

VIRGINIA ACTS OF ASSEMBLY -- 2007 RECONVENED SESSION

CHAPTER 894

An Act to amend and reenact §§ 45.1-161.31, 45.1-161.32, 45.1-161.35, 45.1-161.37, 45.1-161.39, 45.1-161.64, 45.1-161.76, 45.1-161.78, 45.1-161.87, and 45.1-161.257 of the Code of Virginia, relating to coal miner certification and mine safety.

[H 3190]

Approved April 4, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-161.31, 45.1-161.32, 45.1-161.35, 45.1-161.37, 45.1-161.39, 45.1-161.64, 45.1-161.76, 45.1-161.78, 45.1-161.87, and 45.1-161.257 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-161.31. Examination fees; Coal Mining Examiners' Fund.

A. A reasonable fee of ~~ten dollars~~ in an amount set by the Board of Coal Mining Examiners, not to exceed \$50, shall be paid to the Chief by each person examined before the commencement of examination. All such fees collected, together with moneys collected pursuant to §§ 45.1-161.32 and 45.1-161.34, shall be retained by the Department and shall be promptly paid by the Chief into the state treasury and shall constitute the Coal Mining Examiners' Fund. The fund shall be administered by the Chief ~~for the payment of the compensation and expenses of the Board of Coal Mining Examiners and its members to cover the costs of administering the miner certification~~, for which purposes such moneys are hereby appropriated.

B. The cost of printing certificates and other necessary forms and the incidental expenses incurred by the Board in conducting examinations, reviewing examination papers and conducting its other duties pursuant to this article shall also be paid out of the Coal Mining Examiners' Fund. The Chief shall keep accounts and records concerning the receipts and expenditures of the fund as required by the Auditor of Public Accounts.

§ 45.1-161.32. Replacement of lost or destroyed certificates.

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

§ 45.1-161.35. Revocation of certificates.

A. The Board of Coal Mining Examiners may *suspend, revoke, or take other action regarding* any certificate upon finding that the holder has (i) failed to comply with the continuing education requirements within the period following the suspension of the certificate as provided in § 45.1-161.34; (ii) been intoxicated while in duty status; (iii) neglected his duties; (iv) violated any provision of this Act or any other coal mining law of the Commonwealth; (v) used any controlled substance without the prescription of a licensed prescriber; or (vi) other sufficient cause. The Board shall also *suspend, revoke, or take other action regarding* the first class mine foreman certificate of any mine foreman who fails to display a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible for implementing, when examined on-site by a mine inspector in accordance with guidelines promulgated by the Board. In such a case, the Board shall make a determination, based on evidence presented by interested parties, of whether the mine foreman had a thorough knowledge of such plans at the time of his examination by the mine inspector.

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

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

D. *Any miner present at any mine shall be deemed to have given consent to reasonable search, at the direction of the Chief by employees of the Department, of his person and his personal property located at the mine. This search shall be limited to the investigation of potential violations of the Coal Mine Safety Act (§ 45.1-161.7 et seq.).*

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

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

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

E H. Any hearing conducted after the temporary suspension of a miner's certificate due to (i) a criminal conviction in any court of competent jurisdiction for possession or use of any controlled substance without the prescription of a licensed prescriber as provided for in subsection C, (ii) a failure to pass a substance abuse test required by the Chief pursuant to § 45.1-161.78, (iii) a failure to pass a pre-employment substance abuse screening test, (iv) a discharge for violation of the company's substance or alcohol abuse policies, (v) a positive test for the use of any controlled substance without the prescription of a licensed prescriber, (vi) a positive test for intoxication while on duty status, or (vii) a failure to complete a substance abuse program pursuant to § 45.1-161.87, shall be conducted within 60 days of the temporary suspension. The Board shall make every effort to hold the hearing within 40 days of the temporary suspension.

I. Any person who has been aggrieved by a decision of the Board shall be entitled to judicial review of such decision. Appeals from such decisions shall be in accordance with Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

§ 45.1-161.37. General coal miner certification.

A. Every person ~~commencing work~~ working in a coal mine in Virginia subsequent to January 1, 1996, shall hold a general coal miner certificate issued by the Board of Coal Mining Examiners. Any person who has been employed to work in a coal mine in Virginia prior to that date may, but shall not be required to, hold a general coal miner certificate January 1, 1996, shall submit a complete application for certification as a general coal miner by September 30, 2007. The Board of Coal Mining Examiners shall issue a general coal miner certification upon submittal of a complete application.

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

§ 45.1-161.39. Surface foreman certification.

Applicants for a surface foreman certificate shall be at least 23 years of age and have had at least five years of experience at surface coal mining, and in a coal mine with at least three years of such experience in a surface coal mine. A graduate of an approved four-year college course in mining engineering shall be given credit for three of the five years of practical experience required. An applicant who possesses a degree in mining technology shall be given credit for two of the five years of required practical experience. Applicants shall demonstrate to the Board of Coal Mining Examiners a thorough knowledge of the theory and practice of surface coal mining by making eighty-five percent or more on the written examination. In addition, each applicant shall pass the examinations in first aid and gas detection. The holder of a surface foreman certificate issued by the Board shall be authorized to act as surface foreman at any surface coal mine.

§ 45.1-161.64. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.

A. Prior to commencing mining activity, the operator of a coal mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine. Beginning July 1, 2007, all maps shall be presented on the Virginia Coordinate System of 1927, South Zone, unless otherwise approved by the Chief. At intervals not to exceed 12 months and when a coal mine is abandoned, the operator shall submit to the Chief three copies of an up-to-date map of the entire mine in paper format or one copy of the map in an electronic format. On and after July 1, 2007, only maps in an electronic format will be accepted unless otherwise approved by the Chief. If there are no changes in the information required to be submitted under this section at the time an updated map is due, the operator may submit a notice that there are no changes to the map in lieu of submitting an updated map to the Department.

B. Underground coal mine maps shall show:

- 1. The active workings;*
- 2. All pillared, worked out, and abandoned areas, except as provided in this section;*
- 3. Entries and aircourses with the quantity of airflow, direction of airflow indicated by arrows, and*

ventilation controls;

4. Contour lines of all elevations;
5. Dip of the coalbed;
6. Escapeways;
7. The locations that are known or should be known of (i) adjacent mine workings within 1,000 feet, (ii) mines above or below, and (iii) water pools above;
8. Either producing or abandoned oil and gas wells located within 500 feet of such mine and in any underground area of such mine; and

9. Such other information as the Chief may require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

G. ~~Surface coal mine operators shall maintain an accurate and up-to-date map of the mine. The map maps shall show:~~

1. Name and address of the mine;
2. The property or boundary lines of the active areas of the mine;
3. Contour lines passing through whole number elevations of the coalbed being mined. The spacing of such lines shall not exceed 25-foot elevation levels, except that a broader spacing of contour lines may be approved by the Chief for steeply pitching coalbeds. *The Chief may approve alternate means of*

delineating seam elevations where multiple seams are being mined. Contour lines may be placed on overlays or tracings attached to mine maps;

4. The general elevation of the coalbed or coalbeds being mined, and the general elevation of the surface;

5. Either producing or abandoned oil and gas wells and gas transmission lines located on the mine property;

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

7. All prospect drill holes that penetrate the coalbed or coalbeds being mined on the mine property;

8. All auger and strip mined areas of the coalbed or coalbeds being mined on the mine property together with the line of maximum depth of holes drilled during auger mining operations;

9. All worked out and abandoned areas;

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

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

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

13. The scale of the map; and

14. Such other information required by the Chief.

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

1. The location of each working pit or pits;

2. Auger or highwall miner workings; and

3. Other information that may affect the safety of miners including, but not limited to, updates of gas well or gas line locations.

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

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

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

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

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

§ 45.1-161.76. Workers' compensation; liability.

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

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.

§ 45.1-161.78. Operators' reports of accidents; investigations; reports by Department.

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

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

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

E. 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 operator, and one copy to the employee representative when he has been present at the investigation. The Chief shall maintain a complete file of all accident reports for coal mines, and shall give such further publicity as may be ordered by the Director in an effort to prevent mine accidents.

§ 45.1-161.87. Duties of operator.

A. The operator, or his agent, of every mine shall furnish the Chief 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.

D. *The mine operator shall implement a substance abuse screening policy and program for all miners that shall, at a minimum, include a pre-employment, 11-panel urine test for the following substances:*

1. Amphetamines,
2. Cannabinoids/THC,
3. Cocaine,
4. Opiates,
5. Phencyclidine (PCP),
6. Benzodiazepines,
7. Propoxyphene,
8. Methaqualone,
9. Methadone,
10. Barbiturates, and
11. Synthetic narcotics.

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

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

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

G. *The provisions of this chapter shall not be construed to preclude an employer from developing or*

maintaining a drug and alcohol abuse policy, testing program, or substance abuse program that exceeds the minimum requirements set forth in this section.

§ 45.1-161.257. Records of examinations.

A. Documentation of examinations and testing conducted pursuant to § 45.1-161.256 shall be recorded in a mine record book provided for that purpose. Documentation shall include hazardous conditions found in the work area. However, examinations of fire extinguishers shall be conducted by an authorized person and documentation shall be accomplished by recording the date of the examination on a permanent tag attached to the extinguisher.

B. The actual methane readings taken during examinations required under this Act shall be recorded in the mine record book.

C. The surface foreman shall maintain and sign a daily record book. Where such reports disclose hazardous conditions, the surface foreman shall take prompt action to have such conditions corrected, barricaded, or posted with warning signs.

D. Records shall be countersigned by the supervisor of the examiner creating the records. Where such records disclose hazardous conditions, the countersigning of the records shall be performed no later than the end of the next regularly scheduled working shift following the shift for which the examination records were completed, and the person countersigning shall ensure that actions to eliminate or control the hazardous conditions have been taken. Where such records do not disclose hazardous conditions, the countersigning may be completed within 24 hours following the end of the shift for which the examination records were completed. The operator may authorize another person with equivalent authority of the supervisor to act in the supervisor's temporary absence to read and countersign the records and ensure that action is taken to eliminate the hazardous conditions disclosed in the records.

~~When one individual serves in more than one position that is required to countersign such reports, he shall only be required to sign each report once.~~

E. All records of inspections shall be open for inspection by interested persons and maintained at the mine site for a minimum of one year.