

# MINERAL MINE SAFETY LAWS OF VIRGINIA

2022 EDITION



Issued by  
Department of Energy



# MINERAL MINE SAFETY LAWS OF VIRGINIA

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Department of Energy

Reprinted from the Code of Virginia  
and the 2022 Supplement



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# MINERAL MINE SAFETY LAWS OF VIRGINIA

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## TITLE 45.1.

### MINES AND MINING.

Section

45.1-1 through 45.1-400.

#### §§ 45.1-1 through 45.1-400.

Repealed by Acts 2021, Sp. Sess. I, c. 387, cl. 11, effective October 1, 2021.

#### **Cross references.**

For present provisions as to Mines and Mining, see Title 45.2 (§ 45.2-100 et seq.).

#### **Editor's note.**

Acts 2021, Sp. Sess. I, c. 387 repealed and recodified former Titles 45.1 and 67 as Title 45.2. Where appropriate, the historical citations to former sections have been added to corresponding new sections.

At its 1966 session the General Assembly, by Acts 1966, c. 594, repealed Title 45 and enacted

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

Acts 1984, c. 590, which added Article 1 of Chapter 1 and Chapters 25 and 26 and enacted, amended, and repealed other sections of Title 45.1, are effective Jan. 1, 1985.

Chapters 1 through 14 of Title 45.1 were previously repealed by Acts 1994, c. 28.



**TITLE 45.2.**  
**MINES, MINERALS, AND ENERGY.**

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**SUBTITLE I.**  
**ADMINISTRATION.**

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**CHAPTER 1.**  
**ADMINISTRATION.**

**Article 1. Department of Energy.**

Section

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**Article 1.**  
**Department of Energy.**

**§ 45.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:  
“*Chief*” means the Chief of the Division of Mines of the Department of Energy.

“*Department*” means the Department of Energy.

“*Director*” means the Director of the Department of Energy.

“*State Geologist*” means the Commissioner of Mineral Resources and State Geologist appointed pursuant to § 45.2-107.

**History.**

1984, c. 590, § 45.1-1.2; 1994, c. 28, § 45.1-161.1; 2021, Sp. Sess. I, cc. 387, 532.

**Transition provisions.**

Acts 2021, Sp. Sess. I, c. 387 recodified former Titles 45.1 and 67 as Title 45.2. Where appro-



appropriate, the historical citations to former sections have been added to corresponding new sections. The case notes appearing under new sections were decided under corresponding former sections or under prior law. In addition to revision by Acts 2021, Sp. Sess. I, c. 387, Titles 45.1 and 67, were also amended by other acts passed at the 2021 Regular and Special Session I. As required by § 30-152, the Virginia Code Commission has incorporated the majority of these amendments into the new sections.

Acts 2021, Sp. Sess. I, c. 387, cl. 2 provides: “That whenever any of the conditions, requirements, provisions, or contents of any section or chapter of Title 45.1, Title 67, or any other title of the Code of Virginia as such title existed prior to October 1, 2021, are transferred in the same or modified form to a new section or chapter of Title 45.2 or any other title of the Code of Virginia and whenever any such former section or chapter is given a new number in Title 45.2 or any other title, all references to any such former section or chapter of Title 45.1, Title 67, or any other title appearing in the Code of Virginia shall be construed to apply to the new or renumbered section or chapter containing such conditions, requirements, provisions, contents, or portions thereof.”

Acts 2021, Sp. Sess. I, c. 387, cl. 3 provides: “That the regulations of any department or agency affected by the revision of Title 45.1 or such other titles of the Code of Virginia as are in effect on the effective date of this act shall continue in effect to the extent that they are not in conflict with this act and shall be deemed to be regulations adopted under this act.”

Acts 2021, Sp. Sess. I, c. 387, cl. 4 provides: “That the provisions of § 30-152 of the Code of Virginia shall apply to the revision of Title 45.1 and repeal of Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia so as to give effect to other laws enacted by the 2021 Session of the General Assembly, notwithstanding the delay in the effective date of this act.”

Acts 2021, Sp. Sess. I, c. 387, cl. 5 provides: “That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect any act or offense done or committed, any penalty incurred, or any right established, accrued, or accruing on or before such date, or any proceeding, prosecution, suit, or action pending on that date. Except as otherwise provided in this act, neither the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), § 62.1-195.1 and 62.1-

195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, nor the enactment of Title 45.2 shall apply to offenses committed prior to October 1, 2021, and prosecution for such offenses shall be governed by the prior law, which is continued in effect for that purpose. For the purposes of this enactment, an offense was committed prior to October 1, 2021, if any of the essential elements of the offense occurred prior thereto.”

Acts 2021, Sp. Sess. I, c. 387, cl. 6 provides: “That any notice given, recognizance taken, or process or writ issued before October 1, 2021, shall be valid although given, taken, or to be returned to a day after such date, in like manner as if Title 45.2 had been effective before the same was given, taken, or issued.”

Acts 2021, Sp. Sess. I, c. 387, cl. 7 provides: “That if any clause, sentence, paragraph, subdivision, or section of Title 45.2 shall be adjudged in any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or section thereof directly involved in the controversy in which the judgment shall have been rendered, and to this end the provisions of Title 45.2 are declared severable.”

Acts 2021, Sp. Sess. I, c. 387, cl. 8 provides: “That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any loan agreement or other contract, or any right established or accrued under such loan agreement or other contract, that existed prior to such repeal.”

Acts 2021, Sp. Sess. I, c. 387, cl. 9 provides: “That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective October 1, 2021, shall not affect the validity, enforceability, or legality of any properly recorded deed that was recorded prior to such repeal.”

Acts 2021, Sp. Sess. I, c. 387, cl. 10 provides: “That the repeal of Chapter 6.1 (§§ 11-34.1 through 11-34.4) of Title 11, Title 45.1 (§§ 45.1-161.1 through 45.1-399), §§ 62.1-195.1 and 62.1-195.3, and Title 67 (§§ 67-100 through 67-1700) of the Code of Virginia, effective as of October 1, 2021, shall not affect the validity, enforceability, or legality of any bond or other debt obligation authorized, issued, or outstanding prior to such repeal.”

Acts 2021, Sp. Sess. I, c. 387, cl. 12 provides: “That the provisions of this act shall not affect the existing terms of persons currently serving as members of any agency, board, authority, commission, or other entity and that appointees currently holding positions shall maintain their terms of appointment and continue to serve until such time as the existing terms might expire or become renewed. However, any new appointments made on or after October 1, 2021, shall be made in accordance with the provisions of this act.”

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.1 from which this section is derived. Pursuant to § 30-152, the 2021, Sp. Sess. I amendments have been given effect in this section by substituting “Department of Energy” for “Department of Mines, Minerals and Energy” throughout the section.

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-101. Certified mail; subsequent mail or notices may be sent by regular mail.**

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

**History.**

2011, c. 566, § 45.1-161.1:1; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-102. Department of Energy; appointment of Director.**

The Department of Energy is established in the executive branch within the Secretariat of Commerce and Trade. The Department shall be headed by a Director who shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor for a term coincident with the Governor’s term.

**History.**

1984, c. 590, § 45.1-1.1; 1994, c. 28, § 45.1-161.2; 2021, Sp. Sess. I, cc. 387, 532.

the amendment by c. 532 has been given effect in this section by substituting “Department of Energy” for “Department of Mines, Minerals and Energy.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.2 from which this section is derived. Pursuant to § 30-152,

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-103. Powers of Department.**

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

1. To employ the personnel required to carry out the purposes of this title;
2. To make and enter into any contract or agreement necessary or incidental to the performance of its duties and the execution of its powers under this title, including reciprocal agreements with responsible officers of other states and

contracts with the private sector, the United States, other state agencies, and governmental subdivisions of the Commonwealth;

3. To accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department may comply with any condition and execute any agreement that is necessary, convenient, or desirable;

4. To adopt regulations necessary or incidental to the performance of its duties or execution of its powers under this title or any other provision of law. Such regulations shall be adopted by the Department, the Chief, or the Director, as appropriate, and in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; and

5. To do all acts necessary or convenient to carry out the purposes of this title.

**History.**

1984, c. 590, § 45.1-1.3; 1994, c. 28, § 45.1-161.3; 2014, c. 145; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-104. Powers and duties of Director.**

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

**History.**

1984, c. 590, § 45.1-1.4; 1994, c. 28, § 45.1-161.4; 2021, Sp. Sess. I, c. 387.

**Editor's note.**

Acts 2020, c. 973, cl. 1 provides: "That the Department of Mines, Minerals and Energy shall, in cooperation with the Department of Environmental Quality, the Department of Taxation, and the Department of Motor Vehicles, convene a working group to determine the feasibility of an electric vehicle rebate program. Other relevant stakeholders, including (i) automobile manufacturers, (ii) motor vehicle dealers, (iii) electric vehicle charging network representatives, (iv) electric vehicle manufacturers, (v) environmental organizations, and (vi) energy utility organizations, shall be invited to participate in such working group. Such working group shall (a) review potential methods of structuring and administering an electric vehicle rebate program, (b) review funding opportunities available to facilitate

such a rebate, (c) evaluate the vehicle sales data in states in which an electric vehicle rebate program has been implemented before and after such implementation, and (d) determine the ideal metrics for an electric vehicle rebate program. Any recommendations issued by such working group shall be guided by the following parameters: (1) no program shall authorize rebates of more than \$4,500 for individual consumer purchases of qualified zero-emission vehicles; (2) the program may include incentives for individuals with an income below 300 percent of the federal poverty guidelines; (3) the program shall allow both online and paper applications; and (4) the program, if properly funded, will be operational no later than December 30, 2021. The working group shall issue a report on the work completed by the working group and the recommendations of the working group to the General Assembly by November 1, 2020."

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-104.1. Appointment of Chief Clean Energy Policy Advisor.**

The Chief Clean Energy Policy Advisor shall be appointed by the Governor and shall be under the direction of and report to the Director.

**History.**

2021, Sp. Sess. I, c. 532.

**Editor's note.**

Acts 2021, Sp. Sess. I, c. 532, effective Octo-

ber 1, 2021, enacted § 45.1-161.4:1 from which this section is derived. Pursuant to § 30-152, the enactment by c. 532 has been given effect as this section.

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

### § 45.2-105. Establishment of divisions; division heads.

The following divisions, through which the functions, powers, and duties of the Department may be discharged, are established in the Department: a Division of Mines, a Division of Mined Land Repurposing, a Division of Geology and Mineral Resources, a Division of Gas and Oil, a Division of Mineral Mining, a Division of Renewable Energy and Energy Efficiency, and a Division of Offshore Wind. The Director may establish other divisions as he deems necessary. The Director shall appoint persons to direct the various functions and programs of each division and may delegate to the head of any division any of the powers and duties conferred or imposed by law on the Director.

#### History.

1984, c. 590, § 45.1-1.5; 1990, c. 92; 1994, c. 28, § 45.1-161.5; 2008, c. 369; 2020, c. 794; 2021, Sp. Sess. I, cc. 387, 532.

in this section by substituting “Repurposing” for “Reclamation,” “Division of Renewable Energy and Energy Efficiency” for “Division of Energy” and “The Director” for “Except as provided in § 45.1-161.15 with respect to the Chief of the Division of Mines, the Director.”

#### Editor’s note.

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.5 from which this section is derived. Pursuant to § 30-152, the amendment by c. 532 has been given effect

Acts 2021, Sp. Sess. I, c. 532, cl. 2 provides: “That the provisions of this act shall become effective on October 1, 2021.”

## OPINIONS OF THE ATTORNEY GENERAL

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

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

### § 45.2-106. Department to serve as lead agency for inspections undertaken subsequent to the issuance of a permit.

Following the issuance of any permit under Chapter 10 (§ 45.2-1000 et seq.) or 12 (§ 45.2-1200 et seq.), the Department shall serve as the lead agency for enforcement of the provisions of the permit. Any other agency that has reviewed and approved, or not disapproved, a permit application prior to its approval by the Director shall contact the Director or his designee prior to making any routine inspection. The Director or his designee shall then contact the permittee, if prior contact is to be made, to schedule the inspection and shall accompany any employee of any agency other than the Department during any inspection by such other agency. However, nothing in this section shall apply in the event of a blackwater discharge, a failure of a waste treatment facility, or any situation that in the judgment of the State Water Control Board requires an inspection on an emergency or expedited basis.

**History.**

1984, c. 188, § 45.1-1.9; 1994, c. 28, § 45.1-161.6; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Article 2.**

**Division of Geology and Mineral Resources.**

**§ 45.2-107. Division of Geology and Mineral Resources; State Geologist.**

There is established in the Department a Division of Geology and Mineral Resources. The Director shall appoint a geologist of established reputation as the Commissioner of Mineral Resources and State Geologist to serve as chief executive and head officer of the Division. As used in this article, unless the context requires a different meaning, "Division" means the Division of Geology and Mineral Resources.

**History.**

1984, c. 590, § 45.1-383; 2008, c. 369; 2021, Sp. Sess. I, c. 387.

**Editor's note.**

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

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

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

Acts 2021, Sp. Sess. I, c. 532, amended § 45.1-383, from which this section is derived. Since the amendments had been incorporated by Acts 2021, Sp. Sess. I, c. 387, the amendments by c. 532 were not given effect.

**§ 45.2-108. General powers and duties of State Geologist.**

The State Geologist shall exercise those powers and perform those duties, in relation to mineral resources, geology, and geophysical matters, that are conferred or imposed upon the Director by the provisions of this title, including powers and duties delegated to him by the Director. The State Geologist may also exercise and perform such other powers and duties as are lawfully delegated to him and such powers and duties as are conferred or imposed upon him by law.

**History.**

1984, c. 590, § 45.1-384; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-109. Using or revealing proprietary information.**

Notwithstanding any provision of law to the contrary, neither the State Geologist nor any employee or agent of the Division shall make use of or reveal

any proprietary information or statistic gathered from any source for any purpose other than that of this chapter, except with the express written consent of the source of such information or statistic. The State Geologist shall not reveal such information to the Director or any other employee of the Department who is not employed within the Division.

**History.**

1984, c. 590, § 45.1-385; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-110. Powers and duties of the Division.**

The Division has the following powers and duties:

1. Examination of the geological formations of the Commonwealth and the resources contained therein, with special reference to both economic products and energy resources, including coal, ore, clay, feldspar, lime, natural gas, oil, cement, sand and gravel, stone, materials suitable for use in building and road construction, mineral water, other mineral substances, and geothermal energy resources.

2. Examination of latent resources and waste minerals to determine the best methods of utilizing them and study of the soils and weathered residuum as related to parent rock.

3. Maintenance of repositories for representative rock and mineral materials from various wells, mines, excavations, and naturally occurring exposures.

4. Maintenance of records and statistics of the mineral industry and geological conditions of the Commonwealth.

5. Performance of chemical and physical tests, including test borings, to acquire subsurface information relative to mineral deposits masked by soils and rock overburden.

6. Examination of the physical features of the Commonwealth with reference to their practical bearing upon the occupation and well-being of the people.

7. Preparation of special geological and economic maps and displays to illustrate the resources of the Commonwealth.

8. Preparation of regular and special reports, with necessary illustrations and maps, that embrace both a general and detailed description of the geology and mineral resources of the Commonwealth.

9. Consideration of such other scientific and economic questions that in the judgment of the Director are deemed of value to the people of the Commonwealth.

10. Arrangement for the investigation and reporting of the geology of the Commonwealth with the Director or the representative of the United States Geological Survey (USGS) in regard to cooperation between the USGS and the Department in topographic and geologic work when deemed necessary and of advantage to the Commonwealth. The Director may accept or reject the work of the USGS.

11. Participation in matters requiring advice and guidance sought by state agencies and institutions concerning geological and mineral resources as related to state lands.

12. Provision of basic research and the development of methods utilized in the determination of characteristics, structure, and origin for geological formations and economic mineral deposits.

**History.**

1984, c. 590, § 45.1-386; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

**§ 45.2-111. Publication of reports.**

The Director may direct the publication of the reports of the Division, with proper illustrations and maps, and the reports shall be distributed as the interests of the Commonwealth and of science indicate.

**History.**

1984, c. 590, § 45.1-387; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

**§ 45.2-112. Disposition of materials that have served purpose of the Division.**

Materials collected after having served the purpose of the Division shall be distributed to the educational institutions of the Commonwealth in the manner that the Director determines to be of the greatest advantage to the educational interests of the Commonwealth.

**History.**

1984, c. 590, § 45.1-388; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

**§ 45.2-113. Immunity from prosecution for trespass.**

No criminal action for trespass shall lie against the State Geologist or any agent or employee of the State Geologist pursuant to any lawful act done in the performance of his duties, including entry upon the lands of any person for the purpose of performing such duties.

**History.**

1984, c. 590, § 45.1-389; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

## CHAPTER 4.

### PRESUMPTIONS REGARDING OWNERSHIP.

#### Section

45.2-400. Presumption that no coal, minerals, ore, or oil exists in certain lands.

45.2-401. Actions to extinguish certain claims.

45.2-402. Presumption regarding use of underground space.

#### § 45.2-400. Presumption that no coal, minerals, ore, or oil exists in certain lands.

A. Subject to the provisions of subsection B, in any case in which either (i) a claim to coal, minerals, ore, oil, or subsurface substances in, on, or under lands in the Commonwealth or (ii) the right to enter such land for the purpose of exploring, mining, boring, and sinking shafts for such coal, minerals, ore, oil, or subsurface substances is derived or reserved by any writing made 35 years or more prior to the institution of the action pursuant to § 45.2-401, it shall be prima facie presumed that no coal, minerals, ore, oil, or subsurface substances exist in, on, or under such lands, except lands lying west of the Blue Ridge Mountains.

B. The provisions of subsection A shall apply only if (i) for a period of 35 years or more, such right to explore or mine has not been exercised, the person having such claim or right has never been charged with taxes thereon, all the taxes on the land have been charged to and paid by the person holding the land subject to such right to explore or mine, and no deed of bargain and sale of such claim or reservation in such mineral rights in the lands embraced in such claim has been recorded in the clerk's office of the county wherein the lands are located or (ii) the right to explore and mine has been exercised, the coal, minerals, ore, oil, or subsurface substances in or on the land have been exhausted, and the right of mining or boring has been abandoned for a period of 35 years or more.

#### History.

1924, p. 719; 1930, p. 721; Michie Code 1942, § 6239a; 1944, p. 48; Code 1950, § 55-154; 1956, c. 642; 1964, c. 377; 1968, c. 319; 1970, c. 350; 1972, c. 306; 1973, c. 123; 1974, c. 238; 1977, c. 309; 1980, c. 310; 1981, c. 518; 1984, c. 452; 2019, c. 712, § 45.1-161.311-9; 2021, Sp. Sess. I, c. 387.

#### Editor's note.

Act 2019, cc. 712, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2019."

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

#### CASE NOTES

##### I. DECIDED UNDER PRIOR LAW.

**Constitutionality.** —This section is not special, local, private, and, therefore, arbitrary in its classification and operation. The legislation is general and impartial in its operation on all persons and lands similarly situated. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

The fact that a law applies only to certain territorial districts does not render it unconstitutional, provided it applies to all districts and all persons who are similarly situated, and to all parts of the State where like conditions exist. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**Exceptions to provision that presumption does not apply west of Blue Ridge are**



**unconstitutional.** —Those provisions in this section which create exceptions to the general provision that the presumption concerning extinguishing mineral rights does not apply west of the Blue Ridge are unconstitutional, as a circuitous and disingenuous means of designating and providing local legislation. *Riddleberger v. Chesapeake W. Ry.*, 229 Va. 213, 327 S.E.2d 663 (1985).

**This section is a procedural statute of a remedial nature.** *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**It is a statute of repose and limitation,** founded upon a rule of convenience, policy and regard for the security of property. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**And it provides a rule of evidence for**

setting at rest titles to land when its value is reduced because of a reservation of nonexisting values therein. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**This section was not intended to destroy or impair any ownership in existing property.** *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**And it takes nothing from anyone** if the facts and circumstances establish the nonexistence of anything of value. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

**Court may not find to contrary.** —This section clearly implies that a court may not find to the contrary if there be any minerals or mineral substances of value actually in or on the land. *Love v. Lynchburg Nat'l Bank & Trust Co.*, 205 Va. 860, 140 S.E.2d 650 (1965).

### § 45.2-401. Actions to extinguish certain claims.

A. The owner or owners of land subject to a claim or right pursuant to § 45.2-400 separately or jointly may bring an action requesting the extinguishment of such claim or right. The person by whom such claim by such writing was derived or reserved, or his successors in title, shall be made a defendant by name so far as known or as defendants unknown if such successors in title are unknown. The venue for such action shall be as specified in subdivision 3 of § 8.01-261.

B. The court shall allow a period of not less than six months from the time the cause is docketed and set for hearing to elapse. During such time, the defendant may explore and discover any commercial coal, mineral, ore, oil, or subsurface substance.

C. In the absence of satisfactory evidence to the contrary, it shall be presumed that no commercial coal, mineral, ore, oil, or subsurface substance exists in or on the land, and the court shall enter an order declaring the claim or right to be a cloud on the title and releasing the land therefrom and extinguishing such claim or right. However, if the defendant or defendants prove that a commercial coal, mineral, ore, oil, or subsurface substance exists in or on the land, the court shall require such coal, mineral, ore, oil, or subsurface substance to be charged with taxes according to law.

#### History.

1924, p. 720; 1930, p. 721; Michie Code 1942, § 6239a; 1944, p. 49; Code 1950, § 55-155; 1977, c. 624; 2019, c. 712, § 45.1-161.311:11; 2021, Sp. Sess. I, c. 387.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

#### Editor's note.

Acts 2019, c. 712, recodified former § 55-155 as this section, effective October 1, 2019.

### § 45.2-402. Presumption regarding use of underground space.

A. Except as otherwise provided in the deed by which the owner of minerals derives title, the owner of minerals shall be presumed to be the owner of the

shell, container chamber, passage, or space opened underground for the removal of the minerals, with full right to haul and transport minerals from other lands and to pass people, materials, equipment, water, and air through such space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage, or space opened underground by the owner of minerals for any such purpose. The provisions of this subsection shall not affect any contractual obligation or agreement entered into prior to July 1, 1981.

B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate, unless expressly excepted by the instrument creating the mineral ownership or lease interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal.

1. Any such shell, container chamber, passage, space, or void opened underground that is within the boundaries of a mine permit issued under this title may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

2. Any such shell, container chamber, passage, space, or void opened underground that is located in a sealed mine for which a mining permit no longer exists may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved only with the consent of the owner of such shell, container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use. In determining whether an offer of compensation is reasonable, a court shall be guided by the compensation set forth in other leases for the use of mine voids as is customary in the area.

C. No provision of subdivision B 1 or 2 shall (i) affect any provision contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; (ii) alter any contract entered into prior to July 1, 2012, that provides for the payment of compensation from the lessee to the lessor expressly for the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; or (iii) have any bearing on or application to any determination of ownership rights in natural gas or coalbed methane.

#### History.

1981, c. 291, § 55-154.2; 2012, c. 695; 2019, c. 712, § 45.1-161.311:10; 2021, Sp. Sess. I, c. 387.

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

#### Editor's note.

Acts 2019, c. 712, recodified former § 55-154.2 as this section, effective October 1, 2019.

### CASE NOTES

**No retrospective application.** —Presumption of mine void ownership did not apply to deeds executed before July 1, 1981, because

nothing in the statutory language indicated a manifest legislative intent to retroactively apply the presumption of mine void ownership to

deeds executed before the date the statute was enacted. Bailey v. Spangler, 289 Va. 353, 771 S.E.2d 684 (2015) (decided under prior law).

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**SUBTITLE III.  
MINERAL MINES.**

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**PART A.  
MINERAL MINES GENERALLY.**

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**CHAPTER 11.  
MINERAL MINE SAFETY ACT.**

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**Article 1. General Provisions.**

Section

- 45.2-1100. Mineral Mine Safety Act.
- 45.2-1101. Definitions.
- 45.2-1102. Safety and health.
- 45.2-1103. Special safety rules.
- 45.2-1104. Persons permitted to work in mines; age requirements.
- 45.2-1105. Prohibited acts by miners or other persons; miners to comply with law.
- 45.2-1106. Safety materials and supplies.
- 45.2-1107. Notifying miners of violations; compliance with Act.

**Article 2. Director and Mining Inspectors.**

- 45.2-1108. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.
- 45.2-1109. Appointment and general qualifications of mine inspectors.
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- 45.2-1115. Examinations required for Mineral Mining Certifications.
- 45.2-1116. Performance of certain tasks by uncertified persons; penalty.
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- 45.2-1118. Reciprocal acceptance of other certifications.
- 45.2-1119. Renewal of certificates.
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- 45.2-1121. Reexamination.
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**Article 4. Licensing of Mineral Mines.**

- 45.2-1124. License required for operation of mineral mines; term.

## MINERAL MINE SAFETY ACT

### Section

- 45.2-1125. Fee to accompany application for license; Mineral Mine License Fund; disposition of fees.
- 45.2-1126. Application for license.
- 45.2-1127. Denial or revocation of license.
- 45.2-1128. Operating without license; penalty.
- 45.2-1129. Annual reports; condition to issuance of license following transfer of ownership.
- 45.2-1130. Notices to Department; resumption of mining following discontinuance.
- 45.2-1131. Maps of mines required to be made; contents; extension and preservation; use by Department; release; posting of map.
- 45.2-1132. When the Director may cause maps to be made; payment of expense.
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### **Article 5. Mine Rescue Teams.**

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### **Article 6. Mine Explosions; Mine Fires; Accidents.**

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- 45.2-1157. Notices of violations.
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- 45.2-1159. Tolling of time for abating violations.
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- 45.2-1165. Training programs.
- 45.2-1166. Mineral mining safety training.
- 45.2-1167. Mineral mining safety training programs.

## Article 1. General Provisions.

### § 45.2-1100. Mineral Mine Safety Act.

For purposes of this title, this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) shall be known as the Mineral Mine Safety Act.

#### History.

1997, c. 390, § 45.1-161.292:1; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1101. Definitions.

As used in the Mineral Mine Safety Act and in regulations adopted under the Act, unless the context requires a different meaning:

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

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

“*Active area*” means any place in a mine that is 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 miners in a mine.

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

“*Approved competent person*” means a person with more than two years of experience designated by the Department as having the authority to function as a mine foreman even though the person has less than five years of experience. If an approved competent person meets all the criteria for certification as a mine foreman 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 who is assigned by the operator or agent to perform a specific type of duty or to be at a specific location in the mine and 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 (i) a stranded conductor, known as single-conductor cable, or (ii) a combination of conductors insulated from one another, known as multiple-conductor cable.

*“Certified person”* means a person who holds a valid certificate from the Department authorizing him to perform the particular 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 particular 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.

*“Division”* means the Division of Mineral Mining.

*“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. 91-173, as amended by P.L. 95-164) and regulations adopted 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 electrical equipment and earth or some conducting body that serves in place of earth.

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

*“Hazardous condition”* means a condition that is likely to cause death or serious personal injury to a person exposed to such condition.

*“Imminent danger”* means the existence of any condition or practice in a mine that 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 (a) coal or minerals have not been excavated or processed or (b) work, other than examination by a certified person or emergency work to preserve the mine, has not been performed for a period of 30 days at an underground mine or for a period of 60 days at a surface mine; (ii) for which a valid license is in effect; and (iii) at which reclamation activities have not been completed.

*“Independent contractor”* means any person who 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 entrance to an abandoned area and by analysis contains at least 19.5 percent oxygen and not more than 0.5 percent carbon dioxide and does not contain a hazardous quantity of flammable gas or a harmful quantity of poisonous gas.

*“Interested persons”* means members of the mine safety committee and other duly authorized representatives of the employees at a mine, MSHA employees, mine inspectors, and, to the extent required by the Act, any other person.

*“Licensed operator”* means the operator who has obtained the license for a particular mine under § 45.2-1124.

*“Main entry”* means the principal entry or set of entries driven through the coal bed or mineral deposit and 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 that are administered as distinct units are considered separate mines. A site is not considered a mine unless the mineral extracted or excavated from it is offered for sale or exchange or used for any other commercial purpose.

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

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

*“Mine inspector”* means a public employee assigned by the Director to make mine inspections as required by the Mineral Mine Safety Act or other applicable law.

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

*“Mineral”* means clay, stone, sand, gravel, metalliferous or nonmetalliferous ore, or any other solid material or substance of commercial value excavated in solid form from a natural deposit on or in the earth, exclusive of coal and any mineral that occurs naturally in liquid or gaseous form.

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

*“Mineral Mine Safety Act”* or *“the Act”* means this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) and includes any regulations adopted thereunder, where applicable.

*“Mine Safety and Health Administration”* or *“MSHA”* means the federal Mine Safety and Health Administration.

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

*“Panel entry”* means a room entry.

*“Permissible”* means any device, process, equipment, or method classified at any time as permissible by MSHA, when such classification is adopted by the Director. “Permissible” includes, unless otherwise herein expressly stated, any requirement, restriction, exception, limitation, or condition attached to such classification by MSHA.

*“Return air”* means air that has passed through (i) the last active working place on each split or (ii) an abandoned or worked-out area. No area within a panel shall be deemed abandoned until it is inaccessible or sealed.

*“Room entry”* means any entry or set of entries from which a room is turned.

*“Serious personal injury”* means any injury that (i) has a reasonable potential to cause death or (ii) is other than a sprain or strain and requires an admission to a hospital for 24 hours or more for medical treatment.

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

*“Surface mineral mine”* means (i) the pit and any other active or inactive area of surface extraction of minerals; (ii) any onsite mill, shop, loadout facility,

or related structure appurtenant to the excavation and processing of minerals; (iii) any impoundment, water or silt retaining dam, tailing pond, mine refuse pile, or other area appurtenant to the extraction of minerals from the site; (iv) any onsite surface area for the transportation or 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) any private way or road appurtenant to such area; and (vii) any area used for surface-disturbing exploration, other than by drilling or seismic testing, or for preparation of a site for surface mineral extraction activity. A site shall commence being a surface mineral mine upon the beginning of any surface-disturbing exploration activity 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 the mineral (a) is extracted for its unique or intrinsic characteristics or (b) requires processing prior to its intended use.

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

“*Underground mineral mine*” means (i) the working face and any other active or inactive area of underground excavation of minerals; (ii) any underground travel way, shaft, slope, drift, incline, or tunnel connected to such area; (iii) any onsite mill, loadout area, shop, or related facility appurtenant to the excavation and processing of minerals; (iv) any onsite surface area for the transportation or storage of minerals excavated at the site; (v) any impoundment, retention dam, tailing pond, or waste area 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) any private way or road appurtenant to such area; and (viii) any area used to prepare a site for underground mineral excavation activities. A site commences being an underground mineral mine upon the beginning of any site preparation activity other than exploratory drilling or other exploration activity and ceases to be an underground mineral mine upon completion of initial reclamation activities.

“*Work area*,” as used in Chapter 9 (§ 45.2-900 et seq.), means an area of a mine in production or being prepared for production or an area of a mine that may pose a danger to miners at such area in production or being prepared for production.

“*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 the portion of a mine encompassing all areas from the loading point of a section to and including the working faces.

#### **History.**

1997, c. 390, § 45.1-161.292:2; 1998, c. 695; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

#### **Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

Acts 2021, Sp. Sess. I, c. 532, effective October 1, 2021, amended § 45.1-161.292:2 from which this section is derived. The amendment updated the definition of “Department,” but that definition was eliminated by Acts 2021, Sp. Sess. I, c. 387 so the amendment was not given effect.



### § 45.2-1102. Safety and health.

In safety and health, all mineral miners are to be governed by the Act, Article 1 (§ 45.2-1300 et seq.) of Chapter 13, any other section of the Code relating to the safety and health of miners, and regulations adopted by the Department.

#### History.

1997, c. 390, § 45.1-161.292:3; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1103. Special safety rules.

The operator of a mine may adopt special safety rules for the safety and operation of his mine regarding the work pertaining thereto inside and outside of the mine. Such rules, however, shall not conflict with the provisions of the Act. Such rules, if established, shall be posted at some conspicuous place about the mine where they may be seen by all miners subject to such rules. In lieu of posting the rules, the operator may furnish a printed copy of such rules to each miner subject to such rules.

#### History.

1997, c. 390, § 45.1-161.292:4; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1104. Persons permitted to work in mines; age requirements.

A. No person under 18 years of age shall be permitted to work in any mine.

B. The Department shall conform to § 212 of the federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq., and federal regulations adopted pursuant to that Act with respect to any person under 18 years of age working around any mine.

C. No operator, agent, or mine foreman shall make a false statement as to the age of any person under 18 years of age applying for work in or around any mine.

#### History.

1997, c. 390, § 45.1-161.292:5; 2020, c. 804; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1105. Prohibited acts by miners or other persons; miners to comply with law.

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

B. Each miner at any mine shall comply fully with the provisions of the Act and other mining laws of the Commonwealth, including regulations adopted by the Department, that pertain to his duties.

**History.**

1997, c. 390, § 45.1-161.292:6; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1106. Safety materials and supplies.**

It is the duty of each operator or agent to keep on hand at all times at each mine, or within convenient distance of each mine, a sufficient quantity of all materials and supplies required to preserve the safety of miners working in any area in which the operator is responsible for their health and safety, as required by the Act. If for any reason the operator or agent cannot procure the necessary materials or supplies, he shall cause all miners to withdraw from the mine, or from the affected portion of the mine, until such materials or supplies are received.

**History.**

1997, c. 390, § 45.1-161.292:7; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1107. 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 the Act. Such operator and agent shall direct all miners to comply with all provisions of the Act, especially when the attention of such operator or agent is called by the Director or a mine inspector to any violation of the Act.

B. The operator of any mine or his agent shall operate at all times in full conformity with the Act and any other mining law of the Commonwealth, including any regulation of the Department. This requirement shall not relieve any other person who is subject to the provisions of the Act from his duty to comply with the requirements of the Act.

C. Nothing in the Act 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 the Act.

**History.**

1997, c. 390, § 45.1-161.292:8; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Article 2.****Director and Mining Inspectors.****§ 45.2-1108. Affiliations of Department personnel with labor union, mining company, etc.; interest in mine; inspections of mines where inspector previously employed.**

A. Neither the Director nor any other officer or employee of the Department shall, upon taking office or being employed, or at any other time during the term of his office or employment, have any affiliation with any operating company, operators' association, or labor union or fail to comply with the

provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Neither the Director nor any other officer while in office shall be directly or indirectly interested as owner, partner, proprietor, lessor, operator, superintendent, or engineer of any mine, nor shall the Director or any other officer while in office own any stock in a corporation that owns a mine either directly or through a subsidiary.

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

**History.**

1997, c. 390, § 45.1-161.292:9; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

### § 45.2-1109. Appointment and general qualifications of mine inspectors.

A. Each mine inspector shall be appointed by the Director.

B. Each mine inspector shall (i) be at least 25 years of age; (ii) be of good moral character and temperate habits; (iii) hold a certificate as a mine foreman; and (iv) hold a certificate as a mine inspector issued prior to July 1, 2012, by the Board of Mineral Mining Examiners or on or after July 1, 2012, by the Department.

**History.**

1997, c. 390, §§ 45.1-161.292:10, 45.1-161.292:11; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

### § 45.2-1110. Qualifications of mine inspectors.

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, the application of electricity and mechanical loading in mining operations, equipment and explosives used in mining, and mine haulage.

**History.**

1997, c. 390, § 45.1-161.292:12; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

### § 45.2-1111. Duties of Director.

A. The Director shall (i) supervise the 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 (ii) perform all other duties required pursuant to the Act.

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

**History.**

1997, c. 390, § 45.1-161.292:13; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1112. Technical specialists.**

The Director may appoint technical specialists in the areas of roof control, electricity, ventilation, and other mine specialties. Each technical specialist shall have all the qualifications of a mine inspector plus any specialized knowledge required in his field. A technical specialist shall advise the Director and mine operators in the areas of his specialty and shall have the power of an inspector to issue a closure order only in a case of imminent danger.

**History.**

1997, c. 390, § 45.1-161.292:14; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Article 3.****Certification of Mineral Mine Workers.****§ 45.2-1113. Records of Board of Mineral Mining Examiners.**

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

**History.**

1997, c. 390, § 45.1-161.292:17; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1114. Certification of certain persons employed in mineral mines; powers of the Department.**

A. The Department may require certification of each person who works in a mineral mine or whose duties and responsibilities in relation to mineral mining require competency, skill, or knowledge in order to perform the tasks required of him in a manner consistent with the preservation of the health and safety of persons and property. Each of the following certificates shall be issued by the Department, and a person who holds such a certificate is authorized to perform the tasks that the Act requires to be performed by such 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 any additional tasks that the Department requires by regulation.

C. The Department may adopt regulations necessary or incidental to the performance of duties or the execution of powers conferred under this title.

Such regulations shall be adopted in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

**History.**

1997, c. 390, § 45.1-161.292:19; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1115. Examinations required for Mineral Mining Certifications.**

A. The Department may require the examination of each applicant for certification. The Department shall require the examination of each applicant for a mine inspector certification. The Department may require such other information from an applicant as necessary to ascertain competency and qualifications for each task.

B. Except as provided by the Act for a general mineral miner or surface foreman certification, the Department shall prescribe the qualifications for each type of certification. The examinations shall be conducted under conditions and regulations that the Department establishes or adopts. Such established conditions and adopted regulations shall be made a part of the permanent record of the Department, published periodically, and applied uniformly to all applicants.

C. Any certificate issued by the Department, except the general mineral miner certificate, shall be valid from the date of issuance for a period of five years unless renewed or unless revoked pursuant to § 45.2-1120. The general mineral miner certificate shall be valid from the date of issuance until it is revoked pursuant to § 45.2-1120.

**History.**

1997, c. 390, § 45.1-161.292:20; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1116. Performance of certain tasks by uncertified persons; penalty.**

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

**History.**

1997, c. 390, § 45.1-161.292:21; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

**Cross references.**

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

**Editor’s note.**

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

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1117. Examination fees; Mineral Mining Examiners’ Fund.**

A. A fee of \$10 shall be paid to the Director by each person examined before the commencement of the examination.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mining Examiners’ Fund, referred to in this section as “the Fund.” The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection A, together with moneys collected pursuant to § 45.2-1119, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. The Fund shall be administered by the Director, and moneys in the Fund shall be used solely for the purposes of payment of the cost of printing certificates and other necessary forms and the incidental expenses incurred by the Department in conducting examinations, reviewing examination papers, and conducting its other duties pursuant to this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director. The Director shall keep accounts and records concerning the receipts and expenditures of the Fund as required by the Auditor of Public Accounts.

**History.**

1997, c. 390, § 45.1-161.292:22; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

**§ 45.2-1118. Reciprocal acceptance of other certifications.**

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

**History.**

1997, c. 390, § 45.1-161.292:24; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1119. Renewal of certificates.**

The holder of any certificate issued by the Board of Mineral Mining Examiners or the Department, other than a general mineral miner certificate, may renew the certificate by successfully completing the examination for the renewal of such certificate. The Department shall establish requirements for renewal of a certificate in accordance with the procedure set forth in § 45.2-1115. The Department shall notify a certificate holder at least 180 days prior to the expiration of the certificate. Any certificate requiring renewal that is not renewed by the fifth anniversary of its issuance or of a previous renewal is invalid. As a condition to renewal, the holder shall provide the Department with all administrative information reasonably required and pay the examination fee as provided in § 45.2-1117.

**History.**

1997, c. 390, § 45.1-161.292:25; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

**§ 45.2-1120. Revocation of certificates.**

A. The Department may revoke any certificate upon finding that (i) the holder has (a) been intoxicated while on duty; (b) neglected his duties; (c) violated any provision of the Act or any other mineral mining law of the Commonwealth, including any regulation adopted by the Department; or (d) used any controlled substance without the prescription of a licensed physician or (ii) other sufficient cause exists.

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

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

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

**History.**

1997, c. 390, § 45.1-161.292:26; 1998, c. 695; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1121. Reexamination.**

The holder of a certificate revoked pursuant to § 45.2-1120 is entitled to examination by the Department after a period of three months has elapsed from the date of revocation of the certificate if he can prove to the satisfaction of the Department that the cause for revocation of his certificate has ceased to exist.

**History.**

1997, c. 390, § 45.1-161.292:27; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

**§ 45.2-1122. General mineral miner certification.**

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

B. Each applicant for a general mineral miner certificate shall prove to the Department that he has knowledge of first aid practices and has a general working knowledge of the provisions of the Act and applicable regulations pertaining to mineral mining health and safety.

**History.**

1997, c. 390, § 45.1-161.292:28; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

**§ 45.2-1123. Foreman certification.**

A. At any mineral mine where three or more persons work at the same time during any part of a 24-hour period, the licensed operator or independent contractor engaged in the extraction or processing of minerals shall employ a mine foreman. Only a person holding a foreman certificate in accordance with § 45.2-1114 shall be employed as a mine foreman. The holder of such a certificate shall present the certificate, or a copy thereof, to the operator where he is employed. Such operator shall file the certificate or its copy in the office at the mine and make it available for inspection by interested persons.

B. Every applicant for a foreman certificate shall have at least five years of experience at mineral mining, or other experience deemed appropriate by the Department, and shall demonstrate to the Department a thorough knowledge of the theory and practice of mineral mining by making a score of 85 percent



or more on the written examination. In addition, each applicant shall pass an examination in first aid approved by the Department.

C. The certified mine foreman at each mine shall examine all active workings at the beginning of each shift. Any hazard or unsafe condition shall be corrected before any miner starts work in the affected area.

D. Any independent contractor working in a mineral mine who is engaged in an activity other than the extraction or processing of minerals and is working in a clearly demarcated area where (i) no mining-associated hazard exists and (ii) no other miner travels or works while engaged in an extraction or processing activity shall employ a competent person to examine the work area of the contractor at the beginning of each shift. Any hazard or unsafe condition shall be corrected prior to any person starting work in the affected area.

**History.**

1997, c. 390, § 45.1-161.292:29; 1998, c. 695; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

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

**Editor’s note.**

Acts 2012, cc. 803 and 835, cl. 50 provides: “That the Certification Requirements for Min-

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**Article 4.**

**Licensing of Mineral Mines.**

**§ 45.2-1124. License required for operation of mineral mines; term.**

A. No person shall engage in the operation of any mineral mine within the Commonwealth without first obtaining a license from the Department. Licenses shall be in a form that the Director prescribes. The license for each mine shall be posted in a conspicuous place near the main entrance to such mine.

B. A license is required prior to commencement of the operation of a mine, and a separate license shall be secured for each mine operated. The Director may transfer a license to a successor operator so long as the successor operator has complied with the requirements of the Act. Every change in ownership of a mine shall be reported to the Department as provided in subsection D of § 45.2-1129.

C. Each license shall be valid for a period of one year following the date of issuance, and a mine operator shall secure the renewal of a license by its anniversary date.

D. Within 30 days after the occurrence of any change in the information required by subsection B, the licensed operator shall notify the Department in writing of such change.

**History.**

1997, c. 390, § 45.1-161.292:30; 1998, c. 695; 2000, c. 974; 2021, Sp. Sess. I, c. 387.

“That the provisions of this act shall become effective on October 1, 2021.”

**Editor’s note.**

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides:

**§ 45.2-1125. Fee to accompany application for license; Mineral Mine License Fund; disposition of fees.**

A. 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 of \$400 payable to the State Treasurer, except an application submitted electronically, which shall be accompanied by a fee of \$330. 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 \$100, except an application submitted electronically, which shall be accompanied by a fee of \$80. All such fees collected shall be retained by the Department and paid into the Mineral Mine License Fund created pursuant to subsection B.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Mineral Mine License Fund, referred to in this section as “the Fund.” The Fund shall be established on the books of the Comptroller. All fees collected pursuant to subsection A shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures from the Fund shall be made solely for the purpose of acquiring or providing safety equipment, safety training, or safety education or to further the safety program in the mineral mining industry. All expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

**History.**

1997, c. 390, § 45.1-161.292:31; 2003, cc. 542, 550; 2021, Sp. Sess. I, c. 387.

**Editor’s note.**

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

Acts 2020, c. 1289, Item 124 E, as amended by Acts 2021, Sp. Sess. I, c. 552, effective for the

biennium ending June 30, 2022, provides: “The application fee for a mineral mine license or a renewal or transfer of a license pursuant to § 45.1-161.292:31, Code of Virginia, shall be in the amount of \$400, except applications submitted electronically, which shall be accompanied by a fee of \$330. However, the fee for any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of \$100, except applications submitted electronically, which shall be accompanied by a fee of \$80.”

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: “That the provisions of this act shall become effective on October 1, 2021.”

**§ 45.2-1126. Application for license.**

A. Each 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 is complete unless it contains the following:

1. The identity of the applicant. The applicant shall state (i) the name and address of the mine and its federal mine identification number, (ii) the name and address of the person with overall responsibility for operating decisions at the mine, (iii) the name and address of the person with overall responsibility for health and safety at the mine, and (iv) the federal mine identification number of every other mine in which the applicant has a 20 percent or greater ownership interest;

2. If the applicant is a sole proprietorship, in addition to the information

required by subdivision 1, (i) his full name and address and (ii) the trade name, if any, and the full name, address of record, and telephone number of the proprietorship;

3. If the applicant is a partnership, in addition to the information required by subdivision 1, (i) the full name and address of each partner; (ii) the trade name, if any, and the full name and address of record and telephone number of the partnership; and (iii) the federal mine identification number of every other mine in which any partner has a 20 percent or greater ownership interest;

4. If the applicant is a corporation, in addition to the information required by subdivision 1, (i) the full name, address of record, and telephone number of the corporation and the state of incorporation; (ii) the full name and address of each officer and director of the corporation; (iii) the full name, address, and state of incorporation of the parent corporation if the corporation is a subsidiary corporation; and (iv) the federal mine identification numbers of every other mine in which any corporate officer has a 20 percent or greater ownership interest;

5. If the applicant is any organization other than a sole proprietorship, partnership, or corporation, in addition to the information required by subdivision 1, (i) the nature and type, or legal identity, of the organization; (ii) the full name, address of record, and telephone number of the organization; (iii) the name and address of each individual who has an ownership interest in the organization; (iv) the name and address of the principal organization officials or members; and (v) the federal mine identification number of every other mine in which any official or member has a 20 percent or greater ownership interest;

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

7. 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 overall responsibility for operating decisions; and (vi) the names and addresses of persons with overall responsibility for the health and safety of employees;

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

9. Any 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

10. For any license renewal, the annual report required pursuant to § 45.2-1129.

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

**History.**

1997, c. 390, § 45.1-161.292:32; 1998, c. 695;  
2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1127. 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 the agent of such applicant or operator has committed violations of the mine safety laws of the Commonwealth that 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 if such person 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 § 45.2-849.

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 if such person has been convicted of violating subsection A of § 45.2-856 or 45.2-857.

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 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 regarding the determination and shall receive additional evidence at the request of any party. The court, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

**History.**

1997, c. 390, § 45.1-161.292:33; 1998, c. 695;  
2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1128. Operating without license; penalty.**

A. In addition to any other power conferred by law, the Director or his designated representative may issue an order closing any mineral mine that is operating without a license. The procedure for issuing a closure order shall be as provided in § 45.2-1158.

B. Any person operating an unlicensed mineral mine is guilty of a Class 3 misdemeanor. Each day any person operates an unlicensed mineral mine constitutes a separate offense.

**History.**

1997, c. 390, § 45.1-161.292:34; 2021, Sp.  
Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1129. Annual reports; condition to issuance of license following transfer of ownership.**

A. The licensed operator of each mine or his agent shall annually, by February 15, mail or deliver to the Department a report for the 12 months ending prior to the preceding January 1. Such report shall state (i) the names of the licensed operator, any agent, and their officers of the mine; (ii) the amount of minerals mined; (iii) any changes in the information required to be part of the license application by subsection A of § 45.2-1126; and (iv) any other information, not of a private nature, that from time to time is required by the Department on forms furnished or approved by the Department.

B. Each independent contractor who is working or has worked at a mine during the preceding 12 months shall annually, by February 15, mail or deliver to the Department a report for the 12 months ending prior to the preceding January 1. Such report shall state (i) the independent contractor's name and Department identification number; (ii) the number of the independent contractor's employees who worked at each mine, listed by mine name and license number; (iii) the number of the independent contractor's employee hours worked at each mine, listed by mine name and license number; and (iv) the lump sum amount of wages paid by the independent contractor at each mine, if such amount is above \$1,000, listed by mine name and license number.

C. For purposes of subsection B, "independent contractor" means any (i) extraction or processing contractor, including a driller, blaster, portable crusher, or stripping or land clearing contractor; (ii) maintenance or repair contractor for mobile or stationary extraction or processing equipment, including a welder, mechanic, painter, or electrician; and (iii) construction contractor involved in mine site construction maintenance or repair, including a plant construction contractor, concrete fabricator, or equipment erector.

D. If the owner of a mine transfers 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 amount of minerals produced since the January 1 prior to the date of such transfer of ownership. No license shall be issued covering such transfer of ownership until the report is furnished.

E. All wage information contained in any report filed with the Department pursuant to this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and shall not be published or made open to public inspection in any manner revealing the employing unit's identity. However, such information may be disclosed to the Director or his authorized representative concerned with carrying out any provisions of this title. Wage data aggregated so as to not reveal the employing unit's identity shall not be exempt from such disclosure.

**History.**

1997, c. 390, § 45.1-161.292:35; 1998, c. 695; 2000, c. 974; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1130. 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 30 days, or a surface mine for a period of 60 days, to the Department at least 10 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 10 days' prior notice of intent to resume the working of an inactive mine. Except for a surface mineral mine that is inspected by MSHA, the working of such mine shall not resume until a mine inspector has inspected the mine and approved it.

C. An emergency action 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 the mine for hazardous conditions immediately before any miner is permitted to work. The licensed operator or his agent shall notify the Department as soon as possible after commencing an emergency action necessary to preserve the mine.

D. The licensed operator or his agent shall send to the Department 10 days' prior notice of any change in the name of a mine or in the name of the operator of a mine.

E. The licensed operator or his agent shall send to the Department 10 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 and location of the mine and the name, mailing address, and email address of the licensed operator.

**History.**

1997, c. 390, § 45.1-161.292:36; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1131. 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 submit, unless already submitted, an accurate map of such mine. The scale of such map shall be stated thereon and shall be between 100 feet and 400 feet to the inch. Such map shall show the openings or excavations, shafts, slopes, entries, headings, rooms, pillars, permanent explosive magazines, permanent fuel storage facilities, and airways with darts or arrows showing direction of air currents. Such map shall also show any portion of such mine that has been abandoned and any portion of the property lines and the outcrop of the mineral of the tract of land on which the mine is located that are located within 1,000 feet of any part of the workings of such mine. For an underground mine only, such map shall show the general inclination of the mineral strata.

B. The licensed operator of such mine shall annually, beginning on the anniversary date of the mine permit issued pursuant to Chapter 12 (§ 45.2-1200 et seq.) and continuing while the mine is in operation, cause such map to be extended so as to accurately show the progress of the workings, and the property lines and outcrop as described in subsection A, and shall forward such updated map to the Department to be kept on record, subject to the conditions stated in subsection D. If there are no changes in the information required by this section, the licensed operator shall not be required to submit an updated map to the Department.

C. Each map required pursuant to this section shall be filed and preserved among the records of the Department. The Department shall make such map

available at a reasonable cost to any person owning, leasing, or residing on or having an equitable interest in any surface area or coal or mineral interest within 1,000 feet of such mining operation upon written proof satisfactory to the Director and upon a sworn affidavit that such person requesting a map has the required legal or equitable interest. However, the Director shall provide to such person only that portion of the map that 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 such map be made for any person who does not possess the required legal or equitable interest 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.

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

E. Copies of the maps required pursuant to this section shall be made available at a reasonable cost to the governing body of any locality 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 any surface area or mineral interest 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 such request for a copy of a map to the licensed operator or his agent.

**History.**

1997, c. 390, § 45.1-161.292:37; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1132. When the Director may cause maps to be made; payment of expense.**

A. If a licensed mine operator or his agent neglects or fails to furnish to the Director a copy of any map or extension thereof, as provided in § 45.2-1131, the Director may cause a correct survey and map of such mine or extension to be made at the expense of the licensed operator of such mine. The expense of making such survey and map or extension thereof shall be recovered from such licensed operator as other debts are recoverable by a civil action.

B. If at any time the Director has reason to believe that a map or extension furnished pursuant to § 45.2-1131 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 and recovered from such licensed operator as other debts are recoverable by a civil action. However, if the map filed by the licensed operator is found to be substantially correct, the expense shall be paid by the Commonwealth.

**History.**

1997, c. 390, § 45.1-161.292:38; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1133. Making false statements; penalty.**

It is unlawful for any person responsible for making any map or other data to be furnished pursuant to the Act to (i) fail to correctly show, within the limits

of error, the data required or (ii) knowingly make any false statement or return in connection with such map or other data. A violation of this section is a misdemeanor, and a person convicted of violating this section shall be fined not less than \$50 and not more than \$200.

**History.**

1997, c. 390, § 45.1-161.292:39; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

## Article 5.

### Mine Rescue Teams.

#### § 45.2-1134. Mine rescue and first aid stations.

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

**History.**

1997, c. 390, § 45.1-161.292:40; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

#### § 45.2-1135. Mine rescue teams.

The Director may have trained and employed at the mine rescue and first aid stations operated by the Department within the Commonwealth the mine rescue teams that he determines necessary. Each member of a mine rescue team 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 team 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 team 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 team member at any time.

**History.**

1997, c. 390, § 45.1-161.292:41; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

#### § 45.2-1136. Duty to train team.

It is the duty and responsibility of the Department to see that every mine rescue team is properly trained by a qualified instructor of the Department or another person who has a certificate of training from the Department or MSHA.



**History.**

1997, c. 390, § 45.1-161.292:41; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1137. Qualification for team membership; direction of teams.**

A. To qualify for membership in a mine rescue team, an applicant shall (i) be an experienced miner; (ii) be 50 years of age or younger; and (iii) pass a physical examination by a licensed physician, licensed physician assistant, or licensed nurse practitioner at least annually. A record that such examination was taken shall be kept on file by the operator who employs the team member and a copy shall be furnished to the Director.

B. All rescue or recovery work performed by any mine rescue team shall be under the jurisdiction of the Department. The Department shall consult with company officials, representatives of MSHA, and representatives of the miners, and all shall 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 every instance, procedures shall be guided by the mine rescue apparatus and auxiliary equipment manuals.

**History.**

1997, c. 390, § 45.1-161.292:43; 2004, c. 855; 2006, c. 396; 2021, Sp. Sess. I, c. 387.

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

**Editor's note.**

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

Acts 2021, Sp. Sess. I, c. 387, cl. 13 provides: "That the provisions of this act shall become effective on October 1, 2021."

Acts 2004, c. 855, cl. 3 provides: "That the

**§ 45.2-1138. Team members 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 team 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 such 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 team members shall be deemed to be within the employment of the licensed operator of the mine for the purpose of workers' compensation coverage.

**History.**

1997, c. 390, § 45.1-161.292:44; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1139. Requirements of recovery work.**

A. During recovery work and prior to entering any mine, each mine rescue

team conducting recovery work shall be properly informed of existing conditions by the operator or his agent in charge.

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

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

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

E. A mine rescue team shall immediately return to the fresh air base if any team member's breathing apparatus malfunctions or the low-oxygen alarm activates.

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

**History.**

1997, c. 390, § 45.1-161.292:45; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1140. State-designated mine rescue teams.**

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

**History.**

1997, c. 390, § 45.1-161.292:46; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1141. Mine Rescue Fund.**

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Mine Rescue Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All moneys collected from licensed operators pursuant to the provisions of § 45.2-1140 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. Moneys in the Fund shall be used solely for the purposes of administering the state-designated mine rescue team program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

C. On July 1 of each year, or as soon thereafter as sufficient moneys are in the Fund, 10 percent of the moneys in 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 that is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams.

**History.**

1997, c. 390, § 45.1-161.292:47; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1142. Inspections; Mine Rescue Coordinator.**

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

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

**History.**

1997, c. 390, § 45.1-161.292:48; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1143. Workers' compensation; liability.**

A. For the purpose of workers' compensation coverage during any mine disaster to which a state-designated mine rescue team responds under the provisions of this article, each member 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. No member of a state-designated team engaging in rescue work at a mine shall 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. No 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 be liable for any civil damages for acts or omissions resulting from the rendering of such rescue work.

**History.**

1997, c. 390, § 45.1-161.292:49; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Article 6.**

**Mine Explosions; Mine Fires; Accidents.**

**§ 45.2-1144. 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. Any independent contractor shall notify the licensed operator of such incident. All facilities of the mine shall be made available for rescue and recovery operations and firefighting.

B. No work other than rescue and recovery work and firefighting shall 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 persons who might 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 officials in charge of rescue and recovery work shall be respected and obeyed by all persons engaged in rescue and recovery work.

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

**History.**

1997, c. 390, § 45.1-161.292:50; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1145. Operators' reports of accidents; investigations; reports by Department.**

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

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

C. Representatives of the operator shall render any assistance needed and act in a consulting capacity in the investigation. An employee, if so designated by the employees of the mine, shall 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 shall render a complete report of circumstances and causes of each accident investigated and make recommendations for the prevention of similar accidents. The Department shall 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 if he has been present at the investigation. The Director shall maintain a complete file of all accident reports for mineral mines. Further publicity may be ordered by the Director in an effort to prevent mine accidents.

**History.**

1997, c. 390, § 45.1-161.292:51; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1146. 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 that does not result in a lost-time injury. Copies of such report shall be given to the injured person or his designated representative to enable him to review the accident report and verify its accuracy prior to the filing of such report for the review of state or federal mine inspectors.

**History.**

1997, c. 390, § 45.1-161.292:52; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1147. Duties of mine inspectors.**

Each mine inspector shall:

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

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 any investigation and suggestions and render any assistance he deems necessary for the future safety of the employees, and he shall make a complete report to his supervisor as soon as practicable. He shall have the power to compel the attendance of witnesses and 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 supervise the reopening of any mine or section thereof that has been sealed or abandoned on account of fire or any other cause.

**History.**

1997, c. 390, § 45.1-161.292:53; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Article 7.**

**Mine Inspections.**

**§ 45.2-1148. Frequency of mine inspections.**

A. The Director shall conduct a complete inspection of each underground mineral mine at least every 180 days, and of any surface mineral mine that is not inspected by MSHA at least once per year. An additional inspection of such mineral mine shall be made when deemed appropriate by the Director based on an evaluation of risks at such mine or if requested by miners employed at a mine or the licensed operator of a mine.

B. The Director shall not conduct an inspection of a surface mineral mine

that is inspected by MSHA; however, a mine inspector or other employee of the Department may enter such mine in order to (i) respond to a complaint of a violation of the Act; (ii) respond to and investigate any serious personal injury or death; and (iii) with the consent of the licensed operator, conduct training programs.

C. The Director shall determine whether a particular surface mineral mine is inspected by MSHA. The Director shall make such determination based on information provided by MSHA and Department records.

D. The Director shall request representatives of MSHA to serve with Department personnel on a joint committee of cooperation. The committee shall include the Director of the Division and such additional Division employees as the Director designates. The committee shall meet at least twice annually at the call of the Director for the purpose of facilitating communication and resolving discrepancies regarding the inspection responsibilities of state and federal agencies with respect to surface mineral mines in the Commonwealth.

#### History.

1997, c. 390, § 45.1-161.292:54; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### CASE NOTES

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

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

### § 45.2-1149. Evaluation of risks at mines.

A. For the purpose of allocating the resources of the Department that are to be used for conducting additional inspections, the Department shall develop a procedural policy for scheduling such inspections based on an assessment, to be made at least annually, of the comparative risks at each underground mineral mine and at any surface mineral mine that is not inspected by MSHA. Such policy shall be prepared with the assistance of working groups consisting of persons knowledgeable in mine safety issues. The issuance of such policy shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. Variables that shall be included in the risk assessment measures include (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 each underground mineral mine, and at each surface mineral mine that is not inspected by MSHA, based on the rating assigned to it reflecting the assessment of its risks compared to other such mines in the Commonwealth.

**History.**

1997, c. 390, § 45.1-161.292:55; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1150. Review of inspection reports and records.**

Prior to completing an inspection of an underground mineral mine, a mine inspector shall review the most recent available report of inspection by MSHA. Prior to completing any inspection of a mine, a mine inspector shall comprehensively review the records of pre-shift examinations, on-shift exams, daily inspections, weekly examinations, and other records relating to safety and health conditions in the mine that are required to be maintained pursuant to the Act, for the 30-day period preceding the inspection. The mine inspector may, but shall not be required to, review the records for such additional period as he may deem prudent.

**History.**

1997, c. 390, § 45.1-161.292:56; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1151. 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 that is reported to or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this title and that contains or might reveal a trade secret referred to in 18 U.S.C. § 1905 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 provision of this title or any proceeding hereunder. In any such proceeding, the court or the Director shall issue any order appropriate to protect the confidentiality of trade secrets.

**History.**

1997, c. 390, § 45.1-161.292:57; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1152. 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 MSHA. To this end, the Director shall endeavor to coordinate the timing of inspections with MSHA personnel.

B. The Director and mine inspectors, to the extent deemed reasonable and prudent, shall schedule mine inspections to commence at a variety of hours of

the day and days of the week, including evening and night shifts, weekends, and holidays.

**History.**

1997, c. 390, § 45.1-161.292:58; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**CASE NOTES**

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

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

**§ 45.2-1153. 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 into any office at the site where maps or records relating to the mine are located, pursuant to the Act.

**History.**

1997, c. 390, § 45.1-161.292:59; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1154. Duties of operator.**

A. Each operator of a mine, or his agent, shall furnish to the Director and each mine inspector 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. Each operator of an underground mine, or his agent, shall provide each 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. Such operator or agent shall, when ordered to do so by a mine inspector during the course of an inspection, promptly clear the mine or section thereof of all persons.

**History.**

1997, c. 390, § 45.1-161.292:60; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1155. Duties of inspectors.**

A. During a complete inspection of any 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 might 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 oxygen deficiency and gas, in each place that he is required to inspect in an underground mine.

B. In a mine that operates more than one shift in a 24-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 might work or travel during the period the mine is an inactive mine.

C. The inspector shall make a personal examination of (i) the interior of each mine inspected and (ii) the outside of such mine where any danger to the miners might exist.

**History.**

1997, c. 390, § 45.1-161.292:61; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1156. Certificates of inspection.**

A. Upon completing a mine inspection, each mine inspector shall complete a certificate of inspection. Such certificate of inspection shall show the date of inspection, the condition in which the mine was found, a statement regarding any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) discovered during the inspection, the progress made in the improvement of the mine as such progress relates to health and safety, the numbers 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 are useful and proper.

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

C. The Department shall provide access to certificates of inspection of underground mineral mines to MSHA.

**History.**

1997, c. 390, § 45.1-161.292:62; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

## Article 8.

### Enforcement and Penalties; Reports of Violations.

**§ 45.2-1157. 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 responsible for the violation. Each notice of violation shall be in writing, shall describe with particularity the nature of the violation, including a reference to the provision of the Mineral Mine Safety Act or the appropriate regulation violated, and shall include an order of abatement and set a reasonable time for abatement of the violation.

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

C. Upon a finding by the mine inspector of the completion of the action required to abate such 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 the final order of the Department and shall not be subject to review by any court or agency unless, within 20 days following its issuance, the person to whom the notice of violation was issued appeals its issuance by notifying the Department in writing that he intends to contest its issuance. The Department shall conduct informal conference or consultation proceedings, presided over by the Director, pursuant to § 2.2-4019, unless the person and the Department agree to waive such a conference or proceeding to go directly to a formal hearing. If such a conference or proceeding is waived, or if it fails to dispose of the case by consent, the Department shall conduct a formal hearing pursuant to § 2.2-4020. The formal hearing shall be presided over by a hearing officer pursuant to § 2.2-4024, who shall recommend findings and an initial decision, which shall be subject to review and approval by the Director. Any party aggrieved by and claiming unlawfulness of such decision is entitled to judicial review pursuant to Article 5 (§ 2.2-4025 et seq.) of the Administrative Process Act.

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

**History.**

1997, c. 390, § 45.1-161.292:63; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1158. Closure orders.**

A. The Director or a mine inspector shall issue a closure order requiring that a mine or section thereof be cleared of all persons, or that equipment be removed from use, and refusing further entry into the mine of any person except a person who is necessary to correct or eliminate a hazardous condition when (i) a violation of the Act has occurred and creates an imminent danger to the life or health of any person in the mine; (ii) a mine fire, mine explosion, or other serious accident has occurred at the mine, making it 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 § 45.2-1124; 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 § 45.2-1157. 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 (i) the licensed operator of the mine, his agent, or the mine foreman and (ii) any independent contractor working in the area of the mine affected by the closure order.

C. Upon a finding by the mine inspector of the abatement of the violation creating the hazardous condition pursuant to which a closure order was issued as provided in clause (i) of subsection A, or the 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 the abatement of the violation for which the notice of violation was issued as provided in clause (iv) of subsection A, the Director or mine inspector shall issue a notice of correction, copies of which shall be delivered as provided in subsection B.

D. The issuance of a closure order shall constitute a final order of the Department, and the owner, licensed operator, or independent contractor to whom such closure order was issued shall not be entitled to administrative review of such decision. Such owner, licensed operator, or independent contractor may, within 10 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 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, operator, or independent contractor. In any such action the court shall receive the records of the Department regarding 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 is finally determined that a closure order was not issued in accordance with the provisions of this section, the closure order shall be vacated and the improperly issued closure order shall not be used to the detriment of the owner or operator to whom it was issued.

**History.**

1997, c. 390, § 45.1-161.292:64; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1159. 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 (i) the final decision of the Department is issued, if an administrative appeal of its issuance is pursued, or (ii) the final order of the circuit court is rendered, if an appeal of its issuance is taken to circuit court, provided that such appeal pursuant to clause (i) or (ii) was undertaken in good faith and not solely for delay or avoidance of penalties.

**History.**

1997, c. 390, § 45.1-161.292:65; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1160. Injunctive relief.**

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

B. Any person failing to abate any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) that 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 in the Commonwealth or contracting for work at a mine in the Commonwealth, to be granted upon a finding by a preponderance of the evidence that (i) a history of noncompliance by the person demonstrates that he is not able or willing to operate in compliance with the provisions of the Act or (ii) a history of the issuance of closure orders to the person demonstrates that he is not able or willing to operate in compliance with the provisions of the Act.

**History.**

1997, c. 390, § 45.1-161.292:66; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1161. Violations; penalties.**

Any person convicted of willfully violating any provision of the Act, unless otherwise specified in the Act, is guilty of a Class 1 misdemeanor.

**History.**

1997, c. 390, § 45.1-161.292:67; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Cross references.**

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

**§ 45.2-1162. Prosecution of violations.**

A. It is the duty of every attorney for the Commonwealth to whom the Director or his authorized representative reports any violation of the Act, or on his own initiative, to cause proceedings to be prosecuted in such case.

B. If the attorney for the Commonwealth declines to cause proceedings to be prosecuted in such case, 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 may institute actions and proceedings for violations described in the request.

**History.**

1997, c. 390, § 45.1-161.292:68; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1163. Fees and costs.**

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

**History.**

1997, c. 390, § 45.1-161.292:69; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1164. Reports of violations.**

A. Any person aware of a violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) may report the violation to a mine inspector or to any other employee of the Department, in person, in writing, or by telephone call, at the mine, at an office of the Department, or at the mine inspector's residence.

B. Each operator, or his agent, shall deliver a copy of this chapter and Chapters 14 (§ 45.2-1400 et seq.) and 15 (§ 45.2-1500 et seq.) to each miner in his employ upon the commencement of the miner's work at a mine, unless the miner is already in possession of a copy.

C. The licensed operator of each 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, that may be used to report any violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.).

D. The Department shall keep a record, on a form prepared for such purpose, of every alleged violation of this chapter or Chapter 14 (§ 45.2-1400 et seq.) or 15 (§ 45.2-1500 et seq.) that 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 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 a violation is excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

**History.**

1997, c. 390, § 45.1-161.292:70; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

## Article 9. Miner Training.

### § 45.2-1165. Training programs.

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

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

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

#### History.

1997, c. 390, § 45.1-161.292:71; 1998, c. 695; 2012, cc. 803, 835; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1166. Mineral mining safety training.

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

#### History.

1997, c. 390, § 45.1-161.292:72; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

### § 45.2-1167. Mineral mining safety training programs.

A. Each operator shall have a plan containing the following programs: training for new miners, training for experienced miners who are newly employed, training for miners for new tasks, annual refresher training, and hazard training. For the purpose of this section, the definition of miner does not include a scientific worker; delivery worker; customer, including a commercial over-the-road truck driver; vendor; or visitor.

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

#### History.

1998, c. 695, § 45.1-161.292:73; 2003, c. 401; 2021, Sp. Sess. I, c. 387.

#### Effective date.

This section is effective October 1, 2021.

**CHAPTER 13.**

**MINERAL MINING RETAINING DAMS; ADJACENT OWNERS.**

**Article 1. Mineral Mining Retaining Dams and Refuse Piles.**

Section

45.2-1300. Definitions.

45.2-1301. Dams and mine refuse piles; construction.

45.2-1302. Examination of dams and mine refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.

**Article 2. Rights of Owners of Land Adjacent to Mineral Mines.**

45.2-1303. Consent required before working mine near land of another.

45.2-1304. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

**Article 1.**

**Mineral Mining Retaining Dams and Refuse Piles.**

**§ 45.2-1300. Definitions.**

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

“*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 a mining operation.

**History.**

1997, c. 390, § 45.1-225.3; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1301. Dams and mine refuse piles; construction.**

A. Any water-retaining or silt-retaining dam or mine refuse pile or modification of an existing water-retaining or silt-retaining dam or mine refuse pile shall be designed and constructed by or under the direction of a qualified engineer if such dam or pile is designed to impound water or silt to a height of (i) five feet or more above the lowest natural ground level within the impounded area and has a storage volume of 50 acre-feet or more or (ii) 20 feet or more, regardless of storage volume.

B. Designs, construction specifications, and other related data, including final abandonment plans, for a water-retaining or silt-retaining dam or mine refuse pile shall be approved and certified by the qualified engineer as specified in subsection A 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 shall be submitted for approval to the Director. If the Director approves the submittal, he shall notify the licensed operator in writing. If the Director disapproves the submittal, he shall

notify the licensed operator with his written objections and required amendments. The Director shall approve or disapprove the submittal within 30 days following receipt thereof.

**History.**

1997, c. 390, § 45.1-225.1; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**Cross references.**

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

**§ 45.2-1302. Examination of dams and mine refuse piles; potentially hazardous conditions; plans to be submitted by licensed operators.**

A. Every water-retaining or silt-retaining dam or mine refuse pile 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 80 percent by volume of the safe design capacity of the dam or pile, such examination shall be made more often as required by the Director or his designated agent. Frequent examinations shall 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 that can reasonably be expected to be affected by such potentially hazardous condition;
2. Eliminate such potentially hazardous condition; and
3. Notify the Director.

C. Records of the inspections required by subsection A 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-retaining or silt-retaining dam is located shall adopt a plan for carrying out the requirements of subsections A and B. The plan shall be submitted for approval to the Director and shall include:

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

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

**History.**

1997, c. 390, § 45.1-225.2; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.



## Article 2.

### Rights of Owners of Land Adjacent to Mineral Mines.

#### § 45.2-1303. Consent required before working mine near land of another.

No owner or tenant of any land within the Commonwealth containing minerals 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 written consent 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. Any person violating this section shall forfeit \$500 to each person injured by such violation and to each person whose consent was required but not obtained.

##### History.

1997, c. 390, § 45.1-161.311:1; 2021, Sp. Sess. I, c. 387.

##### Effective date.

This section is effective October 1, 2021.

#### § 45.2-1304. Adjacent owner to be permitted to survey mine; proceedings to compel entry for survey.

A. If a person who is interested in or has title to any land or mineral rights coterminal with the land or mineral rights on or in which a mine is located has reason to believe his property is being trespassed upon, then the owner, tenant, or occupant of the land or minerals on or in which such mine is opened and worked, or his agent, shall permit such interested person to have ingress and egress with surveyors and assistants to explore and survey such mine for the purpose of ascertaining whether a violation of § 45.2-1203 has occurred. Such exploration and survey shall occur at the expense of the interested person, and such person shall not be entitled to enter the mine property more often than once each month.

B. If such interested person is refused entry to such mine, he may file a complaint before the judge of the general district court of the county or city in which such mine is located. Such judge may issue a summons to such mine owner, tenant, occupant, or agent to answer the complaint. Upon the return of the executed summons and the submission of proof that the complainant has right of entry and that such right of entry has been refused without sufficient cause, the judge shall designate a prompt and convenient time for such entry to be made and issue a warrant commanding the sheriff of the county or city to attend and prevent obstructions or impediments to such entry, exploration, and survey.

C. Any owner, tenant, occupant, or agent who refuses permission, exploration, or survey pursuant to subsection A shall forfeit \$20 for each refusal to the person so refused. The costs of such summons and a fee of \$3 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 of such summons and execution shall be paid by the party making the complaint.

##### History.

1997, c. 390, § 45.1-161.311:2; 2021, Sp. Sess. I, c. 387.

##### Effective date.

This section is effective October 1, 2021.

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**PART B.**  
**UNDERGROUND MINERAL MINES.**

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**CHAPTER 14.**  
**REQUIREMENTS APPLICABLE TO UNDERGROUND  
MINERAL MINES.**

**Section**

45.2-1400. Scope of chapter.

45.2-1401. Regulations governing conditions and practices at underground mineral mines.

45.2-1402. Adoption of regulations.

45.2-1403. Flame safety lamps.

45.2-1404. Standards for regulations.

45.2-1405. Mining in proximity to gas and oil wells.

**§ 45.2-1400. Scope of chapter.**

This chapter is applicable to the operation of any underground mineral mine in the Commonwealth and shall supplement the provisions of Chapter 11 (§ 45.2-1100 et seq.).

**History.**

1994, c. 28, § 45.1-161.293; 1997, c. 390;  
2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1401. Regulations governing conditions and practices at underground mineral mines.**

A. The Director shall adopt, in accordance with the provisions of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, regulations 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 adopting regulations more stringent than regulations adopted pursuant to the federal mine safety law. Such regulations applicable to underground mineral mines shall establish requirements for the:

1. Protection of miners from general risks found at underground mineral mines and in mining;

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

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

4. Control of unstable roof, face, rib, floor, and other ground conditions;

5. Handling and storage of combustible materials, including requirements for emergency plans, firefighting 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. Control of exposure to airborne contaminants and excessive noise levels;

- 7. Provision of adequate air quality and quantity through ventilation and other appropriate measures;
- 8. Safe storage, transportation, and use of explosives and blasting devices;
- 9. Safe design, operation, maintenance, and inspection of drilling equipment;
- 10. Construction, installation, maintenance, use, and inspection of boilers, air compressors, and compressed gas systems;
- 11. Safe design, use, maintenance, and inspection of passageways, walkways, ladders, and other travel ways;
- 12. Safe design, operation, maintenance, and inspection of electrical equipment and systems;
- 13. Safe storage, transportation, and handling of materials, including corrosive and hazardous substances;
- 14. Safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
- 15. Safe design and operation of chutes;
- 16. Inspection, maintenance, safe design, and operation of hoisting equipment and cables;
- 17. Inspection, maintenance, and construction of mine shafts;
- 18. Actions to be taken by certified and competent persons; and
- 19. 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 adopt any regulation relating to underground mineral mines that is inconsistent with any requirement established by the Act or that, if an operator were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

**History.**

1994, c. 28, § 45.1-161.294; 1996, c. 774; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1402. Adoption of regulations.**

The Director shall adopt regulations:

- 1. Regarding transportation of miners, including regulations regarding (i) the carrying of tools by miners on mantrips; (ii) the riding of any miner, except the motorman and trip rider, inside a car; and (iii) the boarding and disembarking of miners to and from mantrips;
- 2. Requiring any bare wire and any cable other than a ground wire, grounded power conductor, or trailing cable to be supported by insulators and away from combustible materials, roof, and ribs;
- 3. Regarding the bonding, welding, or securing of rails and track switches where track is used to conduct electrical power;
- 4. Requiring the installation of disconnecting switches underground in all main power circuits at appropriate locations;
- 5. Requiring respiratory equipment and hearing protection, including by requiring that (i) each miner exposed for short periods to a hazard from inhalation of gas, dust, or fumes wear approved respiratory equipment and (ii) each operator supply hearing protection to miners upon request; and
- 6. Requiring that fire precautions be taken when mining equipment is transported underground in proximity to energized trolley wires or trolley feeder wires.

**History.**

Code 1950, §§ 45-14.1, 45-69.2, 45-82, 45-82.1, 45-82.3, 45-86; 1954, c. 191; 1966, c. 594, §§ 45.1-74, 45.1-78, 45.1-80, 45.1-89, 45.1-99; 1985, c. 296; 1994, c. 28, § 45.1-161.298; 1974, c. 323; 1978, c. 118, 729, § 45.1-99.1; 1984, c.

590; 1985, c. 296, 500; 1993, c. 442; 1994, c. 28, §§ 45.1-161.298 through 45.1-161.303; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1403. Flame safety lamps.**

No flame safety lamp shall be used for detecting methane. The Director shall determine whether flame safety lamps shall constitute approved devices for detecting oxygen deficiency. If flame safety lamps are approved for such purpose, the Director shall establish standards for their use and maintenance.

**History.**

Code 1950, § 45-69.7; 1954, c. 191; 1966, c. 594, § 45.1-64; 1993, c. 442; 1994, c. 28, § 45.1-161.297; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1404. Standards for regulations.**

In adopting regulations pursuant to § 45.2-1401 or 45.2-1402, the Director shall consider:

1. Standards utilized and generally recognized by the underground mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;
4. Research, demonstrations, experiments, and any other information available regarding the maintenance of a reasonable degree of safety protection, including the latest available scientific data in the field, the technical and economic feasibility of such standards, and experience gained under the Act and other mine safety laws; and
5. Any other criteria necessary to ensure the safety and health of miners and other persons or property likely to be affected by any underground mineral mine or related operation.

**History.**

1994, c. 28, § 45.1-161.295; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1405. Mining in proximity to gas and oil wells.**

A. The Director shall adopt regulations requiring each licensed operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in proximity to 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 within 500 feet of 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 copies of the maps and plans required under § 45.2-1131 showing the mine workings and projected mine workings that 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 appointed pursuant to the provisions of § 45.2-1604. Each such notice shall contain a certification made by the sender that the sender has complied with such requirements.

C. After filing such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, the operator shall not remove any material, drive any entry, or extend any workings in any mine within 200 feet of 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. Any such objection shall be filed within 10 days following the date such petition is filed.

**History.**

1990, c. 92, § 45.1-92.1; 1994, c. 28, § 45.1-161.296; 1997, c. 390; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

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**PART C.**

**SURFACE MINERAL MINES.**

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**CHAPTER 15.**

**REQUIREMENTS APPLICABLE TO SURFACE MINERAL MINES.**

Section

- 45.2-1500. Scope of chapter.
- 45.2-1501. Regulations governing conditions and practices at surface mineral mines.
- 45.2-1502. Standards for regulations.
- 45.2-1503. Mining in proximity to gas and oil wells.
- 45.2-1504. Respiratory equipment.
- 45.2-1505. Health regulations.

**§ 45.2-1500. Scope of chapter.**

This chapter is applicable to the operation of any surface mineral mine in the Commonwealth and shall supplement the provisions of Chapter 11 (§ 45.2-1100 et seq.).

**History.**

1994, c. 28, § 45.1-161.304; 1997, c. 390; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1501. Regulations governing conditions and practices at surface mineral mines.**

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

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

B. The Director shall not adopt any regulation relating to surface mineral mines that is inconsistent with any requirement established by the Act or that, if an operator were to take action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

**History.**

1994, c. 28, § 45.1-161.305; 1996, c. 774;  
1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1502. Standards for regulations.**

In adopting regulations pursuant to § 45.2-1501, the Director shall consider:

1. Standards utilized and generally recognized by the surface mineral mining industry;
2. Standards established by recognized professional mineral mining organizations and groups;
3. The federal mine safety law;

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

5. Any other criteria necessary to ensure the safety and health of miners and other persons or property likely to be endangered by any surface mineral mine or related operation.

**History.**

1994, c. 28, § 45.1-161.306; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1503. Mining in proximity to gas and oil wells.**

A. The Director shall adopt regulations requiring each licensed operator to notify, and in appropriate circumstances obtain the consent of, the Director prior to removing minerals in proximity to 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 within 500 feet of 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 copies of the maps and plans required under § 45.2-1131 showing the mine workings and projected mine workings that 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 appointed pursuant to § 45.2-1604. Each such notice shall contain a certification made by the sender that the sender has complied with such requirements.

C. After filing such notice, the licensed operator may proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Director, the operator shall not remove any material, drive any entry, or extend any workings in any mine within 200 feet of any gas or oil well already drilled or in the process of being drilled. Each licensed operator who files such 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. Any such objection shall be filed within 10 days following the date such petition is filed.

**History.**

1990, c. 92, § 45.1-92.1; 1994, c. 28, § 45.1-161.307; 1997, c. 390; 1998, c. 695; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1504. Respiratory equipment.**

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

**History.**

Code 1950, § 45-86; 1954, c. 191; 1966, c. 594, § 45.1-99; 1994, c. 28, § 45.1-161.308; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.

**§ 45.2-1505. Health regulations.**

A. The Director may adopt 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 may adopt regulations providing that no miner at a surface mineral mine that is subject to inspection by the Department pursuant to § 45.2-1148 shall be exposed to noise levels that exceed the federal limit adopted by MSHA for non-coal miners. Such regulations shall provide that if such exposure exceeds the federal limit, the Director may require the operator to employ feasible engineering and administrative control measures.

**History.**

1994, c. 928, § 45.1-161.309; 1997, c. 390; 2021, Sp. Sess. I, c. 387.

**Effective date.**

This section is effective October 1, 2021.



