to copy  
17 any such records, for the purpose of determining whether or not there is compliance with  
18 or violation of the provisions of this Act and licenses, regulations, and orders issued  
19 hereunder, except that entry into areas under the jurisdiction of the federal government  
20 shall be effected only with the concurrence of the federal government or its duly  
21 designated representative. No search warrant shall be required for any entry or inspection  
22 under this subsection.

23 B. The inspections by the Department shall (i) occur on an irregular basis averaging  
24 not less than one partial inspection per month and one complete inspection per calendar  
25 quarter for the uranium milling operation covered by each license; (ii) occur without prior  
26 notice to the licensee or his agents or employees except for necessary on-site meetings  
27 with the licensee; and (iii) include the filing of inspection reports adequate to enforce the  
28 requirements of and to carry out the terms and purposes of this chapter.

29 C. The Board is authorized to enter into inter-agency agreements with any other state  
30 agency for the coordination of inspection, monitoring, and enforcement responsibilities  
31 assigned to the Board and other state agencies under the provisions of this Act and state  
32 law.

33 § 45.1-447. Records.—The Board is authorized to require, by regulation or order, the  
34 keeping of such records with respect to activities under licenses issued pursuant to this  
35 chapter as may be necessary to effectuate the purposes of this Act. These records shall be  
36 made available for inspection by, or copies thereof shall be submitted to, the agency on  
37 request.

38 § 45.1-448. Fees.—The Board shall prescribe and collect license fees, license revision fees,  
39 license renewal fees, and annual license anniversary fees.

40 The license fee, license renewal fee and license revision fee shall be established by  
41 Board regulations in amounts not to exceed the actual expenses incurred: (i) in processing  
42 applications for a license; and (ii) for amendments to or renewals of licenses.

43 An annual license anniversary fee shall be required of each licensee and the amount  
44 shall be established by Board regulations in amounts not to exceed the actual expense

1 incurred annually: (i) for making inspections of licensees; and (ii) for enforcement of this  
2 chapter and regulations, orders and licenses hereunder.

3 Fees collected by the Board or its designee under this section shall be deposited in the  
4 general fund of the state treasury.

5 § 45.1-449. Security; license bonds.—The provisions for bonds of licensees found in §  
6 32.1-231 and funding for maintenance found in § 32.1-232 shall only be applicable to, and  
7 be required of a uranium milling licensees to the extent that the threat of damage from  
8 the uranium mill and mill tailings area is not covered by the closure and post-closure  
9 plans and financial assurance required by §§ 45.1-453 and 45.1-454 .

10 § 45.1-450. Threat of damage by uranium mill and tailings area.—If at any time either  
11 during mill operations or after mill closure in accordance with § 45.1-453 and the Board  
12 determines that a uranium mill, tailings management area or mining waste rock threatens  
13 the public health and safety and the environment as a result of the release or threatened  
14 release of any contaminant or pollutant and that the licensee or former owner or operator  
15 is unable or unwilling to correct or neutralize the threat, the Board shall use the security,  
16 financial assurance, and Response Fund provided by the licensee under this chapter to pay  
17 the costs of responding to the release or threatened release.

18 § 45.1-451. Recovery of security.—A. If the Board uses security from the fund  
19 established in § 32.1-232 to pay for actions or corrective measures to remedy spills or  
20 contamination by radioactive material resulting from a violation of this chapter or a  
21 regulation, license, or order of the Board or its designee, the Board shall seek  
22 reimbursement either through an order or a suit filed by the Attorney General at the  
23 Board's request.

24 B. On request of the Board, the Attorney General shall file suit to recover security  
25 under subsection A of this section.

26 § 45.1-452. Procedures, orders, penalties, representation by Attorney General.—A. The  
27 Board, the Commissioner and the Department shall administer and enforce the provisions  
28 of this chapter in accordance with and subject to the provisions of §§ 32.1-24, 32.1-26  
29 through 32.1-29 and 32.1-238.

30 B. Except as provided in § 45.1-390 F, any licensee who violates any license condition  
31 or any other provision of this chapter or the regulations thereunder shall be assessed a  
32 civil penalty in an amount not to exceed \$10,000 for each violation. Each day of violation  
33 shall constitute a separate offense.

34 § 45.1-453. Closure and post-closure care—The Board shall by regulation provide for  
35 closure and post-closure care in connection with any required decontamination,  
36 decommissioning, reclamation and disposal of any uranium milling and tailings operations  
37 licensed pursuant to this chapter. The regulations adopted by the Board shall require that  
38 the applicant for a license pursuant to this chapter submit with the application a written  
39 closure plan and a written post-closure care plan, and that the plans, as approved by the  
40 Board, be included as part of the license issued pursuant to this chapter. A post-closure  
41 care plan shall be required only for that portion of a facility where uranium mill tailings  
42 will remain after closure. In adopting regulations pursuant to this section and in  
43 approving closure and post-closure care plans required by this section the Board shall  
44 ensure that each uranium milling and tailings operation is closed, monitored and



1 maintained in a manner that minimizes to the maximum extent feasible the potential for  
2 the release or threatened release at any time of any pollutant or contaminant to the  
3 environment.

4 § 45.1-454. Financial assurance for closure and post-closure care.—The Board shall  
5 provide by regulation that each licensee pursuant to this chapter must establish financial  
6 assurance for closure and post-closure care required by § 45.1-453. The regulations adopted  
7 by the Board shall provide that each licensee may establish financial assurance through  
8 the use of closure trust funds, post-closure trust funds, surety bonds guaranteeing payment  
9 into closure and post-closure trust funds, surety bonds guaranteeing performance of closure  
10 or post-closure, or both, closure and post-closure insurance, and a combination of the  
11 foregoing financial mechanisms for closure and post-closure care.

12 § 45.1-455. Uranium Response Fund—A. The Uranium Response Fund, hereinafter  
13 referred to as the "Fund", is hereby established in perpetuity to be administered by the  
14 Board consistent with the purposes set forth herein. The Fund shall consist of all  
15 payments made into the Fund by uranium mill license holders or from forfeitures of surety  
16 bonds in accordance with the provisions of this section. The Fund shall be available for  
17 use by the Commonwealth in responding to the release or threatened release of any  
18 pollutant or contaminant into the environment from any mill operation, mill tailings  
19 management area or any mining waste rock. The Fund shall be used by the  
20 Commonwealth in the event the Commonwealth's costs in responding to the release or  
21 threatened release are not immediately available from one or more of the security and  
22 financial assurance mechanisms required by this Act.

23 B. Each uranium mill licensee pursuant to this chapter shall pay into the Fund the  
24 sum of ten cents per pound of uranium oxide produced from such mill until the total of  
25 such payments is one million dollars. If, after five years from the date of commencing  
26 production from such mill, the sum of such payments from the licensee does not total one  
27 million dollars, the licensee shall pay into the Fund the unpaid balance so that the  
28 payments to the Fund by the licensee total one million dollars exclusive of interest earned  
29 on the moneys in the Fund.

30 C. To ensure the full sum required by paragraph B of this section is available to the  
31 Fund from the date that the licensee begins uranium oxide production, the licensee shall,  
32 no later than thirty days prior to commencing production, file with the Board on a form  
33 prescribed and furnished by the Board, a one million dollar bond payable to the Fund,  
34 with surety acceptable to the Board, guaranteeing payment of the full amount of the bond  
35 into the Fund in the event (i) the licensee fails or refuses to make the payments required  
36 by paragraph B of this section in accordance with regulations promulgated by the Board,  
37 or (ii) there are insufficient moneys in the Fund to make those disbursements from the  
38 Fund authorized by paragraph D2 of this section and such regulations as may be  
39 promulgated by the Board. The amount of the surety bond may be adjusted annually to  
40 reflect payments to the Fund by the licensee during each preceding year. The licensee  
41 shall remain liable under the bond until the total payments required by paragraph B of  
42 this section have been made to the Fund. No licensee may commence uranium production  
43 until the surety bond required by this subparagraph has been provided to the Board.

44 D. The Fund shall be administered by the Board consistent with the purposes of this

1 section and in accordance with the following provisions:

2 1. The Fund shall be maintained in a separate government-insured, interest-bearing  
3 account. An accounting of moneys received and disbursed shall be kept, and furnished  
4 upon request to the Governor or the General Assembly.

5 2. Disbursements from the Fund shall be available to the Commonwealth for the  
6 following purposes:

7 a. All costs of abatement, removal or remedial action incurred at any time by or at  
8 the direction of the Commonwealth or its political subdivisions with respect to a release  
9 or threatened release from the mill operation, tailings management area or mining waste  
10 rock;

11 b. All costs of response, including but not limited to, the cost of inspections,  
12 investigations, assessments, health and environmental studies incurred by or at the  
13 direction of the Commonwealth or its political subdivisions with respect to a release or  
14 threatened release from the mill operations, tailings management area or mining waste  
15 rock;

16 c. Damages for injury to, destruction of, or loss of natural resources, including the  
17 reasonable costs of assessing such injury, destruction, or loss resulting at any time from a  
18 release from the mill operations, tailings management area or mining waste rock.

19 E. The Board shall adopt such regulations as may be necessary to carry out the  
20 purposes of this section.

21 [§§ 45.1-456 through 45.1-458. Reserved.]

22 CHAPTER 28.

23 DESIGNATING AREAS UNSUITABLE FOR  
24 URANIUM MINING AND MILLING.

25 § 45.1-459. Designating areas unsuitable for uranium mining and milling.—A. 1. The  
26 Director of the Department of Mines, Minerals and Energy and the Commissioner of the  
27 Department of Health shall establish jointly a planning process enabling objective decisions  
28 based on competent and scientifically sound data and information as to which, if any,  
29 land areas of the Commonwealth are unsuitable for all or certain types of uranium mining  
30 or milling operations pursuant to the standards set forth in paragraphs 2 and 3 of this  
31 subsection, but such designation shall not prevent the mineral exploration pursuant to  
32 Chapter 26 of any area so designated. The Director and Commissioner shall formally and  
33 finally adopt regulations to implement this chapter no later than July 1, 1986, including  
34 the designation of an administrator for this chapter.

35 2. Upon petition pursuant to subsection C of this section, the administrator shall  
36 designate an area as unsuitable for all or certain types of uranium mining or milling  
37 operations if he determines that reclamation pursuant to the requirements of this Act is  
38 not technologically or economically feasible.

39 3. Upon petition pursuant to subsection C of this section, a surface area may be  
40 designated unsuitable for certain types of uranium mining or milling operations if such  
41 operations will (i) be incompatible with existing land use plans; or (ii) affect fragile or  
42 historic lands in which such operations could result in significant damage to important  
43 historic, cultural, scientific and esthetic values and natural systems; or (iii) affect  
44 renewable resources lands in which operations could result in a substantial loss or

1 reduction of long-range productivity of water supply or of food or fiber products, and such  
2 lands to include aquifers and aquifer recharge areas; or (iv) affect natural hazard lands in  
3 which such operations could substantially endanger life and property, such lands to  
4 include areas subject to frequent flooding and areas of unstable geology.

5 4. Determinations of the unsuitability of land for uranium mining or milling, as  
6 provided for in this section, shall be integrated as closely as possible with present and  
7 future land use planning and regulation processes at the federal, state and local levels.

8 B. Prior to designating any land areas as unsuitable for uranium mining or milling  
9 operations, the administrator shall cause to be prepared a detailed statement of (i) the  
10 potential uranium resources of the area, (ii) the demand for uranium resources and (iii) the  
11 impact of such designation on the environment, the economy and the supply of uranium.

12 C. Any person having an interest which is or may be adversely affected shall have the  
13 right to petition the administrator to have an area designated as unsuitable for uranium  
14 mining or milling operations, or to have such designation terminated. Such a petition shall  
15 contain allegations of facts with supporting evidence which would tend to establish the  
16 allegations. Within ten months after receipt of the petition, the administrator shall hold a  
17 public hearing in the locality of the affected area, after appropriate notice and publication  
18 of the date, time and location of the hearing. After a person having an interest which is  
19 or may be adversely affected has filed a petition and before the hearing, as required by  
20 this subsection, any person may intervene by filing allegations of facts with supporting  
21 evidence which would tend to establish the allegations. The administrator shall issue and  
22 furnish to the petitioner and any other party to the hearing within ninety days after such  
23 hearing, a written decision regarding the petition and the reasons therefor. In the event  
24 that all petitioners stipulate agreement prior to hearing and withdraw their request such  
25 hearing need not be held.

26 D. No uranium mining or milling operations shall be licensed:

27 1. On any lands within the boundaries of units of the National Park System, the  
28 National Wildlife Refuge Systems, the National System of Trails, the National Wilderness  
29 Preservation System, the Wild and Scenic Rivers System, including study rivers designated  
30 under Section 5(a) of the Wild and Scenic Rivers Act and National Recreation Areas  
31 designated by act of Congress and any federal lands within the boundaries of any national  
32 forest, except as otherwise provided by federal law;

33 2. Which will adversely affect any publicly owned park or places included in the  
34 National Register of Historic Sites unless approved jointly by the administrator and  
35 federal, state or local agency with jurisdiction over the park or historic site;

36 3. Within 100 feet of the outside right-of-way line of any public road, except where  
37 access roads or haulage roads join such right-of-way line and except that the Director  
38 may permit such roads to be relocated or the area affected to lie within 100 feet of such  
39 road, if, after public notice and opportunity for hearing in the locality, a written finding is  
40 made that the interests of the public and landowners affected thereby will be protected; or

41 4. Within 300 feet from any occupied dwelling, unless waived by the owner thereof,  
42 nor within 300 feet of any public building, school, church, community, or institutional  
43 building, public park, or within 100 feet of a cemetery.

## LIABILITY PROVISIONS.

§ 45.1-460. *Definitions.—As used in this chapter:*

"Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

"Damages" means damages for personal injury, property damage or loss, or loss or damage of natural resources as set forth in § 45.1-461 of this Act.

"Drinking water supply" means any raw or finished water source that is or may be used by a public water system or as drinking water by one or more individuals.

"Natural resources" means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, or otherwise controlled by the Commonwealth of Virginia.

"Operation" means a uranium mine operation, a uranium mill operation or a combined operation as defined in § 45.1-386.

"Owner or operator" means: (i) any person owning or operating a uranium mine, mill, or combined operation, and (ii) in the case of any inactive operation, any person who owned or operated or otherwise controlled activities at such operation at the time the operation became inactive.

These terms shall not include a person who, without participating in the management of a operation, holds indicia of ownership primarily to protect his security interest in the operation.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment of radiation from any source or resultant radioactive material.

"Resultant radioactive material" means any mill tailings as defined in § 45.1-386, any other radioactive waste including any residual stock of unprocessed ores or low grade materials, and any real property or improvement which is contaminated with residual radioactive materials derived from an operation.

§ 45.1-461. *General rule.—Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in § 45.1-462 of this chapter, the owner or operator of an operation shall be strictly, jointly and severally liable for the following costs and damages:*

1. All costs of abatement, removal or remedial action incurred by or at the direction of the Commonwealth or its political subdivisions with respect to a release or threatened release from the operation which are not covered by the Response Fund created by § 45.1-455;

2. All costs of response, including but not limited to, the cost of inspections, investigations, assessments, health and environmental studies incurred by or at the direction of the Commonwealth or its political subdivisions with respect to a release or threatened release which are not covered by the Response Fund created by § 45.1-455;

3. Damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from a release which are not covered by the Response Fund created by § 45.1-455;

4. All medical expenses, rehabilitation costs, or burial expenses due to personal injury,

1 illness, or death resulting from a release;

2 5. All loss of earning capacity due to personal injury, illness, or death resulting from a  
3 release; and

4 6. All damages to property caused by a release.

5 § 45.1-462. Defenses.—There shall be no liability under § 45.1-461 of this chapter for a  
6 person otherwise liable who can establish by a preponderance of the evidence that the  
7 release or threat of a release and damages resulting therefrom were caused solely by:

8 1. An act of God;

9 2. An act of war;

10 3. An act or omission of a third party other than: (i) an employee or agent of the  
11 defendant, or (ii) one whose act or omission occurs in connection with a contractual  
12 relationship, existing directly or indirectly, with the defendant, except where the sole  
13 contractual arrangement arises from a published tariff and acceptance for carriage by a  
14 common carrier by rail; or

15 4. Any combination of the foregoing.

16 § 45.1-463. Limitations.—A. Except as provided in paragraph B of this section, the  
17 liability under this chapter for each release from an operation shall not exceed the total of  
18 all costs of response, removal and remedial action plus \$50,000,000 for any damages under  
19 this chapter.

20 B. The foregoing limitations shall not apply if:

21 1. The release or threat of a release was the result of willful misconduct or willful  
22 negligence within the privity or knowledge of the owner or operator, or (ii) the primary  
23 cause of the release was a violation (within the privity or knowledge of the owner or  
24 operator) of applicable federal or state safety, construction, or operating standards or  
25 regulations; or

26 2. Such owner or operator fails or refuses to provide all reasonable cooperation and  
27 assistance, including access to records, requested by a responsible public official.

28 C. Notwithstanding any other provision or rule of law, and subject only to the  
29 defenses set forth in § 45.1-462 of this chapter, if any person who is liable for a release or  
30 threat of release fails without sufficient cause to properly provide removal or remedial  
31 action upon order of the Governor, such person shall be strictly liable to the  
32 Commonwealth for punitive damages in an amount at least equal to, and not more than  
33 three times, the amount of any costs incurred by the Commonwealth as a result of such  
34 failure to take proper action. The Governor is authorized to commence a civil action  
35 against any such person to recover such damages, which shall be in addition to any costs  
36 recovered from such person pursuant to § 45.1-461.

37 § 45.1-464. Indemnification agreements.—A. No indemnification, hold harmless, or similar  
38 agreement or conveyance shall be effective to transfer from the owner or operator of any  
39 operation or from any person who may be liable for a release or threat of release under  
40 this chapter, to any other person the liability imposed under this chapter. Nothing in this  
41 section shall bar any agreement to insure, hold harmless, or indemnify a party to such  
42 agreement for any liability under this chapter.

43 B. Nothing in this section, including the provisions of paragraph A, shall bar a cause  
44 of action that an owner or operator or any other person subject to liability under this

1 chapter, or a guarantor, has or would have, by reason of subrogation or otherwise against  
2 any person.

3 § 45.1-465. Damages to natural resources.—In the case of damages to, destruction of, or  
4 loss of natural resources under paragraph 3 of § 45.1-461, liability shall be to the  
5 Commonwealth for natural resources belonging to, held in trust by, managed, or otherwise  
6 controlled by the Commonwealth. The Governor shall act on behalf of the Commonwealth  
7 to recover such damages. Sums recovered shall be available for use to restore, rehabilitate,  
8 or acquire the equivalent of such natural resources by the appropriate agencies of the  
9 Commonwealth, but the measure of damages shall not be limited by the sums which can  
10 be used to restore or replace such resources.

11 2. That Chapter 21 of Title 45.1 of the Code of Virginia, consisting of sections numbered  
12 45.1-272 through 45.1-285, is repealed.

Official Use By Clerks

Passed By

The House of Delegates

without amendment ☐

with amendment ☐

substitute ☐

substitute w/amdt ☐

Passed By The Senate

without amendment ☐

with amendment ☐

substitute ☐

substitute w/amdt ☐

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Clerk of the House of Delegates

Clerk of the Senate