

MINERAL MINE SAFETY LAWS OF VIRGINIA

2017 EDITION



Issued by
Department of Mines, Minerals and Energy



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Department of Mines, Minerals and Energy

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and the 2017 Supplement



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Mines and Mining.

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MINERAL MINE SAFETY LAWS OF VIRGINIA

TITLE 45.1. MINES AND MINING.

CHAPTER 14.1. ADMINISTRATION.

Section

- 45.1-161.1. Definitions.
- 45.1-161.1:1. Certified mail; subsequent mail or notices may be sent by regular mail.
- 45.1-161.2. Department continued; appointment of Director.
- 45.1-161.3. Powers of Department.
- 45.1-161.4. Powers and duties of Director.
- 45.1-161.5. Establishment of divisions; division heads.
- 45.1-161.6. Department to serve as lead agency for inspections undertaken subsequent to the issuance of a permit.

§ 45.1-161.1. Definitions.

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

“*Chief*” means the Chief of the Division of Mines of the Department of Mines, Minerals and Energy.

“*Department*” means the Department of Mines, Minerals and Energy.

“*Director*” means the Director of the Department of Mines, Minerals and Energy.

History.

1984, c. 590, § 45.1-1.2; 1994, c. 28.

§ 45.1-161.1:1. Certified mail; subsequent mail or notices may be sent by regular mail.

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

History.

2011, c. 566.

§ 45.1-161.2. Department continued; appointment of Director.

The Department of Mines, Minerals and Energy is continued as an agency within the Secretariat of Commerce and Trade. The Department shall be

headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at his pleasure for a term coincident with his own.

History.

1984, c. 590, § 45.1-1.1; 1994, c. 28.

Editor's note.

At its 1966 session the General Assembly, by Acts 1966, c. 594, repealed Title 45 and enacted in its place a new Title 45.1, comprising Chapters 1 (§ 45.1-1.1 et seq.) through 14 (§ 45.1-158 et seq.). Former Chapter 15 (§§ 45.1-162 through 45.1-179), also enacted at the 1966 session of the General Assembly, was codified in this title by the Virginia Code Commission.

Chapter 717 of the Acts of 1966 provides: "Whenever, during the regular session of the General Assembly of Virginia of nineteen hundred sixty-six there shall have been enacted any statute purporting to revise, rearrange, amend and recodify any title of the Code of Virginia, such statute shall be deemed to have been enacted prior in time to any other statute enacted at such session adding to, repealing or amending and reenacting any portion of such title; and every such other statute shall be deemed to have so added to, repealed or amended and reenacted, as the case may be, such title as so revised, rearranged, amended and recodified; provided, however, that effect shall be given to any such other, or subsequent, statute only to the extent of any apparent changes in the law as it existed prior to such session."

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

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

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

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

Acts 1984, c. 590, cl. 6 provides: "That regulations promulgated by the Board of Conservation and Economic Development, the Commissioner of Labor and Industry, and the Chief of the Division of Mines of the Department of Labor and Industry under the authority transferred to the Department of Mines, Minerals and Energy shall remain in force and effect until any such regulation is amended, modified, or repealed by the Department of Mines, Minerals and Energy."

Acts 1994, c. 28, cl. 2 provides: "That whenever any of the conditions, requirements, provisions, or contents of any section, article, or chapter of Chapters 1 through 14 (§§ 45.1-1.1 through 45.1-161) of Title 45.1 or any other title of this Code as such titles existed prior to July 1, 1994, are transferred in the same or modified form to a new section, article, or chapter of Chapters 14.1 through 14.8 (§§ 45.1-161.1 through 45.1-161.322) of this title or any other title of this Code and whenever any such former section, article, or chapter is given a new number in this or any other title, all references to any such former section, article, or chapter of Chapters 1 through 14 (§§ 45.1-1.1 through 45.1-161) of Title 45.1 or any other title appearing in this Code shall be construed to apply to the new or renumbered section, article, or chapter containing such conditions, requirements, provisions, contents, or sections thereof."

Acts 1994, c. 28, cl. 3 provides: "That the regulations of the Department of Mines, Minerals, and Energy in effect on the effective date of this act [July 1, 1994] shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations promulgated under this act."

§ 45.1-161.3. Powers of Department.

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

1. To employ the personnel required to carry out the purposes of this title;
2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this title, including, but not limited to, reciprocal agreements with responsible officers of other states and contracts with the private sector, the United States, other state agencies, and governmental subdivisions of the Commonwealth;
3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with any conditions and execute any agreements that are necessary, convenient or desirable;
4. To promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title and other relevant chapters, which regulations shall be promulgated by the Department, the Chief, or the Director, as appropriate, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; and
5. To do all acts necessary or convenient to carry out the purposes of this title.

History.

1984, c. 590, § 45.1-1.3; 1994, c. 28; 2014, c. 145.

“reciprocal agreements with responsible officers of other states and” in subdivision 2.

The 2014 amendments.

The 2014 amendment by c. 145 inserted

§ 45.1-161.4. Powers and duties of Director.

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

History.

1984, c. 590, § 45.1-1.4; 1994, c. 28.

§ 45.1-161.5. Establishment of divisions; division heads.

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Reclamation, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, and a Division of Energy. The Director may establish other divisions as he deems necessary. Except as provided in § 45.1-161.15 with respect to the Chief of the Division of Mines, the Director shall appoint persons to direct the various functions and programs of the divisions, and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

History.

1984, c. 590, § 45.1-1.5; 1990, c. 92; 1994, c. 28; 2008, c. 369.

OPINIONS OF THE ATTORNEY GENERAL

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

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

§ 45.1-161.6. Department to serve as lead agency for inspections undertaken subsequent to the issuance of a permit.

Following the issuance of any permit under Chapter 16 (§ 45.1-180 et seq.) or 19 (§ 45.1-226 et seq.) of this title, the Department shall serve as the lead agency for enforcement of the provisions of the permit. Any other agency which has reviewed and approved, or not disapproved, a permit application prior to its approval by the Director shall contact the Director or his designee prior to making any routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be made, to schedule the inspection and shall accompany any employee of any agency other than the Department during any inspection by such other agency. However, nothing in this section shall apply in the event of a blackwater discharge, a failure of waste treatment facilities, or other situation that in the judgment of the State Water Control Board requires an inspection on an emergency or expedited basis.

History.

1984, c. 188, § 45.1-1.9; 1994, c. 28.

**CHAPTER 14.4:1.
MINERAL MINE SAFETY ACT.**

Article 1. General Provisions.

Section

- 45.1-161.292:1. Short title.
- 45.1-161.292:2. Definitions.
- 45.1-161.292:3. Safety and health.
- 45.1-161.292:4. Special safety rules.
- 45.1-161.292:5. Persons not permitted to work in mines.
- 45.1-161.292:6. Prohibited acts by miners or other persons; miners to comply with law.
- 45.1-161.292:7. Safety materials and supplies.
- 45.1-161.292:8. Notifying miners of violations; compliance with Act.

Article 2. Director and Mining Inspectors.

- 45.1-161.292:9. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.
- 45.1-161.292:10. Appointment of mine inspectors.
- 45.1-161.292:11. Qualifications of mine inspectors generally.
- 45.1-161.292:12. Qualifications of inspectors of mines.
- 45.1-161.292:13. Duties of Director.
- 45.1-161.292:14. Technical specialists.

Article 3. Certification of Mineral Mine Workers.

- 45.1-161.292:15, 45.1-161.292:16. [Repealed.]
- 45.1-161.292:17. Records of Board of Mineral Mining Examiners.

MINERAL MINE SAFETY ACT

Section

- 45.1-161.292:18. [Repealed.]
- 45.1-161.292:19. Certification of certain persons employed in mineral mines; powers of the Department.
- 45.1-161.292:20. Examinations required for Mineral Mining Certifications.
- 45.1-161.292:21. Performance of certain tasks by uncertified persons; penalty.
- 45.1-161.292:22. Examination fees; Mineral Mining Examiners' Fund.
- 45.1-161.292:23. [Repealed.]
- 45.1-161.292:24. Reciprocal acceptance of other certifications.
- 45.1-161.292:25. Renewal of certificates.
- 45.1-161.292:26. Revocation of certificates.
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- 45.1-161.292:28. General mineral miner certification.
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Article 4. Licensing of Mineral Mines.

- 45.1-161.292:30. License required for operation of mineral mines; term.
- 45.1-161.292:31. Fee to accompany application for license; fund; disposition of fees.
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- 45.1-161.292:40. Mine rescue and first aid stations.
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- 45.1-161.292:42. Duty to train crew.
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Section

- 45.1-161.292:63. Notices of violations.
- 45.1-161.292:64. Closure orders.
- 45.1-161.292:65. Tolling of time for abating violations.
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- 45.1-161.292:71. Training programs.
- 45.1-161.292:72. Mineral mining safety training.
- 45.1-161.292:73. Mineral mining safety training program.

**ARTICLE 1.
GENERAL PROVISIONS.**

§ 45.1-161.292:1. Short title.

This chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) of this title shall be known as the “Mineral Mine Safety Act.”

History.

1997, c. 390.

Michie’s Jurisprudence.

For related discussion, see 13A M.J. Mines and Minerals, § 74.2.

§ 45.1-161.292:2. Definitions.

As used in this chapter and in Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and in regulations promulgated under such chapters, unless the context requires a different meaning:

“*Abandoned area*” means the inaccessible area of an underground mine that is sealed or ventilated and in which further mining is not intended.

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

“*Active areas*” means all places in a mine that are ventilated, if underground, and examined regularly.

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

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

“*Approved*” means a device, apparatus, equipment, condition, method, course or practice approved in writing by the Director.

“*Approved competent person*” means a person designated by the Department as having the authority to function as a mine foreman even though the person has less than five years’ experience but more than two years’ experience. If an approved competent person has met all the criteria for a mine foreman certification other than the experience criteria, he may perform the duties of a mine foreman except the pre-shift examination.

“*Armored cable*” means a cable provided with a wrapping of metal, plastic or other approved material.

“*Authorized person*” means a person assigned by the operator or agent to perform a specific type of duty or duties or to be at a specific location or locations in the mine who is task trained in accordance with requirements of the federal mine safety law.

“*Blower fan*” means a fan with tubing used to direct part of a particular circuit of air to a working place.

“*Booster fan*” means an underground fan installed in conjunction with a main fan to increase the volume of air in one or more circuits.

“*Cable*” means a stranded conductor (single-conductor cable) or a combination of conductors insulated from one another (multiple-conductor cable).

“*Certified person*” means a person holding a valid certificate from the Department authorizing him to perform the task to which he is assigned.

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

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

“*Competent person*” means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

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

“*Department*” means the Department of Mines, Minerals and Energy.

“*Experienced surface miner*” means a person with more than six months of experience working at a surface mine or the surface area of an underground mine.

“*Experienced underground miner*” means a person with more than six months of underground mining experience.

“*Federal mine safety law*” means the Federal Mine Safety and Health Act of 1977 (P.L. 95-164), and regulations promulgated thereunder.

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

“*Ground*” means a conducting connection between an electric circuit or equipment and earth or to some conducting body which serves in place of earth.

“*Grounded*” means connected to earth or to some connecting body which serves in place of the earth.

“Hazardous condition” means conditions that are likely to cause death or serious personal injury to persons exposed to such conditions.

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

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

“Independent contractor” means any person that contracts to perform services or construction at a mine.

“Intake air” means air that has not passed through the last active working place of the split or by the unsealed entrances to abandoned areas and by analysis contains not less than 19.5 percent oxygen nor more than 0.5 percent of carbon dioxide, nor any hazardous quantities of flammable gas nor any harmful amounts of poisonous gas.

“Interested persons” means members of the Mine Safety Committee and other duly authorized representatives of the employees at a mine; federal Mine Safety and Health Administration employees; mine inspectors; and, to the extent required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), any other person.

“Licensed operator” means the operator who has obtained the license for a particular mine under § 45.1-161.292:30.

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

“Mine” means any underground mineral mine or surface mineral mine. Mines that are adjacent to each other and under the same management and which are administered as distinct units shall be considered as separate mines. A site shall not be a mine unless the mineral extracted or excavated therefrom is offered for sale or exchange, or used for any other commercial purposes.

“Mine fire” means an unplanned fire not extinguished within 30 minutes of discovery.

“Mine foreman” means a person holding a valid certificate of qualification as a foreman issued by the Department.

“Mine inspector” means a public employee assigned by the Director to make mine inspections as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and other applicable laws.

“Miner” means any individual working in a mineral mine.

“Mineral” means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and any other solid material or substance of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals which occur naturally in liquid or gaseous form.

“Mineral mine” means a surface mineral mine or an underground mineral mine.

“Mineral Mine Safety Act” or *“Act”* shall mean this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and shall include any regulations promulgated thereunder, where applicable.

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

“*Panel entry*” means a room entry.

“*Permissible*” means a device, process, or equipment or method heretofore or hereafter classified by such term by the Mine Safety and Health Administration, when such classification is adopted by the Director, and includes, unless otherwise herein expressly stated, all requirements, restrictions, exceptions, limitations, and conditions attached to such classification by the Administration.

“*Return air*” means air that has passed through the last active working place on each split, or air that has passed through abandoned or worked-out areas. Area within a panel shall not be deemed abandoned until inaccessible or sealed.

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

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

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

“*Surface mineral mine*” means (i) the pit and other active and inactive areas of surface extraction of minerals; (ii) on-site mills, shops, loadout facilities, and related structures appurtenant to the excavation and processing of minerals; (iii) impoundments, retention dams, tailing ponds, and other areas appurtenant to the extraction of minerals from the site; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) equipment, machinery, tools and other property used in, or to be used in, the work of extracting minerals from the site; (vi) private ways and roads appurtenant to such area; and (vii) the areas used for surface-disturbing exploration (other than by drilling or seismic testing) or preparation of a site for surface mineral extraction activities. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activities other than exploratory drilling or seismic testing, and shall cease to be a surface mineral mine upon completion of initial reclamation activities. The surface extraction of a mineral shall not constitute surface mineral mining unless (a) the mineral is extracted for its unique or intrinsic characteristics, or (b) the mineral requires processing prior to its intended use.

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

“*Underground mineral mine*” means (i) the working face and other active and inactive areas of underground excavation of minerals; (ii) underground travel ways, shafts, slopes, drifts, inclines and tunnels connected to such areas; (iii) on-site mills, loadout areas, shops, and related facilities appurtenant to the excavation and processing of minerals; (iv) on-site surface areas for the transportation and storage of minerals excavated at the site; (v) impoundments, retention dams, tailing ponds and waste areas appurtenant to the excavation of minerals from the site; (vi) equipment, machinery, tools, and other property, on the surface or underground, used in, or to be used in, the excavation of minerals from the site; (vii) private ways and roads appurtenant to such area; and (viii) the areas used to prepare a site for underground mineral excavation activities. A site shall commence being an underground mineral mine upon the beginning of any site preparation activity other than

exploratory drilling or other exploration activity, and shall cease to be an underground mineral mine upon completion of initial reclamation activities.

“*Work area*,” as used in Chapter 14.4 (§ 45.1-161.253 et seq.), means those areas of a mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

“*Working face*” means any place in a mine in which work of extracting minerals from their natural deposit in the earth is performed during the mining cycle.

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

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

History.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted “Department” for “Board of Mineral Mining Examiners” in the definition of “Certified person”; added the defi-

nition of “Department”; substituted “issued by the Department” for “duly issued by action of the Board of Mineral Mining Examiners” in the definition of “Mine foreman”; redesignated clauses (i) and (ii) as clauses (a) and (b) in the last sentence of the definition of “Surface mineral mine”; and made stylistic changes.

§ 45.1-161.292:3. Safety and health.

In safety and health, all mineral miners are to be governed by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and Chapter 18.1 (§ 45.1-225.1 et seq.) of this title, and any other sections of the Code relating to safety and health of miners and rules and regulations promulgated by the Department.

History.

1997, c. 390.

§ 45.1-161.292:4. Special safety rules.

The operator of every mine shall have the right to adopt special safety rules for the safety and operation of his mine or mines, covering the work pertaining thereto inside and outside of the same, which, however, shall not be in conflict with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). Such rules, when established, shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners subject to such rules, or in lieu thereof the operator shall furnish a printed copy of such rules to each miner subject to such rules.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:5. Persons not permitted to work in mines.

A. No person under eighteen years of age shall be permitted to work in or around any mine, and in all cases of doubt, the operator, agent or mine foreman shall obtain a birth certificate or other documentary evidence, from the Registrar of Vital Statistics, or other authentic sources as to the age of such person.

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

History.

1997, c. 390.

§ 45.1-161.292:6. Prohibited acts by miners or other persons; miners to comply with law.

A. No miner or other person shall (i) knowingly damage any shaft, lamp, instrument, air course, or brattice or obstruct airways; (ii) carry in a mine any intoxicating liquors or controlled drugs without the prescription of a licensed physician; (iii) disturb any part of the machinery or appliances in a mine; (iv) open a door used for directing ventilation and fail to close it again; (v) enter any part of a mine against caution; or (vi) disobey any order issued pursuant to the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

B. Each miner at any mine shall comply fully with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and other mining laws of this Commonwealth that pertain to his duties.

History.

1997, c. 390.

§ 45.1-161.292:7. Safety materials and supplies.

It shall be the duty of every operator or agent to keep on hand, at or within convenient distance of each mine, at all times a sufficient quantity of all materials and supplies required to preserve the safety of the miners working in those areas in which the operator is responsible for their health and safety, as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). If for any reason, the operator or agent cannot procure the necessary materials or supplies, he shall cause the miners to withdraw from the mine, or the portion thereof affected, until such material or supplies are received.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:8. Notifying miners of violations; compliance with Act.

A. The operator and his agent shall cooperate with the mine foreman, competent person and other officials in the discharge of their duties as required by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), and shall direct that all miners comply with all provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), especially when his attention is called to any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) by the Director or a mine inspector.

B. The operator of any mine or his agent shall operate in full conformity with this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and any other mining law of the Commonwealth at all times. This requirement shall not relieve any other person subject to the provisions of

this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) from his duty to comply with the requirements of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

C. Nothing in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) shall be construed to relieve an operator or his agent from the duty imposed at common law to secure the reasonable safety of his employees.

D. No operator, agent, competent person, or certified person shall knowingly permit any person to work in any part of a mine in violation of written instructions issued by a mine inspector pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

History.

1997, c. 390; 1998, c. 695.

ARTICLE 2.

DIRECTOR AND MINING INSPECTORS.

§ 45.1-161.292:9. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.

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

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

History.

1997, c. 390.

§ 45.1-161.292:10. Appointment of mine inspectors.

Mine inspectors shall be appointed by the Director.

History.

1997, c. 390.

§ 45.1-161.292:11. Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1,

2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

History.

1997, c. 390; 2012, cc. 803, 835.

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted “prior to July 1, 2012, by the Board of Mineral Mining Exam-

iners or on or after July 1, 2012, by the Department” for “by the Board of Mineral Mining Examiners. Persons currently appointed as mine inspectors to inspect mineral mines shall have until July 1, 1996, to obtain a mine inspector certificate from the Board of Mineral Mining Examiners” at the end of the section.

§ 45.1-161.292:12. Qualifications of inspectors of mines.

Each mine inspector conducting inspections of mineral mines shall have a thorough knowledge of the various systems of working and ventilating underground mineral mines and working surface mineral mines; the control of mine roof and ground control; methods of rescue and recovery in mining operations; application of electricity and mechanical loading in mining operations; equipment and explosives used in mining; and mine haulage.

History.

1997, c. 390.

§ 45.1-161.292:13. Duties of Director.

A. The Director shall supervise execution and enforcement of all laws pertaining to the safety and health of persons employed within or at mineral mines within the Commonwealth, and the protection of property used in connection therewith, and to perform all other duties required pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

B. The Director shall keep a record of all inspections of mineral mines made by him or his authorized representatives. He shall also keep a permanent record thereof, properly indexed, which record shall at all times be open to inspection by any citizen of the Commonwealth.

History.

1997, c. 390.

§ 45.1-161.292:14. Technical specialists.

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation and other mine specialties. Technical specialists shall have all the qualifications of a mine inspector plus such specialized knowledge in their field as may be required. Technical specialists shall advise the Director and mine operators in the areas of their specialty. Technical specialists shall have the power of an inspector to issue a closure order only in cases of imminent danger.

History.

1997, c. 390.

ARTICLE 3.**CERTIFICATION OF MINERAL MINE WORKERS.**

§§ 45.1-161.292:15, 45.1-161.292:16. Repealed by Acts 2012, cc. 803, 835, cl. 49.

Editor's note.

Former § 45.1-161.292:15, pertaining to the Board of Mineral Mining Examiners, derived from 1997, c. 390; 1998, c. 695. Former §

45.1-161.292:16, pertaining to meetings of the Board of Mineral Mining Examiners and compensation, derived from 1997, c. 390.

§ 45.1-161.292:17. Records of Board of Mineral Mining Examiners.

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

History.

1997, c. 390.

§ 45.1-161.292:18. Repealed by Acts 2012, cc. 803, 835, cl. 49.**Editor's note.**

Former § 45.1-161.292:18, pertaining to

nominations for the Board of Mineral Mining Examiners, derived from 1997, c. 390.

§ 45.1-161.292:19. Certification of certain persons employed in mineral mines; powers of the Department.

A. The Department may require certification of persons who work in mineral mines and persons whose duties and responsibilities in relation to mineral mining require competency, skill or knowledge in order to perform consistently with the health and safety of persons and property. The following certifications shall be issued by the Department, and a person holding such a certification shall be authorized to perform the tasks which this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated by the Department requires be performed by such a certified person:

1. Surface foreman;
2. Surface foreman open pit;
3. Underground foreman;
4. Surface blaster;
5. Electrical repairman;
6. Underground mining blaster;
7. General mineral miner; and
8. Mine inspector.

B. Certification shall also be required for such additional tasks as the Department may require by regulation.

C. The Department shall have the power to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this title, which regulations shall be promulgated in accordance with the provisions of Article 2 (§ 2.2-4007 et seq.) of the Administrative Process Act.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and in subsection A, substituted "Department" for "Board of Mineral Mining Examiners" in the first sentence, substituted "Department" for "Board" following "issued by the" and deleted "the Board or" following "promulgated by" in the second sentence; and substituted "Department" for "Board" in subsections B and C.

§ 45.1-161.292:20. Examinations required for Mineral Mining Certifications.

A. The Department may require examination of applicants for certification; however, the Department shall require examination of applicants for a mine inspector certification. The Department may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as provided by this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) for general mineral miner and surface foreman certifications, the Department shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Department shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Department, shall periodically be published, and shall be of uniform application to all applicants.

B. Any certificate issued by the Department, except the general mineral miner certification, shall be valid from the date of issuance for a period of five years, unless renewed, or unless revoked pursuant to § 45.1-161.292:26. The general mineral miner certification shall be valid from the date of issuance until it may be revoked pursuant to § 45.1-161.292:26.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted "Department" for "Board of Mineral Mining Examiners" near the beginning of subsection A; twice deleted "by the Board" following "revoked" in subsection B; and substituted "Department" for "Board" throughout the section.

§ 45.1-161.292:21. Performance of certain tasks by uncertified persons; penalty.

It is unlawful for any person to perform any task requiring certification by the Department until he has been certified. It is unlawful for an operator or his agent to permit any uncertified person to perform such tasks. A violation of this section shall constitute a Class 1 misdemeanor. Each day of operation without a required certification shall constitute a separate offense. A certificate issued by the Board of Mineral Mining Examiners prior to July 1, 2012, shall be acceptable as a certificate issued by the Department until the Department shall provide otherwise by appropriate regulations.

History.

1997, c. 390; 2012, cc. 803, 835.

Cross references.

As to punishment for Class 1 misdemeanors, see § 18.2-11.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations

are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted "It is" for "It shall be" at the beginning of the first and second sentences, substituted "Board of Mineral Mining Examiners prior to July 1, 2012" for "Board of Examiners prior to July 1, 1994" in the last sentence, and substituted "Department" for "Board of Mineral Mining Examiners" throughout the section.

§ 45.1-161.292:22. Examination fees; Mineral Mining Examiners' Fund.

A fee of \$10 shall be paid to the Director by each person examined. All fees shall be paid before the commencement of the examination. All such fees collected, together with moneys collected pursuant to § 45.1-161.292:25, shall be retained by the Department and shall be promptly paid by the Director into the state treasury and shall constitute the Mineral Mining Examiners' Fund. The fund shall be administered by the Director for the payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. The Director shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain

in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and rewrote the section.

§ 45.1-161.292:23. Repealed by Acts 2012, cc. 803 and 835, cl. 49.

Editor's note.

Former § 45.1-161.292:23, pertaining to re-

placement of lost or destroyed certificates, derived from Acts 1997, c. 390.

§ 45.1-161.292:24. Reciprocal acceptance of other certifications.

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

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides:

“That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy.”

48, are identical, and substituted “Department” for “Board of Mineral Mining Examiners” preceding “may issue”; and substituted “Department” for “Board” throughout the section.

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl.

§ 45.1-161.292:25. Renewal of certificates.

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance with the procedure set forth in subsection A of § 45.1-161.292:20. The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal which is not renewed by the fifth anniversary of its issuance, or previous renewal, shall be invalid. As a condition to renewal, the holder shall provide the Department with such administrative information as is reasonably required and shall pay the examination fee as provided in § 45.1-161.292:22.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor’s note.

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy.”

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and inserted “or the Department” in the first sentence; deleted “by the Board” following “required” in the last sentence; and substituted “Department” for “Board” throughout the section.

§ 45.1-161.292:26. Revocation of certificates.

A. The Department may revoke any certificate upon finding that the holder has (i) been intoxicated while in duty status; (ii) neglected his duties; (iii) violated any provision of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any other mineral mining law of the Commonwealth; (iv) used any controlled substance without the prescription of a licensed physician; or (v) other sufficient cause.

B. The Department may act to revoke any certificate upon the presentation of written charges by (i) the Director of the Division of Mineral Mining or any other employee of the Department; (ii) the operator of a mine at which such person is employed; (iii) an independent contractor working at such mine; or (iv) 10 persons working at the mine at which such person is employed, or, if less than 10 persons are working at the mine, a majority of the workers at the mine.

C. Prior to revoking a certificate, the Department shall give due notice to the holder of the certificate and conduct a hearing. Any hearing shall be conducted in accordance with § 2.2-4020 unless the parties agree to informal proceedings. The hearing shall be conducted by a hearing officer as provided in § 2.2-4024.

D. Any person who has been aggrieved by a decision of the Department shall be entitled to judicial review of such decision. Appeals from such decisions

shall be in accordance with Article 4 (§ 2.2-4025 et seq.) of the Administrative Process Act.

History.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted "Department"

for "Board of Mineral Mining Examiners" in subsection A; deleted former subsection C, which read: "An affirmative vote of a majority of members of the Board who are qualified to vote shall be required for any action to revoke a certificate" and redesignated former subsections D and E as subsections C and D; substituted "The hearing shall be conducted" for "The hearing may be conducted by the Board or, in the Board's discretion" in the last sentence of subsection C; substituted "Department" for "Board" throughout the section; and made stylistic changes.

§ 45.1-161.292:27. Reexamination.

The holder of a certificate revoked pursuant to § 45.1-161.292:26 shall be entitled to examination by the Department after three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted "Department" for "Board of Mineral Mining Examiners" following "examination by the," and substituted "Department" for "Board" following "satisfaction of the."

§ 45.1-161.292:28. General mineral miner certification.

A. Every person commencing work in a mineral mine subsequent to January 1, 1997, shall hold a general mineral miner certificate issued by the Board of Mineral Mining Examiners or the Department. Any person who has worked in a mineral mine in Virginia prior to that date may, but shall not be required to, hold a general mineral miner certificate.

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) and applicable regulations pertaining to mineral mining health and safety.

History.

1997, c. 390; 2012, cc. 803, 835.

Editor's note.

Acts 2012, cc. 803 and 835, cl. 50 provides: "That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain

in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy."

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and inserted "or the Depart-

ment” at the end of the first sentence of subsection A; and substituted “Department” for “Board” in subsection B.

§ 45.1-161.292:29. Foreman certification.

A. At any mineral mine where three or more persons work during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only persons holding a foreman certificate in accordance with § 45.1-161.292:19 shall be employed as mine foremen. The holder of such a certificate shall present the certificate, or a photostatic copy thereof, to the operator where he is employed, who shall file the certificate or its copy in the office at the mine, and the operator shall make it available for inspection by interested persons.

B. Applicants for a foreman certificate shall have had at least five years of experience at mineral mining or other experience deemed appropriate by the Department and demonstrate to the Department a thorough knowledge of the theory and practice of mineral mining by making 85 percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to miners starting work in the affected area.

D. Independent contractors working in a mineral mine who are engaged in activities other than the extraction or processing of minerals and working in a clearly demarcated area where (i) no mining-associated hazards exist and (ii) no other miners travel or work while engaged in extraction or processing activities, shall employ a competent person who shall examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to personnel starting work in the affected area.

History.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

Editor’s note.

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Mineral Miners (4 VAC 25-35 et seq.) shall remain in full force and effect until updated regulations are adopted by the Department of Mines, Minerals and Energy.”

The 2012 amendments.

The 2012 amendments by cc. 803 and 835, cl. 48, are identical, and substituted “Department” for “Board of Mineral Mining Examiners” in subsection B; substituted “Department” for “Board” throughout the section; and made stylistic changes.

ARTICLE 4.

LICENSING OF MINERAL MINES.

§ 45.1-161.292:30. License required for operation of mineral mines; term.

A. No person shall engage in the operation of any mineral mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The Director may

transfer a license to a successor operator, provided that the successor operator has complied with the requirements of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). Every change in ownership of a mine shall be reported to the Department as provided in subsection D of § 45.1-161.292:35.

B. Licenses shall be valid for a period of one year following the date of issuance and shall be renewed on their anniversary date.

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

History.

1997, c. 390; 1998, c. 695; 2000, c. 974.

Michie's Jurisprudence.

For related discussion, see 13A M.J. Mines and Minerals, § 74.2.

§ 45.1-161.292:31. Fee to accompany application for license; fund; disposition of fees.

Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of \$180. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of \$48. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mineral mining industry. All expenditures from this fund must be approved by the Director.

History.

1997, c. 390; 2003, cc. 542, 550.

Editor's note.

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

Acts 2016, c. 780, Item 119 E, as amended by

Acts 2017, c. 836, effective for the biennium ending June 30, 2018, provides: "The application fee for a mineral mine license or a renewal or transfer of a license pursuant to § 45.1-161.292:31, Code of Virginia, shall be in the amount of \$400, except applications submitted electronically, which shall be accompanied by a fee of \$330. However, the fee for any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of \$100, except applications submitted electronically, which shall be accompanied by a fee of \$80."

§ 45.1-161.292:32. Application for license.

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

1. Identity regarding the applicant. If the applicant is a sole proprietorship, the applicant shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at

the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a twenty percent or greater ownership interest; and (vi) the trade name, if any, and the full name, address of record and telephone number of the proprietorship. If the applicant is a partnership, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a twenty percent or greater ownership interest; (v) the full name and address of all partners; (vi) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (vii) the federal mine identification numbers of all other mines in which any partner has a twenty percent or greater ownership interest. If the applicant is a corporation, the applicant shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a twenty percent or greater ownership interest; (v) the full name, address of record and telephone number of the corporation and the state of incorporation; (vi) the full name and address of each officer and director of the corporation; (vii) if the corporation is a subsidiary corporation, the applicant shall state the full name, address, and state of incorporation of the parent corporation; and (viii) the federal mine identification numbers of all other mines in which any corporate officer has a twenty percent or greater ownership interest. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, the applicant shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a twenty percent or greater ownership interest; (vi) the full name, address of record and telephone number of the organization; (vii) the name and address of each individual who has an ownership interest in the organization; (viii) the name and address of the principal organization officials or members; and (ix) the federal mine identification numbers of all other mines in which any official or member has a twenty percent or greater ownership interest;

2. The names and addresses of any agent of the applicant with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the minerals to be mined;

3. Information about each independent contractor working at the mine: (i) the independent contractor's trade name, business address and business telephone number; (ii) a description of the nature of the work to be performed by the independent contractor and where at the mine the work is to be performed; (iii) the independent contractor's MSHA identification number, if any; (iv) the independent contractor's address of record for service of citations and other documents; (v) the names and addresses of persons with overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

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

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

6. For any license renewal, the annual report required pursuant to § 45.1-161.292:35.

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

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:33. Denial or revocation of license.

A. The Director may deny an application for, or revoke a license for, the operation of a mineral mine, upon determining that the applicant, the licensed operator, or his agent has committed violations of the mine safety laws of the Commonwealth which demonstrate a pattern of willful violations resulting in an imminent danger to miners.

B. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of knowingly permitting a miner to work in an underground coal mine where a methane monitor or other device capable of detecting the presence of explosive gases was impaired, disturbed, disconnected, bypassed, or otherwise tampered with in violation of § 45.1-161.233.

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of violating subsection A of § 45.1-161.177 or § 45.1-161.178.

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:34. Operating without license; penalty.

A. In addition to any other power conferred by law, the Director, or his designated representative, shall have the authority to issue an order closing any mineral mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.1-161.292:64.

B. Any person operating an unlicensed mineral mine shall, upon conviction, be guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mineral mine shall constitute a separate offense.

History.

1997, c. 390.

Cross references.

As to punishment for Class 3 misdemeanors, see § 18.2-11.

§ 45.1-161.292:35. Annual reports; condition to issuance of license following transfer of ownership.

A. The licensed operator of every mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the quantity of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § 45.1-161.292:32; and (iv) such other information, not of a private nature, as may from time to time be required by the Department on blank forms furnished or approved by the Department.

B. Each independent contractor working or who has worked at a mine during the preceding twelve months shall annually, by February 15, mail or deliver to the Department a report for the preceding twelve months, ending with December 31. Such report shall state: (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine, listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above \$1,000, listed by mine name and license number.

C. For purposes of subsection B, independent contractor shall mean any (i) extraction and processing contractors, including, but not limited to, drillers, blasters, portable crushers, and stripping and land clearing contractors; (ii) maintenance and repair contractors for mobile and stationary extraction and processing equipment, including, but not limited to, welders, mechanics, painters and electricians; and (iii) construction contractors involved in mine site construction maintenance or repair, including, but not limited to, plant construction contractors, concrete fabricators and equipment erectors.

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

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from the Virginia Freedom of

Information Act (§ 2.2-3700 et seq.) and shall not be published or open to public inspection in any manner revealing the employing unit's identity, except that such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title. Wage data aggregated in such a manner that it does not reveal the employing unit's identity shall not be considered confidential.

History.

1997, c. 390; 1998, c. 695; 2000, c. 974.

§ 45.1-161.292:36. Notices to Department; resumption of mining following discontinuance.

A. The licensed operator or his agent shall send notice of intent to abandon or discontinue the working of an underground mine for a period of thirty days or a surface mine for a period of sixty days to the Department at least ten days prior to discontinuing the working of a mine with such intent, or at any time a mine becomes an inactive mine.

B. The licensed operator, or his agent, shall send to the Department ten days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine which is inspected by the Mine Safety and Health Administration, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

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

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

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

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:37. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the licensed operator of a mineral mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine, on a scale to be stated thereon of 100 to 400 feet to the inch. Such map shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions of such mine or mines as may have been abandoned, and so much of the property lines and the outcrop of the mineral of the tract of land on which the mine is located, as may be within

1,000 feet of any part of the workings of such mine, and for underground mines only, the general inclination of the mineral strata. The licensed operator shall annually, beginning on the anniversary date of the mine permit issued pursuant to Chapter 16 (§ 45.1-180 et seq.), while the mine is in operation, cause the map thereof to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described above, and shall forward the same to the Department to be kept on record, subject to the conditions stated in subsection C. If there are no changes in the information required by this section, an updated map shall not be required to be submitted to the Department.

B. The licensed operator of any surface mineral mine, or his agent, shall not be required to submit a map of such mine to the Department unless the mine may intersect (i) underground workings or (ii) workings from auger, thin seam, or highwall mining operations. The map shall be filed and preserved among the records of the Department and made available at a reasonable cost to all persons owning, leasing, or residing on or having an equitable interest in surface areas or coal or mineral interests within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon sworn affidavit that such person requesting a map has a proper legal or equitable interest; however, the Director shall provide to the person requesting a map only that portion of the map which abuts or is contiguous to the property in which such requesting party has a legal or equitable interest. In no case shall any copy of the same be made for any other person without the consent of the licensed operator or his agent. The Director shall promptly deliver notice of such request to the licensed operator of such mining operation.

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

D. Copies of such maps shall be made available at a reasonable cost to the governing body of any county, city or town in which the mine is located upon written request; however, such copies shall be provided on the condition that they not be released to any person who does not have a legal or equitable interest in surface areas or mineral interests within 1,000 feet of the mining operation without the written consent of the licensed operator or his agent. The governing body shall promptly deliver notice of any request for a copy of such a map to the licensed operator or his agent.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:38. When the Director may cause maps to be made; payment of expense.

If the licensed operator, or his agent, of any mine shall neglect or fail to furnish to the Director a copy of any map or extension thereof, as provided in § 45.1-161.292:37, the Director is authorized to cause a correct survey and map of said mine, or extension thereof, to be made at the expense of the licensed operator of such mine, the cost of which shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. If at any time the Director has reason to believe that such map, or extensions thereof, furnished pursuant to § 45.1-161.292:37 is substantially incorrect, or will not serve the purpose for which it is intended, he may have a survey and map or extension thereof made, or corrected. The expense of making such

survey and map or extension thereof shall be paid by the licensed operator. The expense shall be recovered from the licensed operator as other debts are recoverable by a civil action at law. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:39. Making false statements; penalty.

A. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to fail to correctly show, within the limits of error, the data required.

B. It shall be unlawful for any person charged with the making of maps or other data to be furnished as provided in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to knowingly make any false statement or return in connection therewith.

C. A violation of this section is a misdemeanor, and a person convicted of violating this section shall be fined not less than \$50 nor more than \$200.

History.

1997, c. 390.

ARTICLE 5.

RESCUE CREWS; RESCUE TEAMS.

§ 45.1-161.292:40. Mine rescue and first aid stations.

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

History.

1997, c. 390.

§ 45.1-161.292:41. Mine rescue crews.

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

History.

1997, c. 390.

§ 45.1-161.292:42. Duty to train crew.

It shall be the duty and responsibility of the Department to see that all crews be properly trained by a qualified instructor of the Department or such other persons who have a certificate of training from the Department or the Mine Safety and Health Administration.

History.

1997, c. 390.

§ 45.1-161.292:43. Qualification for crew membership; direction of crews.

A. To qualify for membership in mine rescue crews, an applicant shall (i) be an experienced miner, (ii) be not more than 50 years of age, and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the crew members and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by these crews shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of the Mine Safety and Health Administration and representatives of the miners, and all should be in agreement as far as possible on the proper procedure for rescue and recovery; however, the Director in his discretion may take full responsibility in directing such work. In all instances, procedures shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

History.

1997, c. 390; 2004, c. 855; 2006, c. 396.

Editor's note.

Acts 2004, c. 855, which amended subsection A, in cl. 2 provides: "That this act shall take effect 60 days following the effective date of the regulations promulgated by the Board of Medicine and Board of Nursing required by the third enactment clause of this act." Emergency regulations took effect July 15, 2004.

Acts 2004, c. 855, cl. 3 provides: "That the Board of Medicine and Board of Nursing shall

amend regulations governing the licensure of nurse practitioners to be effective within 280 days of enactment of this act. Such amendments shall require inclusion of the nurse practitioner's authority for signatures, certifications, stamps, verifications, affidavits and endorsements in the written protocol between the supervising physician and the nurse practitioner."

Law Review.

For 2006 survey article, "Health Care Law," see 41 U. Rich. L. Rev. 179 (2006).

§ 45.1-161.292:44. Crew members to be considered employees of the mine where emergency exists; compensation; workers' compensation.

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

of their emergency employment, all crew members shall be deemed to be within the employment of the licensed operator of the mine for the purpose of workers' compensation coverage.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:45. Requirements of recovery work.

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

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

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

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

E. A mine rescue crew shall immediately return to the fresh air base should any crew member's breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty atmospheres.

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

History.

1997, c. 390.

§ 45.1-161.292:46. State-designated mine rescue teams.

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:47. Mine Rescue Fund.

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from licensed operators pursuant to the provisions of § 45.1-161.292:46 shall be paid into the Mine Rescue Fund. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, ten percent of the fund shall be

transferred from the fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum which is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert to the general fund.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:48. Inspections; Mine Rescue Coordinator.

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

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

History.

1997, c. 390.

§ 45.1-161.292:49. Workers' compensation; liability.

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, members of the state-designated team shall be deemed to be within the employment of the licensed operator of the mine at which the disaster occurred.

B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or omission was the result of gross negligence or willful misconduct.

C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

History.

1997, c. 390; 1998, c. 695.

ARTICLE 6.

MINE EXPLOSIONS; MINE FIRES; ACCIDENTS.

§ 45.1-161.292:50. Reports of explosions and mine fires; procedure.

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

B. No work other than rescue and recovery work and fire fighting may be attempted or started until and unless it is authorized by the Department.

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

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

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

F. The Director shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any mineral mine in the Commonwealth. All employees of the Department shall be kept fully informed and trained in their respective duties in executing rescue and recovery plans. The Department's plans shall be published annually and furnished to all licensed operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all licensed operators of mines.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:51. Operators' reports of accidents; investigations; reports by Department.

A. Each operator shall report promptly to the Department the occurrence at any mine of any accident involving serious personal injury or death to any person or persons, whether employed in the mine or not. The scene of the accident shall not be disturbed pending an investigation, except to prevent suspension of use of a slope, entry or facility vital to the operation of a section or a mine. In cases where reasonable doubt exists as to whether to leave the scene unchanged, the operator shall secure prior approval from the Department before any changes are made.

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

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

D. The Department will render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department will furnish one copy of the report to the licensed operator, one copy to any other operator whose employees were exposed to hazards as a result of the accident, and one copy to the employee representative when he has been present at the investigation. The Director will maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:52. Reports of other accidents and injuries.

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

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

History.

1997, c. 390.

§ 45.1-161.292:53. Duties of mine inspectors.

Each mine inspector shall:

1. Report immediately, and by the quickest available means, any mine fire, mine explosion, and any accident involving serious personal injury or death to his supervisor;

2. Proceed immediately to the scene of any accident at any mine under his jurisdiction that results in loss of life or serious personal injury, and to the scene of any mine fire or explosion regardless of whether there is loss of life or personal injury. He shall make such investigation and suggestions and render such assistance as he deems necessary for the future safety of the employees, and make a complete report to his supervisor as soon as practicable. He shall have the power to compel the attendance of witnesses, and to administer oaths or affirmations; and

3. Take charge of mine rescue and recovery operations whenever a mine fire, mine explosion, or other serious accident occurs, and shall supervise the reopening of all mines or sections thereof that have been sealed or abandoned on account of fire or any other cause.

History.

1997, c. 390.

ARTICLE 7.**MINE INSPECTIONS.****§ 45.1-161.292:54. Frequency of mine inspections.**

A. The Director shall conduct a complete inspection of every underground mineral mine not less frequently than every 180 days, and of those surface mineral mines which are not inspected by the Mine Safety and Health Administration not less frequently than once per year. Additional inspections of such mineral mines shall be made when deemed appropriate by the Director based on an evaluation of risks at the mines, or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct inspections of surface mineral mines which are inspected by the Mine Safety and Health Administration; however, mine inspectors and other employees of the Department may enter such mines in order to (i) respond to complaints of violations of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), (ii) respond to

and investigate any serious personal injury or fatality, and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a surface mineral mine is inspected by the Mine Safety and Health Administration. The Director shall make such determination based on information provided by the Mine Safety and Health Administration and Department records. The Director shall request representatives of the Mine Safety and Health Administration to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division of Mineral Mining and such additional Division employees as the Director shall designate. The committee shall meet not less than twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of the state and federal agencies with respect to surface mineral mines in the Commonwealth.

History.

1997, c. 390; 1998, c. 695.

CASE NOTES

Warrantless searches of mines. — Because warrantless inspections of plaintiff's mines by defendant state inspectors were constitutional, since the state had a substantial interest in protecting worker health and safety and the scope of any inspections did not run afoul of the Fourth Amendment, plaintiff mining company failed to state a claim under 42 U.S.C.S. § 1983 and state law. The inspectors' actions were authorized by Virginia's Mineral Mine Safety Act, § 45.1-161.292:1 et seq., and Chapters 14.5 (§ 45.1-151.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) of Title 45.1, and the inspectors were entitled to qualified immunity. *Lesueur-Richmond Slate Corp. v. Fehrer*, 752 F. Supp. 2d 713, 2010 U.S. Dist. LEXIS 118081 (W.D. Va. 2010), aff'd, 666 F.3d 261, 2012 U.S. App. LEXIS 786 (4th Cir. 2012).

Because subsection B of § 45.1-161.292:54 informed appellant mine operator that inspections to which he was subject were not discretionary acts but were conducted pursuant to statute, it satisfied the *Burger* test requiring a constitutionally adequate substitute for a warrant, and the argument that appellee inspectors' conduct violated the Fourth Amendment also failed, because the searches under subsection B of § 45.1-161.292:54 were responses to objectively supported multiple complaints and there was no indication that they were a pretext for harassment or other improper conduct. *LeSueur-Richmond Slate Corp. v. Fehrer*, 666 F.3d 261, 2012 U.S. App. LEXIS 786 (4th Cir. 2012).

§ 45.1-161.292:55. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department to be used for conducting additional inspections, the Department shall develop a procedural policy of scheduling such inspections based on an assessment, to be made not less frequently than annually, of the comparative risks at each underground mineral mine and those surface mineral mines which are not inspected by the Mine Safety and Health Administration. The Department's procedural policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of the procedural policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables to be included in the risk assessment measures shall include, but not be limited to: (i) fatality and serious accident rates at the mine; (ii) the rates of issuance of closure orders and notices of violations of the mine safety laws of the Commonwealth at the mine; and (iii) the frequency rates for

nonserious accidents or nonfatal days lost. Risk assessments shall be developed for both independent contractors and individual mine sites.

B. The Director shall schedule additional inspections at underground mineral mines, and at surface mineral mines which are not inspected by the Mine Safety and Health Administration, based on the rating assigned to a mine reflecting the assessment of its risks compared to other such mines in the Commonwealth.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:56. Review of inspection reports and records.

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine which are required to be maintained pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), for the thirty-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:57. Advance notice of inspections; confidentiality of trade secrets.

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

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

History.

1997, c. 390.

§ 45.1-161.292:58. Scheduling of mine inspections.

A. The Director shall schedule the inspections of mines under this article, to the extent deemed reasonable and prudent, in order to reduce their chronological proximity to inspections conducted by the Mine Safety and Health Administration. To this end, the Director shall endeavor to coordinate the timing of inspections with Mine Safety and Health Administration personnel.

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

History.

1997, c. 390.

CASE NOTES

Warrantless searches of mines. — Virginia's Mineral Mine Safety Act, § 45.1-161.292:1 et seq., sufficiently cabined the scope of any inspections so that it did not run afoul of the Fourth Amendment. First, the statute was limited to the inspection of surface mines, and second, the text directed inspectors to respond to complaints of certain health and safety vio-

lations arising under specific chapters of Title 45.1; the scope was, therefore, at least as restrictive as that in *Gonsalves* and at least as restrictive as that upheld in other cases. *Lesueur-Richmond Slate Corp. v. Fehrer*, 752 F. Supp. 2d 713, 2010 U.S. Dist. LEXIS 118081 (W.D. Va. 2010), aff'd, 666 F.3d 261, 2012 U.S. App. LEXIS 786 (4th Cir. 2012).

§ 45.1-161.292:59. Denial of entry.

No person shall deny the Director or any mine inspector entry upon or through a mine for the purpose of conducting an inspection or any office at the site where maps or records relating to the mine are located, pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

History.

1997, c. 390.

§ 45.1-161.292:60. Duties of operator.

A. The operator, or his agent, of every mine shall furnish the Director and mine inspectors proper facilities for entering such mine and making examinations or obtaining information and shall furnish any data or information not of a confidential nature requested by such inspector.

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

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

History.

1997, c. 390.

§ 45.1-161.292:61. Duties of inspectors.

A. During a complete inspection of a mine, other than an inactive mine, the mine inspector shall inspect, where applicable, the surface plant; all active workings; all active travel ways; entrances to abandoned areas; accessible worked-out areas; at least one entry of each intake and return airway in its entirety; escapeways and other places where miners work or travel or where

hazardous conditions may exist; electric installations and equipment; haulage facilities; first-aid equipment; ventilation facilities; communication installations; roof and rib conditions; roof-support practices; blasting practices; haulage practices and equipment; and any other condition, practice or equipment pertaining to the health and safety of the miners. The mine inspector shall make tests for the quantity of air flows, and for gas and oxygen deficiency, in each place which he is required to inspect in an underground mine. In mines operating more than one shift in a twenty-four-hour period, the mine inspector shall devote sufficient time on the second and third shifts to determine conditions and practices relating to the health and safety of the miners. For an inactive mine, the mine inspector shall inspect all areas of the mine where persons may work or travel during the period the mine is an inactive mine.

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

History.

1997, c. 390.

§ 45.1-161.292:62. Certificates of inspection.

A. Upon completing a mine inspection, a mine inspector shall complete a certificate regarding such inspections. The certificate of inspection shall show the date of inspection, the condition in which the mine is found, a statement regarding any violations of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

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

C. With respect to underground mineral mines, the Department shall provide access to certificates of inspection to the Mine Safety and Health Administration.

History.

1997, c. 390; 1998, c. 695.

ARTICLE 8.

ENFORCEMENT AND PENALTIES; REPORTS OF VIOLATIONS.

§ 45.1-161.292:63. Notices of violations.

A. If the Director or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person who is responsible for the violation. Each notice of violation shall be in writing and shall describe with particularity the nature of the violation or violations, including a reference to the provisions of

this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or the appropriate regulations violated, and shall include an order of abatement and fix a reasonable time for abatement of the violation.

B. A copy of the notice of violation shall be delivered to the licensed operator, his agent, or mine foreman and any independent contractor whose employees were exposed to hazards related to the violation.

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

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

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:64. Closure orders.

A. The Director or a mine inspector shall issue a closure order requiring any mine or section thereof cleared of all persons, or equipment removed from use, and refusing further entry into the mine of all persons except those necessary to correct or eliminate a hazardous condition, when (i) a violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § 45.1-161.292:30; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.1-161.292:63. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

B. One copy of the closure order shall be delivered to the licensed operator of the mine or his agent or the mine foreman and any independent contractor working in the area of the mine affected by the closure order.

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

D. The issuance of a closure order shall constitute a final order of the Department, and the owner, licensed operator and independent contractor shall not be entitled to administrative review of such decision. The owner, licensed operator or independent contractor to whom a closure order has been issued may, within ten days following the issuance of the order, bring a civil action in the circuit court of the city or county in which the mine, or the greater portion thereof, is located for review of the decision. The commencement of such a proceeding shall not, unless specifically ordered by the court, operate as a stay of the closure order. The court shall promptly hear and determine the matters raised by the owner or operator. In any such action the court shall receive the records of the Department with respect to the issuance of the order, and shall receive additional evidence at the request of any party. In any proceeding under this section, the Attorney General or the attorney for the Commonwealth for the jurisdiction where the mine is located, upon the request of the Director, shall represent the Department. The court shall vacate the closure order if the preponderance of the evidence establishes that the order was not issued in accordance with the provisions of this section.

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

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:65. Tolling of time for abating violations.

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

History.

1997, c. 390.

§ 45.1-161.292:66. Injunctive relief.

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any

appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

B. Any person failing to abate any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) which has been cited in a notice of violation within the time period provided in such notice for its abatement may be compelled in a proceeding instituted by the Director in any appropriate circuit court to abate such violation as provided in such notice, and to cease the operation of the mine at which such violation exists until the violation has been abated, by injunction or other appropriate remedy.

C. The Director may file a bill of complaint with any appropriate circuit court asking the court to temporarily or permanently enjoin a person from operating a mine or mines in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing to operate in compliance with the provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

History.

1997, c. 390; 1998, c. 695.

§ 45.1-161.292:67. Violations; penalties.

Any person convicted of willfully violating any provisions of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any regulation promulgated pursuant to this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), unless otherwise specified in this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), shall be guilty of a Class 1 misdemeanor.

History.

1997, c. 390.

Cross references.

As to punishment for Class 1 misdemeanors, see § 18.2-11.

§ 45.1-161.292:68. Prosecution of violations.

A. It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or on his own initiative to cause proceedings to be prosecuted in such cases.

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

History.

1997, c. 390.

§ 45.1-161.292:69. Fees and costs.

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

History.

1997, c. 390.

§ 45.1-161.292:70. Reports of violations.

A. Any person aware of a violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) to every miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of every mine, or his agent, shall display on a sign placed at the mine office, at the bath house, and on a bulletin board at a prominent place at the mine site where it can be read conveniently by the miners, a notice containing the office and home telephone numbers of mine inspectors and other Department personnel, and office addresses, which may be used to report any violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report being omitted or deleted, to the licensed operator of the mine or his agent and to any independent contractor who is alleged to have committed the violation. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

History.

1997, c. 390; 1998, c. 695.

ARTICLE 9. MINER TRAINING.

§ 45.1-161.292:71. Training programs.

A. The Department may administer training programs for the purpose of (i) assisting with the provision of selected requirements of the federal mine safety

law and (ii) preparing miners for examinations administered by the Department. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

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

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

History.

1997, c. 390; 1998, c. 695; 2012, cc. 803, 835.

are identical, and substituted "Department" for "Board of Mineral Mining Examiners" in subsection A.

The 2012 amendments.

2012 amendments by cc. 803 and 835, cl. 48,

§ 45.1-161.292:72. Mineral mining safety training.

The Director is authorized to implement a program of voluntary safety talks for mineral miners. Safety training may include topical training and talks conducted by inspectors or other Department personnel either on site or in a classroom provided for such purpose.

History.

1997, c. 390.

§ 45.1-161.292:73. Mineral mining safety training program.

A. Each operator shall have a plan containing the following programs: training for new miners, training for newly-employed experienced miners, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include scientific workers; delivery workers; customers, including commercial over-the-road truck drivers; vendors; or visitors.

B. The plan shall be available to the Director for review upon request.

History.

1998, c. 695; 2003, c. 401.

CHAPTER 14.5.
REQUIREMENTS APPLICABLE TO UNDERGROUND
MINERAL MINES.

Section

45.1-161.293. Scope of chapter.

Section

- 45.1-161.294. Regulations governing conditions and practices at underground mineral mines.
- 45.1-161.295. Standards for regulations.
- 45.1-161.296. Mining in proximity to gas and oil wells.
- 45.1-161.297. Flame safety lamps.
- 45.1-161.298. Transportation of miners.
- 45.1-161.299. Bare wires and cables.
- 45.1-161.300. Use of track as electrical power conductor.
- 45.1-161.301. Disconnecting switches.
- 45.1-161.302. Respiratory equipment and ear protectors.
- 45.1-161.303. Fire precautions in transportation of mining equipment.

§ 45.1-161.293. Scope of chapter.

This chapter shall be applicable to the operation of any underground mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ 45.1-161.292:1 et seq.).

History.

1994, c. 28; 1997, c. 390.

§ 45.1-161.294. Regulations governing conditions and practices at underground mineral mines.

A. The Director shall promulgate rules and regulations, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to underground mineral mines shall establish requirements:

1. For protecting miners from general risks found at underground mineral mines and mining;
2. For the provision and use of personal protection equipment and devices for the head, feet, hands, and body;
3. For the maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;
4. For controlling unstable roof, rib, wall and other ground conditions;
5. For the handling and storage of combustible materials, including requirements for emergency plans, fire fighting and emergency rescue, fire prevention and safety features on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;
6. For the control of exposure to airborne contaminants and excessive noise levels;
7. For adequate air quality through ventilation and other appropriate measures;
8. For the safe storage, transportation, and use of explosive and blasting devices;
9. For the safe design, operation, maintenance, and inspection of drilling equipment;
10. For the construction, installation, maintenance, use and inspection of boilers, air compressors, and compressed gas systems;

11. For the safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;

12. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;

13. For the storage, transportation, and handling of materials, including corrosive and hazardous substances;

14. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;

15. For the safe design and operation of chutes;

16. For the inspection, maintenance, safe design, and operation of hoisting equipment and cables;

17. For the inspection, maintenance, and construction of mine shafts;

18. For the actions of certified and competent persons; and

19. For the safe design, operation, maintenance, and inspection of, and the conduct of mining activities at, surface areas of underground mineral mines.

B. The Director shall not promulgate any regulations relating to underground mineral mines which are inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

History.

1994, c. 28; 1996, c. 774; 1998, c. 695.

§ 45.1-161.295. Standards for regulations.

In promulgating rules and regulations pursuant to § 45.1-161.294, the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;

2. Standards established by recognized professional mineral mining organizations and groups;

3. The federal mine safety law;

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

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

History.

1994, c. 28.

§ 45.1-161.296. Mining in proximity to gas and oil wells.

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to

any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § 45.1-161.292:37, which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

History.

1990, c. 92, § 45.1-92.1; 1994, c. 28; 1997, c. 390; 1998, c. 695.

§ 45.1-161.297. Flame safety lamps.

Flame safety lamps shall not be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

History.

Code 1950, § 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-64; 1993, c. 442; 1994, c. 28.

§ 45.1-161.298. Transportation of miners.

A. The Director shall promulgate regulations regarding (i) the carrying of tools by miners on man-trips; (ii) the riding of miners, except the motorman and trip rider, inside the cars; and (iii) the boarding and unboarding of miners to and from man-trips.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the matters to be addressed by such regulations:

1. Each man-trip shall be operated independently of any loaded trip of minerals or other material;

2. All miners, except the motorman and trip rider, shall ride inside the cars; and

3. Miners shall remain seated while in moving man-trip cars, shall not board or leave moving man-trip cars, and shall proceed to and from man-trips in an orderly manner.

History.

Code 1950, § 45-69.2; 1954, c. 191; 1966, c. 594, § 45.1-74; 1985, c. 296; 1994, c. 28.

§ 45.1-161.299. Bare wires and cables.

A. The Director shall promulgate regulations requiring bare wires, and cables other than ground wires, grounded power wires, and trailing cables to be supported by insulators and away from combustible materials, roof, and ribs.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, wires and cables not encased in armor shall be supported by well-installed insulators and shall not touch combustible materials, roof, or ribs; however, this requirement shall not apply to ground wires, grounded power conductors, and trailing cables.

History.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28.

§ 45.1-161.300. Use of track as electrical power conductor.

A. The Director shall promulgate regulations regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power.

B. Until final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply where track is used as a power conductor:

1. Both rails of main-line tracks shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet. If the rails are paralleled with a feeder circuit of like polarity, such paralleled feeder shall be bonded to the track rails at intervals of not more than 1,000 feet.

2. At least one rail on secondary track-haulage roads shall be welded or bonded at every joint, and cross bonds shall be installed at intervals of not more than 200 feet.

3. Track switches on entries shall be well bonded.

4. Rails shall not be used as power conductors in rooms.

History.

Code 1950, §§ 45-82, 45-82.1; 1954, c. 191; 1966, c. 594, § 45.1-78; 1993, c. 442; 1994, c. 28.

§ 45.1-161.301. Disconnecting switches.

A. The Director shall promulgate regulations requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, disconnecting switches shall be installed underground (i) in all main power circuits within approximately 500 feet of the bottoms of shafts and boreholes, and (ii) at other places where main power circuits enter the mine.

History.

Code 1950, § 45-82.3; 1954, c. 191; 1966, c. 594, § 45.1-80; 1994, c. 28.

§ 45.1-161.302. Respiratory equipment and ear protectors.

A. The Director shall promulgate regulations requiring (i) miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment and (ii) operators to supply ear protectors to miners upon request.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, (i) miners exposed for short periods to hazards from inhaling gas, dust, or fumes shall wear approved respiratory equipment and (ii) ear protectors shall be supplied by the operator to all miners upon request.

History.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1978, c. 729, § 45.1-99.1; 1994, c. 28.

§ 45.1-161.303. Fire precautions in transportation of mining equipment.

A. The Director shall promulgate regulations requiring fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, the following standards shall apply to the transportation of mining equipment underground:

1. Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present: (i) the unit of equipment shall be examined by a certified person to ensure that accumulations of oil, grease, and other combustible materials have been removed from such unit of equipment; and (ii) a qualified person shall examine the trolley wires, trolley feeder wires, and the associated automatic circuit interrupting devices to ensure that proper short circuit protection exists.

2. A record shall be kept of the examinations and shall be made available, upon request, to the Director or his authorized representative.

3. Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting such equipment.

4. The frames of off-track mining equipment being moved or transported, in accordance with this subsection, shall be covered on the top and on the trolley wire side with fire-resistant material, where appropriate as determined by the Director.

5. Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

6. To avoid accidental contact with power lines, the equipment being transported or trammed shall be insulated or assemblage removed, if necessary, if the clearance to the power lines is six inches or less.

7. Sufficient prior notice shall be given the Department so that a mine inspector may travel the route of the move before the actual move is made, if he deems it necessary.

8. A minimum vertical clearance of twelve inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment. If the height of the seam of minerals does not permit twelve inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

a. Electric power shall be supplied to the trolley wires or trolley feeder wires only from outby the unit of equipment being moved or transported. Where direct current electric power is used and such electric power can be supplied only from inby the equipment being moved or transported, power may be supplied from inby such equipment if a miner with the means to cut off the power, and in direct communication with persons actually engaged in the moving or transporting operation, is stationed outby the equipment being moved;

b. The settings of automatic circuit interrupting devices used to provide short circuit protection for the trolley circuit shall be reduced to not more than one-half of the maximum current that could flow if the equipment being moved or transported were to come into contact with the trolley wire or trolley feeder wire;

c. At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved. Such miner shall be in direct communication with persons actually engaged in the moving or transporting operation, and capable of communicating with the authorized person on the surface required to be on duty;

d. Where trolley phones are utilized to satisfy the requirements of paragraph c of this subdivision, telephones or other equivalent two-way communication devices that can readily be connected with the mine communication system shall be carried by the miner stationed at the first automatic circuit breaker outby the equipment being moved and by a miner actually engaged in the moving or transporting operation; and

e. No person shall be permitted to be inby the unit of equipment being moved or transported, in the ventilating current of air that is passing over such equipment, except those persons directly engaged in moving such equipment.

The provisions of subdivisions 1 through 8 shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car.

History.

Code 1950, § 45-14.1; 1954, c. 191; 1966, c. 594, § 45.1-89; 1974, c. 323; 1978, c. 118; 1984, c. 590; 1985, c. 500; 1994, c. 28.

CHAPTER 14.6.

REQUIREMENTS APPLICABLE TO SURFACE MINERAL MINING.

Section
45.1-161.304. Scope of chapter.

Section

45.1-161.305. Regulations governing conditions and practices at surface mineral mines.

45.1-161.306. Standards for regulations.

45.1-161.307. Mining in proximity to gas and oil wells.

45.1-161.308. Respiratory equipment.

45.1-161.309. Health regulations.

§ 45.1-161.304. Scope of chapter.

This chapter shall be applicable to the operation of any surface mineral mine in the Commonwealth, and shall supplement the provisions of Chapter 14.4:1 (§ 45.1-161.292:1 et seq.).

History.

1994, c. 28; 1997, c. 390.

§ 45.1-161.305. Regulations governing conditions and practices at surface mineral mines.

A. The Director shall promulgate rules and regulations, in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to surface mineral mines shall establish requirements:

1. For protecting miners from general risks found at surface mineral mines;
2. For the provision and use of personal protection equipment;
3. For controlling unstable ground conditions;
4. For the handling and storage of combustible materials, including requirements for emergency plans, fire-fighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;
5. For controlling exposure to airborne toxic contaminants;
6. For safe storage, transportation, and use of explosives and blasting devices;
7. For the safe design, operation, maintenance, and inspection of drilling equipment;
8. For the construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;
9. For the safe design, operation, maintenance, and inspection of mobile equipment;
10. For the safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;
11. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;
12. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
13. For the storage, transportation and handling of materials, including corrosive and hazardous substances;
14. For the safe design, operation, maintenance, and inspection of hoisting equipment and cables;
15. For the actions of certified and competent persons; and
16. For the design, construction, maintenance, inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

B. The Director shall not promulgate any regulation relating to surface mineral mines which is inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

History.

1994, c. 28; 1996, c. 774; 1998, c. 695.

§ 45.1-161.306. Standards for regulations.

In promulgating rules and regulations pursuant to § 45.1-161.305, the Director shall consider:

1. Standards utilized and generally recognized by the surface mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and such other information that is available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economical feasibility of the standards, and the experience gained under this Act and other mine safety laws; and
5. Such other criteria as shall be necessary for the protection of safety of miners and other persons or property likely to be endangered by surface mineral mines or related operations.

History.

1994, c. 28.

§ 45.1-161.307. Mining in proximity to gas and oil wells.

A. The Director shall promulgate regulations requiring licensed operators to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in the proximity of any gas or oil well already drilled or in the process of being drilled.

B. Any licensed operator who plans to remove any mineral, drive any passage or entry or extend any workings in any mine closer than 500 feet to any gas or oil well already drilled or in the process of being drilled shall file with the Director a notice that mining is taking place or will take place, together with a copy of parts of the maps and plans required under § 45.1-161.292:37, which show the mine workings and projected mine workings which are within 500 feet of the well. The licensed operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. Each notice shall contain a certification made by the sender that he has complied with these requirements.

C. Subsequent to the filing of the notice, the licensed operator may proceed with mining operations in accordance with the maps and plans; however, without the prior approval of the Director, he shall not remove any material, drive any entry, or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such a petition shall mail copies of the petition, maps and plans by certified mail, return receipt requested, to the well operator and the

Gas and Oil Inspector no later than the day of filing. The Gas and Oil Inspector and the well operator shall have standing to object to any petition filed under this section. Such objections shall be filed within ten days following the date such petition is filed.

History.

1990, c. 92, § 45.1-92.1; 1994, c. 28; 1997, c. 390; 1998, c. 695.

§ 45.1-161.308. Respiratory equipment.

A. The Director shall promulgate regulations requiring miners exposed for short periods to hazards from inhalation of gas, dust, or fumes to wear approved respiratory equipment.

B. Until the final regulations promulgated by the Director pursuant to subsection A become effective, miners exposed for short periods to hazards from inhaling dust or fumes shall wear approved respiratory equipment.

History.

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. 28.

§ 45.1-161.309. Health regulations.

A. The Director shall have the authority to promulgate regulations requiring that sources of dust at surface mineral mines be wetted down unless controlled by dry collection measures, or other means approved by the Director.

B. The Director shall have the authority to promulgate regulations providing that miners at surface mineral mines which are subject to inspection by the Department pursuant to § 45.1-161.292:54 shall not be exposed to noise levels that exceed the federal limit adopted by the Mine Safety and Health Administration for non-coal miners. The regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

History.

1994, c. 28; 1997, c. 390.

CHAPTER 14.7:1.

**RIGHTS OF OWNERS OF LAND ADJACENT TO
MINERAL MINES.**

Section

45.1-161.311:1. Consent required before working mine near land of another.

45.1-161.311:2. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

§ 45.1-161.311:1. Consent required before working mine near land of another.

No owner or tenant of any land containing minerals, within this Commonwealth, shall open or sink, dig, excavate or work in any mine on such land

within five feet of the line dividing such land from that of another person, without the consent, in writing, of every person interested in or having title to such adjoining lands or mineral rights in possession, reversion or remainder, or of the guardian of any such person that may be under a disability. If any person violates this section, he shall forfeit \$500 to any person injured by such activity and to anyone whose consent is required but not obtained.

History.

1997, c. 390.

§ 45.1-161.311:2. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

A. The owner, tenant, or occupant of any land or minerals, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, if he has reason to believe his property is being trespassed, to have ingress and egress with surveyors and assistants to explore and survey such mine at his own expense, for the purpose of ascertaining whether a violation of § 45.1-161.311:1 has occurred; however, such person shall not be entitled to enter the property more often than once a month. Every owner, tenant, occupant or agent who shall refuse such permission, exploration or survey shall forfeit twenty dollars for each refusal, to the person so refused.

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

History.

1997, c. 390.

CHAPTER 18.1.

**MINERAL MINING REFUSE PILES, WATER AND SILT
RETAINING DAMS.**

Section

- 45.1-225.1. Dams and refuse piles to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director.
- 45.1-225.2. Examination of dams and refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.
- 45.1-225.3. Definitions.

§ 45.1-225.1. Dams and refuse piles to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director.

A. On and after July 1, 1974, new water or silt retaining dams, or a mine refuse pile, or the modification of existing mine water or silt or mine refuse retaining dams shall be designed and constructed by, or under the direction of, a qualified engineer, if such retaining dam:

1. Is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and
2. Has a storage volume of fifty acre-feet or more; or
3. Is designed to impound water or silt to a height of twenty feet or more, regardless of storage volume.

B. Water and silt retaining dam or mine refuse piles, designs, construction specifications, and other related data, including final abandonment plans, shall be approved and certified by the qualified engineer specified in subsection A of this section, and by the licensed operator or his agent.

C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B of this section shall be submitted for approval to the Director. If the submittal is approved by the Director, he shall notify the licensed operator in writing. If he disapproves, he shall notify the licensed operator with his written objections thereto and his required amendments. But in no event shall the Director fail to approve or disapprove the submittal within thirty days following the receipt thereof.

History.

1997, c. 390; 1998, c. 695.

Michie's Jurisprudence.

For related discussion, see 13A M.J. Mines and Minerals, § 2.

Cross references.

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

§ 45.1-225.2. Examination of dams and refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.

A. All water and silt retaining dams or mine refuse piles shall be examined daily for visible structural weakness, volume overload and other hazards by a qualified person designated by the licensed operator. When rising water and silt reaches eighty percent by volume of the safe design capacity of the dam, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations must be made during periods of rainfall that could create flooding conditions.

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

1. Remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;
2. Eliminate the potentially hazardous condition; and
3. Notify the Director.

C. Records of the inspections required by subsection A of this section shall be kept and certified by the licensed operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.

D. The licensed operator of each mineral mine on which a water and silt retaining dam is located shall adopt a plan for carrying out the requirements

of subsections A and B of this section. The plan shall be submitted for approval to the Director on or before October 31, 1974. The plan shall include:

1. A schedule and procedures for inspection of the retaining dam by a qualified person;
2. Procedures for evaluating potentially hazardous conditions;
3. Procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous conditions;
4. Procedures for eliminating the potentially hazardous conditions;
5. Procedures for notifying the Director; and
6. Any additional information which may be required by the Director.

E. Before making any changes or modifications in the plan approved in accordance with subsection D of this section, the licensed operator shall obtain approval of such changes or modifications from the Director.

History.

1997, c. 390; 1998, c. 695.

§ 45.1-225.3. Definitions.

For the purpose of this chapter, the term

"Impound water" means to impound water for use in carrying out any part of the process necessary in the production or preparation of minerals.

"Refuse" means waste material resulting from a mineral mining operation.

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

"Water" means water used in mining operations.

History.

1997, c. 390.