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HOUSE BILL NO. 1175

Offered January 26, 1998

A BILL to amend and reenact §§ 45.1-161.292:2, 45.1-161.292:4, 45.1-161.292:7, 45.1-161.292:8, 45.1-161.292:15, 45.1-161.292:26, 45.1-161.292:30, 45.1-161.292:32, 45.1-161.292:33, 45.1-161.292:35 through 45.1-161.292:38, 45.1-161.292:44, 45.1-161.292:46, 45.1-161.292:47, 45.1-161.292:49, 45.1-161.292:50, 45.1-161.292:51, 45.1-161.292:55, 45.1-161.292:56, 45.1-161.292:62, 45.1-161.292:63, 45.1-161.292:64, 45.1-161.292:66, 45.1-161.292:70, 45.1-161.292:71, 45.1-161.294, 45.1-161.296, 45.1-161.305, 45.1-161.307, 45.1-225.1, and 45.1-225.2 of the Code of Virginia and to amend the Code of Virginia by adding in Article 9 of Chapter 14.4:1 a section numbered 45.1-161.292:73, relating to mineral mining.

Patrons—O'Brien, Abbitt, Armstrong, Bennett, Bryant, Byron, Clement, Hall, Hargrove, Ingram, Kilgore, Shuler and Ware; Senators: Bolling, Hawkins, Holland, Marye, Norment, Reasor, Whipple and Woods

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Referred to Committee on Mining and Mineral Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-161.292:2, 45.1-161.292:4, 45.1-161.292:7, 45.1-161.292:8, 45.1-161.292:15, 45.1-161.292:26, 45.1-161.292:30, 45.1-161.292:32, 45.1-161.292:33, 45.1-161.292:35 through 45.1-161.292:38, 45.1-161.292:44, 45.1-161.292:46, 45.1-161.292:47, 45.1-161.292:49, 45.1-161.292:50, 45.1-161.292:51, 45.1-161.292:55, 45.1-161.292:56, 45.1-161.292:62, 45.1-161.292:63, 45.1-161.292:64, 45.1-161.292:66, 45.1-161.292:70, 45.1-161.292:71, 45.1-161.294, 45.1-161.296, 45.1-161.305, 45.1-161.307, 45.1-225.1, 45.1-225.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 9 of Chapter 14.4:1 a section numbered 45.1-161.292:73 as follows:

§ 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

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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 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.

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

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

"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.

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

"Intake air" means air that has not passed through the last active working place of the split or by the unsealed entrances to abandoned areas and by analysis contains not less than 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 chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.), any other person.

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

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

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

"Mine fire" means an unplanned fire not extinguished within 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 Mineral Mining Examiners.

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

and other applicable laws.

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

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

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

"Mineral Mine Safety Act" or "Act" shall mean this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) 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 inby the last open crosscut.

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

§ 45.1-161.292:4. Special safety rules.

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

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

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

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

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

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

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

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

§ 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~~ *nine* members. One member shall be the Director of the Division of Mineral Mining, and ~~six~~ *eight* members shall be appointed by the Governor. Two appointed members shall be miners with at least five years *of* 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. *One appointed member shall be an employee of an independent contractor who performs work at a mine in the Commonwealth and who has at least two years of experience 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) *licensed* 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~~ *a licensed* 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~~ *a licensed* 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~~*a licensed* operator of an underground mineral mine in the Commonwealth at the time of appointment. *One appointed member shall be an individual with at least two years of experience with an independent contractor performing work at a mine in the Commonwealth and who is (i) an officer or director of a corporation operating as an independent contractor, (ii) a general partner in a partnership operating as an independent contractor, or (iii) an employee, in a managerial or supervisory capacity, of an independent contractor.* 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.

§ 45.1-161.292:26. 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 chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) or any other mineral mining law of the Commonwealth; (iv) used any controlled substance without the prescription of a licensed physician; or (v) other sufficient cause.

B. The 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) *an independent contractor working at such mine; or (iv)* ten persons ~~employed~~ *working* at the mine at which such person is employed, or, if less than ten persons are ~~employed~~ *working* at the mine, a majority of the ~~employees of~~ *workers at* 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.

§ 45.1-161.292:29. Foreman certification.

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

B. Applicants for a foreman certificate shall have had at least five years of experience at mineral mining or other experience deemed appropriate by the 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.

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

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

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

A. No person shall engage in the operation of any mineral mine within this Commonwealth without first obtaining a license from the Department. A license shall be required prior to commencement of the operation of a mine. A separate license shall be secured for each mine operated. Licenses shall be in such form as the Director may prescribe. The license shall be posted in a conspicuous place near the main entrance to the mine. The Director may transfer a license to a successor operator, provided that the successor operator has complied with the requirements of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.). Every change in ownership of a mine shall be reported to the Department as provided in subsection 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 *licensed* operator shall notify the Department, in writing, of such change.

§ 45.1-161.292:32. Application for license.

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

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

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

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

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

4*5*. Such information required by the Department that is relevant to an assessment of the safety and health risks likely to be associated with the operation of the mine; and

~~5~~*6*. For any license renewal, the annual report required pursuant to § 45.1-161.292:35.

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

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

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

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

in an imminent danger to miners.

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

C. The Director may revoke every license issued to any person for the operation of a mineral mine and may deny every application by a person for the issuance of a license for the operation of a mineral mine, who has been convicted of violating subsection A of § 45.1-161.292:50 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.

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

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

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

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

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

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

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

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

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

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

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

A. Prior to commencing mining activity, the *licensed* operator of a mineral mine, or his agent, shall make, or cause to be made, unless already made and filed, an accurate map of such mine, on a scale to be stated thereon of 100 to 400 feet to the inch. Such map shall show the openings or excavations, the shafts, slopes, entries and airways, with darts or arrows showing direction of air currents, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and such portions of such mine or mines as may have been abandoned, and so much of the property lines and the outcrop of the mineral of the tract of land on which the mine is located, as may be within 1,000 feet of any part of the workings of such mine, and for underground mines only, the general inclination of the mineral strata. The *licensed* operator shall annually, beginning on the anniversary date of the mine permit issued

pursuant to Chapter 16 (§ 45.1-180 et seq.), while the mine is in operation, cause the map thereof to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described above, and shall forward the same to the Department to be kept on record, subject to the conditions stated in subsection C. If there are no changes in the information required by this section, an updated map shall not be required to be submitted to the Department.

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

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

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

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

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

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

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

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

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

§ 45.1-161.292:47. Mine Rescue Fund.

The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from *licensed* operators pursuant to the provisions of § 45.1-161.292:46 shall be paid into the Mine Rescue Fund. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, ten percent of the fund shall be transferred from the fund to the Department for purposes of administering the state-designated mine rescue team program. On an annual basis, funds in excess of the sum which is transferred for administrative purposes shall be

divided equally among all state-designated mine rescue teams. No moneys in the Mine Rescue Fund shall revert to the general fund.

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

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

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

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

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

A. If an explosion or mine fire occurs in a mine, *(i) the independent contractor shall notify the licensed operator and (ii)* the *licensed* 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 Director shall act as consultant, or take personal charge, where in his opinion the circumstances of any mine explosion, fire or other accident warrant.

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

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

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

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

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

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

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

§ 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. *Risk assessments shall be developed for both independent contractors and individual mine sites.*

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

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

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

§ 45.1-161.292:62. Certificates of inspection.

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

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

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

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

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

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

D. The notice of violation shall be deemed to be the final order of the Department and not subject to review by any court or agency unless, within twenty days following its issuance, the person to whom the notice of violation has been issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § 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 chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) has occurred, which creates an imminent danger to the life or health of persons in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, as may be necessary to preserve the scene of such accident during the investigation of the accident; (iii) a mine is operating without a license, as provided by § 45.1-161.292:30; or (iv) an operator to whom a notice of violation was issued has failed to abate the violation cited therein within the time period provided in such notice for its abatement; however, a closure order shall not be issued for failure to abate a violation during the pendency of an administrative appeal of the issuance of the notice of violation as provided in subsection D of § 45.1-161.292:63. In addition, a technical specialist may issue a closure order upon discovering a violation creating an imminent danger.

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

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

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

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

§ 45.1-161.292:66. Injunctive relief.

A. Any person violating or failing, neglecting or refusing to obey any closure order may be compelled in a proceeding instituted by the Director in any appropriate circuit court to obey same and to comply therewith by injunction or other appropriate relief.

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

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

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14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.).

§ 45.1-161.292:70. Reports of violations.

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

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

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

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter and Chapters 14.5 (§ 45.1-161.293 et seq.) and 14.6 (§ 45.1-161.304 et seq.) which is reported and the results of any investigation. The Department shall give a copy of the complaint form, with the identity of the person making the report being omitted or deleted, to the *licensed* operator of the mine or his agent *and to any independent contractor who is alleged to have committed the violation*. The Department shall not disclose the identity of any person who reports an alleged violation to the owner or operator of the mine or his agent, or to any other person or entity. Information regarding the identity of the person reporting the violation shall be excluded from access under the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.).

§ 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~~ *section*. Nothing contained herein shall prevent an operator or any other person from administering a state-approved training program.

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

A. Each operator shall have a plan containing the following programs: training for new miners, training for newly-employed experienced miners, training for miners for new tasks, annual refresher training, and hazard training.

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

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

A. The Director shall promulgate rules and regulations, in accordance with the provisions of Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act, necessary to ensure the safety and health of miners and other persons and property at underground mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to underground mineral mines shall establish requirements:

1. For protecting miners from general risks found at underground mineral mines and mining;

2. For the provisions and use of personal protection equipment and devices for the head, feet, hands, and body;

3. For the maintenance, operation, storage, and transportation of mechanical or electrical equipment, devices, and machinery used in the underground mining of minerals;

4. For controlling unstable roof, rib, wall and other ground conditions;

5. For the handling and storage of combustible materials, including requirements for emergency plans, fire fighting and emergency rescue, fire prevention and safety features on mine equipment, fire safety in mine structures and other areas, and other flame and spark hazards;

6. For the control of exposure to airborne contaminants and excessive noise levels;

7. For adequate air quality through ventilation and other appropriate measures;

8. For the safe storage, transportation, and use of explosive and blasting devices;

9. For the safe design, operation, maintenance, and inspection of drilling equipment;

10. For the construction, installation, maintenance, use and inspection of boilers, air compressors, and compressed gas systems;

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

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

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

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

15. For the safe design and operation of chutes;

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

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

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

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

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

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

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

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

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

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

A. The Director shall promulgate rules and regulations, in accordance with Article 2 (§ 9-6.14:7.1 et seq.) of the Administrative Process Act, necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to surface mineral mines shall establish requirements:

1. For protecting miners from general risks found at surface mineral mines;

2. For the provision and use of personal protection equipment;

3. For controlling unstable ground conditions;

4. For the handling and storage of combustible materials, including requirements for emergency plans, fire-fighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;

5. For controlling exposure to airborne toxic contaminants;

6. For safe storage, transportation, and use of explosives and blasting devices;

7. For the safe design, operation, maintenance, and inspection of drilling equipment;

8. For the construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;

9. For the safe design, operation, maintenance, and inspection of mobile equipment;

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

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

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

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

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

15. *For the actions of certified and competent persons; and*

16. For the design, construction, maintenance, inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

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

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

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

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

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

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

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

1. Is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and

2. Has a storage volume of fifty acre-feet or more; or

3. Is designed to impound water or silt to a height of twenty feet or more, regardless of storage volume.

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

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

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

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

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

1. Remove all persons from the area which may reasonably be expected to be affected by the potentially hazardous condition;

2. Eliminate the potentially hazardous condition; and

3. Notify the Director.

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

D. The *licensed* operator of each mineral mine on which a water and silt retaining dam is located shall adopt a plan for carrying out the requirements of subsections A and B of this section. The plan shall be submitted for approval to the Director on or before October 31, 1974. The plan shall include:

1. A schedule and procedures for inspection of the retaining dam by a qualified person;

2. Procedures for evaluating potentially hazardous conditions;

3. Procedures for removing all persons from the area which may reasonably be expected to be affected by the potentially hazardous conditions;

4. Procedures for eliminating the potentially hazardous conditions;

5. Procedures for notifying the Director; and

6. Any additional information which may be required by the Director.

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

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