

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact §§ 9-6.14:4.1, 45.1-161.7, 45.1-161.8, 45.1-161.19, 45.1-161.20, 45.1-161.57, 45.1-161.59, 45.1-161.60 through 45.1-161.64, 45.1-161.77, 45.1-161.78, 45.1-161.81, 45.1-161.82, 45.1-161.83, 45.1-161.89, 45.1-161.90, 45.1-161.102, 45.1-161.293, 45.1-161.296, 45.1-161.304, 45.1-161.307, 45.1-161.309, 45.1-161.310, 45.1-161.311, and 45.1-225 of the Code of Virginia; to amend the Code of Virginia by adding in Title 45.1 a chapter numbered 14.4:1, consisting of sections numbered 45.1-161.292:1 through 45.1-161.292:72, a chapter numbered 14.7:1, consisting of sections numbered 45.1-161.311:1 and 45.1-161.311:2, and a chapter numbered 18.1, consisting of sections numbered 45.1-225.1 through 45.1-225.3; and to repeal § 45.1-161.22, Article 4 (§§ 45.1-161.42 through 45.1-161.56) of Chapter 14.2 of Title 45.1, and § 45.1-161.104 of the Code of Virginia, relating to coal and mineral mining.*

[H 2269]

Approved

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

**1. That §§ 9-6.14:4.1, 45.1-161.7, 45.1-161.8, 45.1-161.19, 45.1-161.20, 45.1-161.57, 45.1-161.59, 45.1-161.60 through 45.1-161.64, 45.1-161.77, 45.1-161.78, 45.1-161.81, 45.1-161.82, 45.1-161.83, 45.1-161.89, 45.1-161.90, 45.1-161.102, 45.1-161.293, 45.1-161.296, 45.1-161.304, 45.1-161.307, 45.1-161.309, 45.1-161.310, 45.1-161.311, and 45.1-225 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 45.1 a chapter numbered 14.4:1, consisting of sections numbered 45.1-161.292:1 through 45.1-161.292:72, a chapter numbered 14.7:1, consisting of sections numbered 45.1-161.311:1 and 45.1-161.311:2, and a chapter numbered 18.1, consisting of sections numbered 45.1-225.1 through 45.1-225.3, as follows:**

§ 9-6.14:4.1. Exemptions and exclusions.

A. Although required to comply with § 9-6.18 of the Virginia Register Act (§ 9-6.15 et seq.), the following agencies are exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 9-6.14:14.1, 9-6.14:21 and 9-6.14:22:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency which by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth provided that, with respect to § 9-6.14:22, such educational institutions shall be exempt from the publication requirements only with respect to regulations which pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' license and base, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Virginia Voluntary Formulary Board in formulating recommendations regarding amendments to the Formulary pursuant to § 32.1-81.

11. The Council on Information Management.

12. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.1-526.14.

13, 14. [Repealed.]

15. The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

16. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.1-726.

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17. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and C of § 3.1-106.4, subsection B of § 3.1-126.12:1, § 3.1-271.1, § 3.1-398, subsections B and C of § 3.1-828.4, and subsection A of § 3.1-884.21:1.

18. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

19. The Board of Medicine, in consultation with the Board of Pharmacy, when promulgating amendments to the Physician's Assistant Formulary established pursuant to § 54.1-2952.1.

20. The Boards of Medicine and Nursing in promulgating amendments to the Nurse Practitioner Formulary established pursuant to § 54.1-2957.01.

21. The Virginia War Memorial Foundation.

22. The Virginia Medicaid Prior Authorization Advisory Committee in making recommendations to the Board of Medical Assistance Services regarding prior authorization for prescription drug coverage pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

23. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-280.3.

24. The Virginia Student Assistance Authorities.

25. The Virginia Racing Commission, when acting by and through its duly appointed stewards or in matters related to any specific race meeting.

26. The Virginia Small Business Financing Authority.

27. The Virginia Economic Development Partnership Authority.

28. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to clause A (ii) of § 59.1-156.

B. Agency action relating to the following subjects is exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental, penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of a pool or pools authorized by Article 7.1 (§ 2.1-234.9:1 et seq.) of Chapter 14 of Title 2.1.

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the State Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1.

C. The following agency actions otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act are excluded from the operation of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter:

1. Agency orders or regulations fixing rates or prices.

2. Regulations which establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations which consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations which:

(a) Are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved;

(b) Are required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

(c) Are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing; notice of the proposed adoption of these regulations and the Registrar's above determination shall be published in the Virginia Register not less than thirty days prior to the effective date thereof.

5. Regulations which an agency finds are necessitated by an emergency situation. For the purposes of this subdivision, "emergency situation" means (i) a situation involving an imminent threat to public health or safety or (ii) a situation in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation shall be effective in 280 days or less from enactment of the law or the appropriation act or the effective date of the federal regulation, and the regulation is not exempt under the provisions of subdivision C 4 of this section. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt such regulations. Pursuant to § 9-6.14:9, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations. Such regulations shall be limited to no more than twelve months in duration. During the twelve-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the twelve-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the twelve-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of this chapter. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be published within sixty days of the effective date of the emergency regulation, and the proposed replacement regulation shall be published within 180 days after the effective date of the emergency regulation.

6. [Repealed.]

7. Preliminary program permit fees of the Department of Environmental Quality assessed pursuant to subsection C of § 10.1-1322.2.

8. Regulations of the Pesticide Control Board adopted pursuant to subsection B of § 3.1-249.51 or clause (v) or (vi) of subsection C of § 3.1-249.53 after having been considered at two or more Board meetings and one public hearing.

9. Regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 which are limited to reducing fees charged to regulants and applicants.

10. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

11. General permits issued by the State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.), of Title 10.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

12. General permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the Board: (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of subsection B of § 9-6.14:7.1, (ii) following the passage of thirty days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in subsection F of § 9-6.14:7.1, and (iv) conducts at least one public hearing on the proposed general permit.

Whenever regulations are adopted under this subsection C, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this subsection shall be in accordance with the provisions of § 9-6.14:9.3, except in the case of emergency regulations, which shall become effective as provided in subsection A of § 9-6.14:9.

D. The following agency actions otherwise subject to this chapter are excluded from the operation of Article 3 (§ 9-6.14:11 et seq.) of this chapter:

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

E. Appeals from decisions of the Governor's Employment and Training Department otherwise subject to this chapter are excluded from the operation of Article 4 (§ 9-6.14:15 et seq.) of this chapter.

F. The Marine Resources Commission, otherwise subject to this chapter and § 9-6.18 of the Virginia Register Act, is excluded from the operation of subsection C of this section and of Article 2 (§ 9-6.14:7.1 et seq.) of this chapter; however, the authorization for any general permit or guidelines for activity undertaken pursuant to Title 28.2 by the Marine Resources Commission shall be in accordance with the provisions of this chapter.

G. A regulation for which an exemption is claimed under this section and which is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

H. The Joint Legislative Audit and Review Commission shall conduct a review periodically of exemptions and exclusions authorized by this section. The purpose of this review shall be to assess whether there are any exemptions or exclusions which should be discontinued or modified.

I. Minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act, Chapter 1.2 (§ 9-6.15 et seq.) of this title, made by the Virginia Code Commission pursuant to § 9-77.10:1 shall be exempt from the provisions of this chapter.

#### CHAPTER 14.2.

#### COAL MINE SAFETY ACT.

§ 45.1-161.7. Short title.

This chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) to 14.6 (~~§ 45.1-161.304 et seq.~~) and 14.4 (~~§ 45.1-161.253 et seq.~~) of this title shall be known as the "Coal Mine Safety Act."

§ 45.1-161.8. Definitions.

As used in this chapter and in Chapters 14.3 (§ 45.1-161.105 et seq.) through 14.6 (§ 45.1-161.304 et seq.) of this title, 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 thirty minutes; (iv) an unplanned inundation of a mine by liquid or gas; (v) an unplanned ignition or explosion of gas or dust; (vi) an unplanned fire not extinguished within thirty minutes of discovery; (vii) an unplanned ignition or explosion of a blasting agent or an explosive; (viii) an unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (ix) a coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (x) an unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile or culm bank; (xi) damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty 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 Chief or Director.

"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 Board of Coal Mining Examiners ~~or the Board of Mineral Mining Examiners~~ authorizing him to perform the task to which he is assigned.

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

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

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

*"Coal Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.3 (§ 45.1-161.105 et seq.) and 14.4 (§ 45.1-161.253 et seq.) of this title, and shall include any regulations promulgated thereunder, where applicable.*

"Competent person" means a person designated by the Department as 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.

"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 thirty days, or at a surface mine for a period of sixty days, (ii) for which a valid license is in effect, and (iii) at which reclamation activities have not been completed.

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

"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 nineteen and one-half percent oxygen nor more than one-half of one 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 Act, any other person.

"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 coal mine, ~~or surface coal mine, 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 coal ~~or 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 thirty minutes of discovery.

"Mine foreman" means a person holding a valid certificate of qualification as a foreman duly issued by action of the Board of Coal Mining Examiners ~~or as a foreman duly issued by action of the Board of Mineral Mining Examiners.~~

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

302 "Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.2 (§ 45.1-161.105 et seq.)  
 303 through 14.6 (§ 45.1-161.304 et seq.) of this title, and shall include any regulations promulgated  
 304 thereunder, where applicable.

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

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

309 "Mineral mine" means a surface mineral mine or an underground mineral mine.

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

312 "Panel entry" means a room entry.

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

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

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

321 "Serious personal injury" means any injury requiring at least one day of hospital confinement for  
 322 other than strains and sprains which has a reasonable potential to cause death or an injury other than a  
 323 sprain or strain which requires an admission to a hospital for twenty-four hours or more for medical  
 324 treatment.

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

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

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

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

353 "Underground coal mine" means (i) the working face and other active and inactive areas of  
 354 underground excavation of coal; (ii) underground travel ways, shafts, slopes, drifts, inclines, and tunnels  
 355 connected to such areas; (iii) on-site preparation plants, shops, tipples and related facilities appurtenant  
 356 to the excavation and processing of coal; (iv) on-site surface areas for the transportation and storage of  
 357 coal excavated at the site; (v) impoundments, retention dams, and tailing ponds appurtenant to the  
 358 excavation of coal from the site; (vi) equipment, machinery, tools, and other property, on the surface  
 359 and underground, used in, or to be used in, the excavation of coal from the site; (vii) private ways and  
 360 roads appurtenant to such area; (viii) the areas used to prepare a site for underground coal excavation

activities; and (ix) areas used for the drilling of vertical ventilation holes. A site shall commence being an underground coal mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity, and shall cease to be an underground coal mine upon completion of initial reclamation activities.

"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.) of this title, means those areas of a surface coal mine in production or being prepared for production and those areas of the mine which may pose a danger to miners at such areas.

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

"Working face" means any place in a mine in which work of extracting coal or minerals from its 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.

§ 45.1-161.19. Qualifications of mine inspectors generally.

Each mine inspector shall (i) be not less than twenty-five years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued by the Board of Coal Mining Examiners or 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.

§ 45.1-161.20. Qualifications of inspectors of coal mines.

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

B. Each mine inspector conducting inspections of mineral mines shall also 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.

§ 45.1-161.57. License required for operation of coal mines; term.

A. No person shall engage in the operation of any coal 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 license shall not be transferable and every change in ownership of a mine shall be reported to the Department as provided in subsection B of § 45.1-161.62.

B. Licenses for coal mines shall be valid for a period of no more than one year following the date of issuance and shall be renewed annually within fifteen days following the anniversary of the date the mine began operations. Licenses for mineral mines shall be valid for a period of one year following the date of issuance and shall be renewed on their anniversary date.

§ 45.1-161.59. Application for license.

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

1. Identity regarding the operator of the mine. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine

identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a 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 operator is a partnership, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a 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 operator is a corporation, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a 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 operator 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 operator is any organization other than a sole proprietorship, partnership, or corporation, the operator shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a 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 operator with responsibility for the business operation of the mine, and any person with an ownership or leasehold interest in the coal or minerals to be mined;

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

4. 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

5. [Repealed.]

6. [Repealed.]

7. For any license renewal, the annual report required pursuant to § 45.1-161.62.

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 operator shall notify the Department, in writing, of such change.

§ 45.1-161.60. Denial or revocation of license.

A. The Chief may deny an application for, or may revoke a license for the operation of, a coal mine; and the Director may deny an application for, or revoke a license for the operation of, a mineral mine; upon determining that the applicant, the 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 Chief may revoke every license issued to any person for the operation of a coal mine and may deny every application by a person for the issuance of a license for the operation of a coal mine; and 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 Chief may revoke every license issued to any person for the operation of a coal mine and



may deny every application by a person for the issuance of a license for the operation of a coal mine; and 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.

§ 45.1-161.61. Operating without license; penalty.

A. In addition to any other power conferred by law, the Chief, or his designated representative, shall have the authority to issue an order closing any coal mine which is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.1-161.91.

B. 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 § 45.1-161.91.

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

§ 45.1-161.62. Annual reports; condition to issuance of license following transfer of ownership.

A. The operator or his agent of every mine 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 operator, any agent, and their officers, of the mine; (ii) the quantity of coal or minerals mined; and (iii) 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. 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 coal or minerals produced since the January 1 previous to the date of such sale or transfer of such mine. A license will not be issued covering such transfer of ownership until the report is furnished.

C. The operator or his agent of every coal mine shall annually, by February 15, mail or deliver to the Department (i) an affidavit, certified by the Commissioner of Revenue of the locality in which the coal mining operations are conducted, stating that all local coal severance taxes enacted pursuant to §§ 58.1-3703, 58.1-3712, and 58.1-3713 due with respect to the coal mining operations have been paid; and (ii) an affidavit, certified by the Treasurer of the locality in which the coal mining operations are conducted, stating that all personal property, real estate and mineral land taxes due with respect to coal mining operations have been paid.

§ 45.1-161.63. Notices to Department; resumption of mining following discontinuance.

A. The 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 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 operator, or his agent, shall notify the Department as soon as possible after commencing emergency action necessary to preserve the mine.

D. The operator, or his agent, shall send to the Department 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 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 operator, and the operator's mailing address.

§ 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 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 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. 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, on a scale to be stated thereon of 100 to 400 feet to the inch. At intervals not to exceed twelve months, the operator shall submit to the Chief three copies of an up-to-date map of the entire mine. A registered engineer or registered surveyor shall certify that the map of the mine workings is accurate. Such map shall show the mine name, company name, mine index number, legend identifying the scale of the map, symbols used and the name of the person responsible for the information on the map. The map shall contain information related to active and worked-out areas of the mine, projections for at least twelve months of anticipated development, location of gas wells and all known drill holes, the location of all known mine workings underlying, overlying, and adjacent to the mine property, the direction and quantity of air current, ventilation controls, escapeways, so much of the property lines and the outcrop of the coal or mineral of the tract of land on which the mine located as may be within 1000 feet of any part of the workings of such mine, and such other information related to underground and surface activities as deemed necessary by the Chief. 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.

C. B. The operator of any surface coal or 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 operator or his agent. The Director shall promptly deliver notice of such request to the operator of such mining operation.

D. C. The original map, or a true copy thereof, shall be kept by such operator at the active mine, open at all reasonable times for the examination and use of the mine inspector. For coal mines, such map shall be kept up to date by temporary notations and such map shall be revised and supplemented at intervals not to exceed six months.

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

F. E. 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 operator or his agent. The governing body shall promptly deliver notice of any request for a copy of such a map to the operator or his agent.

G. 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.

§ 45.1-161.77. Reports of explosions and mine fires; procedure.

A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the quickest available means. All facilities of the mine shall be made available for rescue and recovery operations and 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 Chief or 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 Chief shall maintain an up-to-date rescue and recovery plan for prompt and adequate employment at any coal mine in the Commonwealth; and the Director shall do the same with respect to mineral mines. 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 operators of mines. Changes in the plan shall be published promptly when made and furnished to all operators of mines.

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

§ 45.1-161.81. Frequency of mine inspections.

A. The Chief shall conduct a complete inspection of every underground coal mine not less frequently than every 180 days, and of every surface coal mine not less frequently than once per year. Additional inspections of coal mines shall be made when deemed appropriate by the Chief based on an evaluation of risks at each mine, or if requested by miners employed at a mine or the operator of a mine.

B. 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 operator of a mine.

C. 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 violation of this Act, (ii) respond to and investigate any serious personal injury or fatality, and (iii) with the consent of the operator, conduct training programs.

D. 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.

§ 45.1-161.82. 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 and surface coal mine, ~~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 (§ 9-6.14:7.1 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.

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

§ 45.1-161.83. Review of inspection reports and records.

Prior to commencing an inspection of a coal mine ~~or underground mineral mine~~, a mine inspector shall review the most recent available report of inspection by the Mine Safety and Health Administration. Prior to commencing 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 Act, 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.

§ 45.1-161.89. 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 Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

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

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

§ 45.1-161.90. Notices of violations.

A. If the Director, the Chief, or a mine inspector has reasonable cause to believe that a violation of the Act has occurred, he shall with reasonable promptness issue a notice of violation to the person 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 provision of this Act 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 operator, his agent, or mine foreman.

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

D. The notice of violation shall be deemed 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 Chief ~~if the violation pertains to coal mining or by the Director if the violation pertains to mineral mining~~, pursuant to § 9-6.14:11, 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 § 9-6.14:12. The formal hearing shall be presided over by a hearing officer pursuant to § 9-6.14:14.1, 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 4 (§ 9-6.14:15 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.

§ 45.1-161.102. Training programs.

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

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

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

#### CHAPTER 14.4:1.

### MINERAL MINE SAFETY ACT.

#### 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."*

§ 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.) of this title 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 thirty 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 thirty 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 thirty 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*

788 duty or duties or to be at a specific location or locations in the mine who is task trained in accordance  
789 with requirements of the federal mine safety law.

790 "Blower fan" means a fan with tubing used to direct part of a particular circuit of air to a working  
791 place.

792 "Booster fan" means an underground fan installed in conjunction with a main fan to increase the  
793 volume of air in one or more circuits.

794 "Cable" means a stranded conductor (single-conductor cable) or a combination of conductors  
795 insulated from one another (multiple-conductor cable).

796 "Certified person" means a person holding a valid certificate from the Board of Mineral Mining  
797 Examiners authorizing him to perform the task to which he is assigned.

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

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

802 "Competent person" means a person having abilities and experience that fully qualify him to perform  
803 the duty to which he is assigned.

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

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

808 "Experienced underground miner" means a person with more than six months of underground mining  
809 experience.

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

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

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

816 "Grounded" means connected to earth or to some connecting body which serves in place of the  
817 earth.

818 "Hazardous condition" means conditions that are likely to cause death or serious personal injury to  
819 persons exposed to such conditions.

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

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

828 "Independent contractor" means any person that contracts to perform services or construction at a  
829 mine.

830 "Intake air" means air that has not passed through the last active working place of the split or by  
831 the unsealed entrances to abandoned areas and by analysis contains not less than nineteen and one-half  
832 percent oxygen nor more than one-half of one percent of carbon dioxide, nor any hazardous quantities  
833 of flammable gas nor any harmful amounts of poisonous gas.

834 "Interested persons" means members of the Mine Safety Committee and other duly authorized  
835 representatives of the employees at a mine; federal Mine Safety and Health Administration employees;  
836 mine inspectors; and, to the extent required by this Act, any other person.

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

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

843 "Mine fire" means an unplanned fire not extinguished within thirty minutes of discovery.

844 "Mine foreman" means a person holding a valid certificate of qualification as a foreman duly issued  
845 by action of the Board of Mineral Mining Examiners.

846 "Mine inspector" means a public employee assigned by the Director to make mine inspections as  
847 required by this Act, and other applicable laws.

848 "Miner" means any individual working in a mineral mine.

"Mineral" means clay, stone, sand, gravel, metalliferous and non-metalliferous 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.) of this title, 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 twenty-four 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 (i) the mineral is extracted for its unique or intrinsic characteristics, or (ii) 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.) of this title, 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.

§ 45.1-161.292:3. Safety and health.

In safety and health, all mineral miners are to be governed by this Act and Chapter 18.1

910 (§ 45.1-225.1 et seq.) of this title, and any other sections of the Code relating to safety and health of  
 911 miners and rules and regulations promulgated by the Department.

912 § 45.1-161.292:4. Special safety rules.

913 The operator of every mine shall have the right to adopt special safety rules for the safety and  
 914 operation of his mine or mines, covering the work pertaining thereto inside and outside of the same,  
 915 which, however, shall not be in conflict with the provisions of this Act. Such rules, when established,  
 916 shall be posted at some conspicuous place about the mines, where the rules may be seen by all miners  
 917 at such mines, or in lieu thereof the operator shall furnish a printed copy of such rules to each of his  
 918 miners.

919 § 45.1-161.292:5. Persons not permitted to work in mines.

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

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

926 § 45.1-161.292:6. Prohibited acts by miners or other persons; miners to comply with law.

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

932 B. Each miner at any mine shall comply fully with the provisions of this Act and other mining laws  
 933 of this Commonwealth that pertain to his duties.

934 § 45.1-161.292:7. Safety materials and supplies.

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

940 § 45.1-161.292:8. Notifying miners of violations; compliance with Act.

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

945 B. The operator of any mine or his agent shall operate his mines in full conformity with this Act and  
 946 any other mining law of the Commonwealth at all times. This requirement shall not relieve any other  
 947 person subject to the provisions of this Act from his duty to comply with the requirements of this Act.

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

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

#### 952 Article 2.

953 Director and Mining Inspectors.

954 § 45.1-161.292:9. Affiliations of Department personnel with labor union, mining company, etc.;  
 955 interest in mine; inspections of mines where inspector previously employed.

956 A. In addition to compliance with the provisions of the State and Local Government Conflict of  
 957 Interests Act (§ 2.1-639.1 et seq.), neither the Director nor any other officer or employee of the  
 958 Department shall, upon taking office or being employed, or at any other time during the term of his  
 959 office or employment, have any affiliation with any operating company, operators' association, or labor  
 960 union. Neither the Director nor any other officer while in office shall be directly or indirectly interested  
 961 as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any mine, nor shall the  
 962 Director, or any other officer while in office, own any stock in a corporation owning a mine either  
 963 directly or through a subsidiary.

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

966 § 45.1-161.292:10. Appointment of mine inspectors.

967 Mine inspectors shall be appointed by the Director.

968 § 45.1-161.292:11. Qualifications of mine inspectors generally.

969 Each mine inspector shall (i) be not less than twenty-five years of age; (ii) be of good moral  
 970 character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as



a mine inspector issued by the Board 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.

§ 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.

§ 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 Act.

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.

§ 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.

### Article 3.

#### Certification of Mineral Mine Workers.

§ 45.1-161.292:15. Board of Mineral Mining Examiners.

A. There is hereby created the Board of Mineral Mining Examiners, which shall consist of seven members. One member shall be the Director of the Division of Mineral Mining, and six members shall be appointed by the Governor. Two appointed members shall be miners with at least five years experience in surface mineral mining and who are employed at surface mineral mines in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. One appointed member shall be a miner with at least five years of experience in underground mineral mining and who is employed at an underground mineral mine in the Commonwealth in a nonmanagerial, nonsupervisory capacity at the time of appointment. Two appointed members shall be individuals with at least five years of experience in the operation of surface mineral mines, who are (i) operators of a surface mineral mine, (ii) officers or directors of a corporation operating a surface mineral mine, (iii) general partners in a partnership operating a surface mineral mine, or (iv) employees, in a managerial or supervisory capacity, of an operator of a surface mineral mine in the Commonwealth at the time of appointment. One appointed member shall be an individual with at least five years of experience in the operation of an underground mineral mine, who is (i) an operator of an underground mineral mine, (ii) an officer or director of a corporation operating an underground mineral mine, (iii) a general partner in a partnership operating an underground mineral mine, or (iv) an employee, in a managerial or supervisory capacity, of an operator of an underground mineral mine in the Commonwealth at the time of appointment. All appointed members shall be residents of the Commonwealth.

B. The terms of office of the appointed members of the Board shall be as follows: one shall be appointed for an initial term of one year; one shall be appointed for an initial term of two years; two shall be appointed for an initial term of three years; and two shall be appointed for an initial term of four years. Thereafter, the members shall be appointed for terms of four years. Vacancies occurring on the Board among appointed members shall be filled by the Governor for the unexpired term.

C. The Director of the Division of Mineral Mining shall serve as chairman of the Board.

§ 45.1-161.292:16. Meetings of the Board of Mineral Mining Examiners; compensation.

The Board of Mineral Mining Examiners shall meet at least once a year and shall be called by the Director of the Division of Mineral Mining to meet at such other times as he deems necessary. The Board shall meet at such place or places as shall be designated by the Director of the Division of Mineral Mining, and the Board shall remain in session until its work is completed; but no one session of the Board shall continue more than three days. Out of the Mineral Mining Examiner's Fund, there shall be paid to each member of the Board, except the Director of the Division of Mineral Mining, who shall serve without extra pay, reimbursement for expenses and compensation as is provided by § 2.1-20.4.

§ 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.

§ 45.1-161.292:18. *Nominations for the Board of Mineral Mining Examiners.*

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

§ 45.1-161.292:19. *Certification of certain persons employed in mineral mines; powers of Board of Mineral Mining Examiners.*

*A. The Board of Mineral Mining Examiners 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 Board, and a person holding such a certification shall be authorized to perform the tasks which this Act or any regulation promulgated by the Board or 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 Board may require by regulation.*

*C. The Board 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 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act.*

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

*A. The Board of Mineral Mining Examiners may require examination of applicants for certification; however, the Board shall require examination of applicants for a mine inspector certification. The Board may require such other information from applicants as may be necessary to ascertain competency and qualifications for each task. Except as provided by this Act for general mineral miner and surface foreman certifications, the Board shall prescribe the qualifications for any certification. The examinations shall be conducted under such rules, conditions and regulations as the Board shall promulgate. Such rules, when promulgated, shall be made a part of the permanent record of the Board, shall periodically be published, and shall be of uniform application to all applicants.*

*B. Any certificate issued by the Board, 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 by the Board 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 by the Board pursuant to § 45.1-161.292:26.*

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

*It shall be unlawful for any person to perform any task requiring certification by the Board of Mineral Mining Examiners until he has been certified. It shall be 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 Examiners prior to July 1, 1994, shall be acceptable as a certificate issued by the Board of Mineral Mining Examiners until the Board of Mineral Mining Examiners shall provide otherwise by appropriate regulations.*

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

*A. A fee of ten dollars 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 §§ 45.1-161.292:23 and 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 compensation and expenses of the Board of Mineral Mining Examiners and its members for which purpose 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 Mineral Mining Examiners' Fund. The Director shall keep accounts and records concerning the receipts and expenditures of the fund as required by the*

*Auditor of Public Accounts.*

*§ 45.1-161.292:23. Replacement of lost or destroyed certificates.*

*If any certificate issued by the Board of Mineral Mining Examiners shall be lost or destroyed, the Director may supply a copy thereof to the person to whom it was issued, upon the payment of one dollar; provided it shall be established to the satisfaction of the Board of Mineral Mining Examiners that the loss or destruction actually occurred and the person seeking such copy was the holder of such certificate.*

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

*In lieu of an examination prescribed by law or regulation, the Board of Mineral Mining Examiners 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 Board 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 Board are permitted to perform similar tasks in such state, and obtain similar certification from such state if required, upon presentation of the certificate issued by the Board and without additional testing, training, or other requirements not directly related to program administration.*

*§ 45.1-161.292:25. Renewal of certificates.*

*The holder of any certificate issued by the Board of Mineral Mining Examiners, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Board 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 Board 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 Board with such administrative information as is reasonably required by the Board, and shall pay the examination fee as provided in § 45.1-161.292:22.*

*§ 45.1-161.292:26. Revocation of certificates.*

*A. The Board of Mineral Mining Examiners 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 Act 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 Board 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; 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 of the mine.*

*C. 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.*

*D. Prior to revoking 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 § 9-6.14:12 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 § 9-6.14:14.1.*

*E. 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 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.*

*§ 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 Board of Mineral Mining Examiners after three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Board that the cause for revocation of his certificate has ceased to exist.*

*§ 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. 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 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 mineral mining health and safety.*

*§ 45.1-161.292:29. Foreman certification.*

*A. The operator of any mineral mine where three or more persons work during any part of a twenty-four-hour period shall employ a mine foreman. The operator shall employ as a mine foreman*

only persons holding a foreman certificate in accordance with § 45.1-161.292:19. 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 Board of Mineral Mining Examiners and demonstrate to the Board a thorough knowledge of the theory and practice of mineral mining by making eighty-five percent or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Board.

#### 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 Act. Every change in ownership of a mine shall be reported to the Department as provided in subsection B 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 operator shall notify the Department, in writing, of such change.

§ 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 seventy-five dollars. 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 twenty dollars. 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.

§ 45.1-161.292:32. Application for license.

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

1. Identity regarding the operator of the mine. If the operator is a sole proprietorship, the operator shall state: (i) his full name and address; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the sole proprietor has a 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 operator is a partnership, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the partnership has a 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 operator is a corporation, the operator shall state: (i) the name and address of the mine and its federal mine identification number; (ii) the name and address of the person with overall responsibility for operating decisions at the mine; (iii) the name and address of the person with overall responsibility for health and safety at the mine; (iv) the federal mine identification numbers of all other mines in which the corporation has a 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 operator 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 operator is any organization other than a sole proprietorship, partnership, or

corporation, the operator shall state: (i) the nature and type, or legal identity of the organization; (ii) the name and address of the mine and its federal mine identification number; (iii) the name and address of the person with overall responsibility for operating decisions at the mine; (iv) the name and address of the person with overall responsibility for health and safety at the mine; (v) the federal mine identification numbers of all other mines in which the organization has a 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 operator 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. The names and addresses of persons to be contacted in the event of an accident or other emergency at the mine;

4. 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

5. 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 operator shall notify the Department, in writing, of such change.

§ 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 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 § 45.1-161.292:50 or § 45.1-161.292:51.

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.

§ 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.

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

A. The operator or his agent of every mine 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 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. 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

1276 transfer of such mine. A license will not be issued covering such transfer of ownership until the report  
1277 is furnished.

1278 § 45.1-161.292:36. Notices to Department; resumption of mining following discontinuance.

1279 A. The operator or his agent shall send notice of intent to abandon or discontinue the working of an  
1280 underground mine for a period of thirty days or a surface mine for a period of sixty days to the  
1281 Department at least ten days prior to discontinuing the working of a mine with such intent, or at any  
1282 time a mine becomes an inactive mine.

1283 B. The operator, or his agent, shall send to the Department ten days' prior notice of intent to resume  
1284 the working of an inactive mine. Except for a surface mineral mine which is inspected by the Mine  
1285 Safety and Health Administration, the working of such mine shall not resume until a mine inspector has  
1286 inspected the mine and approved it.

1287 C. Emergency actions necessary to preserve a mine may be undertaken without the prior notice of  
1288 intent and advance inspection required by subsection B. In such event, a mine foreman shall examine a  
1289 mine for hazardous conditions immediately before miners are permitted to work. The operator, or his  
1290 agent, shall notify the Department as soon as possible after commencing emergency action necessary to  
1291 preserve the mine.

1292 D. The operator, or his agent, shall send to the Department ten days' prior notice of any change in  
1293 the name of a mine or in the name of the operation of a mine.

1294 E. The operator, or his agent, shall send to the Department ten days' prior notice of the opening of  
1295 a new mine.

1296 F. Any notice required by this section shall be in writing and shall include the name of the mine, the  
1297 location of the mine, the name of the operator, and the operator's mailing address.

1298 § 45.1-161.292:37. Maps of mines required to be made; contents; extension and preservation; use by  
1299 Department; release; posting of map.

1300 A. Prior to commencing mining activity, the operator of a mineral mine, or his agent, shall make, or  
1301 cause to be made, unless already made and filed, an accurate map of such mine, on a scale to be stated  
1302 thereon of 100 to 400 feet to the inch. Such map shall show the openings or excavations, the shafts,  
1303 slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms,  
1304 pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions of such  
1305 mine or mines as may have been abandoned, and so much of the property lines and the outcrop of the  
1306 mineral of the tract of land on which the mine is located, as may be within 1,000 feet of any part of the  
1307 workings of such mine, and for underground mines only, the general inclination of the mineral strata.  
1308 The operator shall annually, beginning on the anniversary date of the mine permit issued pursuant to  
1309 Chapter 16 (§ 45.1-180 et seq.), while the mine is in operation, cause the map thereof to be extended so  
1310 as to accurately show the progress of the workings, and the property lines and outcrop as described  
1311 above, and shall forward the same to the Department to be kept on record, subject to the conditions  
1312 stated in subsection C. If there are no changes in the information required by this section, an updated  
1313 map shall not be required to be submitted to the Department.

1314 B. The operator of any surface mineral mine, or his agent, shall not be required to submit a map of  
1315 such mine to the Department unless the mine may intersect (i) underground workings or (ii) workings  
1316 from auger, thin seam, or highwall mining operations. The map shall be filed and preserved among the  
1317 records of the Department and made available at a reasonable cost to all persons owning, leasing, or  
1318 residing on or having an equitable interest in surface areas or coal or mineral interests within 1,000  
1319 feet of such mining operation upon written proof satisfactory to the Director and upon sworn affidavit  
1320 that such person requesting a map has a proper legal or equitable interest; however, the Director shall  
1321 provide to the person requesting a map only that portion of the map which abuts or is contiguous to the  
1322 property in which such requesting party has a legal or equitable interest. In no case shall any copy of  
1323 the same be made for any other person without the consent of the operator or his agent. The Director  
1324 shall promptly deliver notice of such request to the operator of such mining operation.

1325 C. The original map, or a true copy thereof, shall be kept by such operator at the active mine, open  
1326 at all reasonable times for the examination and use of the mine inspector.

1327 D. Copies of such maps shall be made available at a reasonable cost to the governing body of any  
1328 county, city or town in which the mine is located upon written request; however, such copies shall be  
1329 provided on the condition that they not be released to any person who does not have a legal or  
1330 equitable interest in surface areas or mineral interests within 1,000 feet of the mining operation without  
1331 the written consent of the operator or his agent. The governing body shall promptly deliver notice of  
1332 any request for a copy of such a map to the operator or his agent.

1333 § 45.1-161.292:38. When the Director may cause maps to be made; payment of expense.

1334 If the operator, or his agent, of any mine shall neglect or fail to furnish to the Director a copy of  
1335 any map or extension thereof, as provided in § 45.1-161.292:37, the Director is authorized to cause a  
1336 correct survey and map of said mine, or extension thereof, to be made at the expense of the operator of

such mine, the cost of which shall be recovered from the 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 operator. The expense shall be recovered from the operator as other debts are recoverable by a civil action at law. However, if the map filed by the operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

§ 45.1-161.292:39. 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 Act 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 Act 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.

#### 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.

§ 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.

§ 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.

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

A. To qualify for membership in mine reserve crews an applicant shall (i) be an experienced miner, (ii) be not more than fifty years of age, and (iii) pass a physical examination by a licensed physician 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.

§ 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 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 operator of the mine for the purpose of workers' compensation coverage.

§ 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



1398 *provided with a backup crew of equal strength, stationed at each fresh air base.*

1399 *C. For every two crews performing work underground, one six-member crew shall be stationed at*  
 1400 *the mine portal.*

1401 *D. Two-way communication, life lines or their equivalent shall be provided by the fresh air base to*  
 1402 *all crews and no crew member shall be permitted to advance beyond such communication system.*

1403 *E. A mine rescue crew shall immediately return to the fresh air base should any crew member's*  
 1404 *breathing apparatus malfunction or the atmospheric pressure of any apparatus deplete to sixty*  
 1405 *atmospheres.*

1406 *F. The Director may also assign rescue and recovery work to inspectors, instructors or other*  
 1407 *qualified employees of the Department as the Director may determine desirable.*

1408 *§ 45.1-161.292:46. State-designated mine rescue teams.*

1409 *The Director may, upon the request of an operator or agent who employs a mine rescue team,*  
 1410 *designate two or more mine rescue teams as "state-designated mine rescue teams." Any team which is*  
 1411 *certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49*  
 1412 *shall be eligible to be a state-designated team. Following the designation of any such teams, the*  
 1413 *Director shall, upon the payment to the Department of an annual fee, set by the Director based on*  
 1414 *current costs for maintaining mine rescue stations and personnel, assign two or more state-designated*  
 1415 *teams to the operator. An operator who has paid the rescue fee shall be entitled to the rescue services*  
 1416 *of a state-designated rescue team at no additional charge.*

1417 *§ 45.1-161.292:47. Mine Rescue Fund.*

1418 *The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys*  
 1419 *collected from operators pursuant to the provisions of § 45.1-161.292:46 shall be paid into the Mine*  
 1420 *Rescue Fund. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue*  
 1421 *Fund as are needed for this purpose, ten percent of the fund shall be transferred from the fund to the*  
 1422 *Department for purposes of administering the state-designated mine rescue team program. On an annual*  
 1423 *basis, funds in excess of the sum which is transferred for administrative purposes shall be divided*  
 1424 *equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert*  
 1425 *to the general fund.*

1426 *§ 45.1-161.292:48. Inspections; Mine Rescue Coordinator.*

1427 *A. The Director shall (i) inspect, or cause to be inspected, the rescue station of each state-designated*  
 1428 *mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and*  
 1429 *(iii) ensure that all team members are adequately trained.*

1430 *B. The Director shall designate an employee of the Department as the Mine Rescue Coordinator,*  
 1431 *who shall perform the duties assigned to him by the Director.*

1432 *§ 45.1-161.292:49. Workers' compensation; liability.*

1433 *A. For the purpose of workers' compensation coverage during any mine disaster to which a*  
 1434 *state-designated mine rescue team responds to under the provisions of this article, members of the*  
 1435 *state-designated team shall be deemed to be within the employment of the operator of the mine at which*  
 1436 *the disaster occurred.*

1437 *B. Any member of a state-designated team engaging in rescue work at a mine shall not be liable for*  
 1438 *civil damages for acts or omissions resulting from the rendering of such rescue work unless the act or*  
 1439 *omission was the result of gross negligence or willful misconduct.*

1440 *C. Any operator providing personnel to a state-designated mine rescue team to engage in rescue*  
 1441 *work at a mine not owned or operated by the operator shall not be liable for any civil damages for acts*  
 1442 *or omissions resulting from the rendering of such rescue work.*

1443 *Article 6.*

1444 *Mine Explosions; Mine Fires; Accidents.*

1445 *§ 45.1-161.292:50. Reports of explosions and mine fires; procedure.*

1446 *A. If an explosion or mine fire occurs in a mine, the operator shall notify the Department by the*  
 1447 *quickest available means. All facilities of the mine shall be made available for rescue and recovery*  
 1448 *operations and fire fighting.*

1449 *B. No work other than rescue and recovery work and fire fighting may be attempted or started until*  
 1450 *and unless it is authorized by the Department.*

1451 *C. If an explosion occurs in an underground mine, the fan shall not be reversed except by authority*  
 1452 *of the officials in charge of rescue and recovery work, and then only after a study of the effect of*  
 1453 *reversing the fan on any persons who may have survived the explosion and are still underground.*

1454 *D. The Department shall make available all the facilities at its disposal in effecting rescue and*  
 1455 *recovery work. The Director shall act as consultant, or take personal charge, where in his opinion the*  
 1456 *circumstances of any mine explosion, fire or other accident warrant.*

1457 *E. The orders of the official in charge of rescue and recovery work shall be respected and obeyed by*  
 1458 *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 operators of mineral mines. Changes in the plan shall be published promptly when made and furnished to all operators of mines.*

*§ 45.1-161.292:51. 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 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 will 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 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 operator 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.*

*§ 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.*

*§ 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.*

#### *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 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 violation of this Act, (ii) respond to and investigate any serious personal injury or fatality, and (iii) with the consent of the 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.

§ 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 (§ 9-6.14:7.1 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.

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.

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

Prior to commencing 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 commencing 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 Act, 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.

§ 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.

§ 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.

§ 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 Act.

§ 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.

§ 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.

§ 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 Act discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the number of accidents and injuries occurring in and about the mine since the previous inspection, and all other facts and information of public interest concerning the condition of the mine as may be useful and proper.

B. The mine inspector shall deliver one copy of the certificate of inspection to the operator, agent or mine foreman, and one copy to the employees' safety committee where applicable; and shall post one copy at a prominent place 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.

#### 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 provision of this Act 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 operator, his agent, or mine foreman.

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 § 9-6.14:11, 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 § 9-6.14:12. The formal hearing shall be presided over by a hearing officer pursuant to § 9-6.14:14.1, 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 4 (§ 9-6.14:15 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.

§ 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 Act 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 operator of the mine or his agent or the mine foreman.

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 or operator of the mine shall not be entitled to administrative review of such decision. The owner or operator of any mine or part thereof for which a closure order has been issued may, within 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 of the mine for which it was issued.

§ 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.

§ 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 Act 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, to be granted upon finding by a preponderance of the evidence that (i) a history of noncompliance at the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act or (ii) a history of the issuance of closure orders for the mine or mines operated by the person demonstrates that he is not able or willing to operate a mine in compliance with the provisions of this Act.

§ 45.1-161.292:67. Violations; penalties.

Any person convicted of willfully violating any provisions of this Act or any regulation promulgated pursuant to this Act, unless otherwise specified in this Act, shall be guilty of a Class 1 misdemeanor.

§ 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 Act 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.

§ 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.

§ 45.1-161.292:70. Reports of violations.

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

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

C. The 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 the mine site, 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 Act.

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this Act 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 operator of the mine or his agent. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.).

#### 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 Board of Mineral Mining Examiners. The Director shall establish the curriculum and teaching materials for the training programs, which shall be consistent with the requirements of the federal mine safety law where feasible.

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

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

§ 45.1-161.292:72. 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.

§ 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 2 (~~§ 45.1-161.7 et seq.~~) 14.4:1 (~~§ 45.1-292:1 et seq.~~).

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

A. The Director shall promulgate regulations requiring 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 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 ~~§ 45.1-161.64~~ 45.1-161.292:37, which show

the mine workings and projected mine workings which are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. 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 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 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.

§ 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 2 (~~§ 45.1-161.7 et seq.~~) 14.4:1 (~~§ 45.1-292:1 et seq.~~).

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

A. The Director shall promulgate regulations requiring 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 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 ~~§ 45.1-161.64~~ 45.161.292:37, which show the mine workings and projected mine workings which are within 500 feet of the well. The operator shall simultaneously mail copies of such notice, maps and plans by certified mail, return receipt requested, to the well operator and the Gas and Oil Inspector. 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 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 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.

§ 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 ~~§ 45.1-161.81~~ 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.

#### CHAPTER 14.7.

##### RIGHTS OF ADJACENT OWNERS OF LAND ADJACENT TO COAL MINES.

§ 45.1-161.310. Consent required before working mine near land of another.

No owner or tenant of any land containing coal, ~~or 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.

§ 45.1-161.311. 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~~ coal, on or in which a mine is opened and worked, or his agent, shall permit any person interested in or having title to any land or mineral rights coterminal with that in which such mine is located, 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 § 45.1-161.310 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.

#### CHAPTER 14.7:1.

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

§ 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.

§ 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.

#### CHAPTER 18.

#### COAL MINING REFUSE PILES, WATER AND SILT RETAINING DAMS.

§ 45.1-225. Definitions.

For the purpose of this chapter, the term

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

(e) "Refuse" means waste material resulting from a mining operation of coal or other minerals.

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

(d) "Water;" as used in this chapter, means water used in mining operations.

#### CHAPTER 18.1.

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

§ 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 operator or his agent.*

*C. The designs, construction specifications, and other related data approved and certified in accordance with subsection C of this section shall be submitted for approval to the Director. If the submittal is approved by the Director, he shall notify the operator in writing. If he disapproves, he shall notify the 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.*

*§ 45.1-225.2. Examination of dams and refuse piles; potentially hazardous conditions; plans to be submitted by 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 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 operator or his agent. Such records shall be kept on the surface at the office or designated station of the mine.*

*D. The 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 operator shall obtain approval of such changes or modifications from the Director.*

*§ 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.*

**2. That § 45.1-161.22, Article 4 (§§ 45.1-161.42 through 45.1-161.56) of Chapter 14.2 of Title 45.1, and § 45.1-161.104 of the Code of Virginia are repealed.**

**3. That for the purposes of any regulations promulgated under Chapter 14.1, 14.2, 14.5 or 14.6 that relate to mineral mining and that employ the term "competent person" as defined in § 45.1-161.8, such definition shall remain in effect until the Department of Mines, Minerals and Energy promulgates new regulations or amends existing regulations that specifically address the duties of a competent person.**

**4. That the regulations of the Board of Mineral Mining Examiners and the Department of Mines, Minerals and Energy in effect on the effective date of this act related to mineral mine safety and health that were promulgated under Chapter 14.2 of Title 45.1 shall be deemed to be regulations properly promulgated under Chapter 14.4:1 of this act. Regulations of the Department of Mines, Minerals and Energy in effect on the effective date of this act related to mineral mine refuse piles or water or silt retaining dams that were promulgated under Chapter 18 of Title 45.1 shall be deemed to be regulations properly promulgated under Chapter 18.1 of this act.**