



# Independent Contractors

Virginia Department of Energy  
Division of Mineral Mining  
2022

# Use of Independent Contractors

- Independent contractors contribute significantly to the mineral mining industry in Virginia.
- In 2021, Independent Contractors provided 3,137 employees working 1,164,715 hours on Virginia's mineral mines.
- This represented 47% of the total workers and 16% of the total work hours for 2021.



# Contractors = “Operator”

- In Virginia law, “operator” (as in mine operator), is defined as any person who operates, controls or supervises a mine or any independent contractor performing services or construction at the mine.
- The contractor and the mine operator have responsibilities when an independent contractor performs work on a mine site.




# Virginia Law Says:

## ➤ 45.2-1167. Mineral Mining Safety Training Programs.

- A. Each operator (including independent contractors) shall have a plan containing the following programs:
  - training for new miners
  - training for newly employed experienced miners
  - training for new tasks
  - annual refresher training
  - hazard training

\*\* These 5 parts are consistent with MSHA requirements

# Independent Contractor Requirements

- Written training plans/employee training
  - Registration with DMM
  - Certifications (when required)
  - Annual Reporting
  - Compliance with all State laws and regulations
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# Training

- Prior to starting work at the mine, the contractor must have written training plans acceptable to Virginia's Division of Mineral Mining (DMM) and in most cases MSHA (if working at a MSHA inspected site).
- What type of work, and where on the site they will be doing it, are key factors in determining what sort of plans and training must be done.

# Contractor Training Plan Requirements

- Virginia - all contractors required to have training plans.
- MSHA - some contractors are exempt based on length of exposure to mine hazards. Contractor personnel who are not exposed to mine hazards for *frequent or extended periods* may not need a training plan. **Frequent exposure** is defined as a pattern of exposure to hazards at mining operations occurring intermittently and repeatedly over time. An **extended period** is defined as exceeding 5 consecutive days at a particular time.
- MSHA's 30 CFR Part 46 minimum training time requirements for contractors are the same as that for mine employees.
- Virginia has no minimum training time requirements.

# Training Plans

- Basic requirements: (See 30CFR 46.3 for MSHA)
    - Contractor name and MSHA ID number, if available, mine name(s) and MSHA ID number(s) covered by the plan.
    - Name and position of the person responsible for health and safety training for your company.
    - The subject areas to be covered, general description of teaching methods and materials to be used and the amount of time, or range of time, to be spent on each subject area.
    - A list of persons or organizations providing the training and the subject area(s) the persons/organizations are competent to teach. A “competent person” is required for all training.
    - The evaluation procedures used to determine the effectiveness of the training.
- \* DMM can provide templates/guides to go by.



# New Miner Training

- Must contain General Mineral Miner Certification if the contractor employee is involved in extraction or processing.
- GMM Certification training is available online through the DMM website:  
<https://energy.virginia.gov/dmmtraining/frmmain.aspx>
- For MSHA – contractor new miner training requirements are the same as for the mine operator.
  - ❖ 4 hour minimum before starting work on 7 initial subjects
  - ❖ Total of 24 hours of New Miner Training required
  - ❖ See 30 CFR 46.5 for more details or the MSHA Program Policy Manual at:  
<https://arlweb.msha.gov/regs/complian/ppm/pmvol3b.htm>

# Newly Hired Experienced Miner Training

- For new employees who have previously received new miner training with another employer.
- MSHA (30 CFR 46.6)
  - No minimum time requirement
  - 7 initial training subjects before starting work & use, care & maintenance of self rescue & respiratory devices if used within 60 days.
  - Operator's responsibility to determine the miner's experience based on work and training history

# Task Training

## ➤ **Virginia: Employee Training 4VAC 25-40-100.**

New or reassigned employees shall be trained in **state and company safety regulations** and be task trained prior to being assigned a task or duty. Records of training must be kept in writing. Training should be specific to the model of equipment of used.

## ➤ **MSHA: New Task Training 30 CFR 46.7**

Must be provided for any employee who is reassigned to a new task in which he or she has no previous work experience – includes changes to a miner's assigned task that affects the health and safety risks that are encountered by the miner.

# Site Specific Hazard Training

- Responsibility of the mine operator \*
- Requires coordination with contractor to ensure rotating employees are trained during lengthy jobs
- Hard hat stickers or other means to ensure contractor personnel have been trained can be useful

\* MSHA (46.12(a)(1) – establishes that the production-operator has primary responsibility for ensuring that Site-Specific Hazard Awareness training is given to employees of independent contractors.

# Annual Refresher Training

## ➤ MSHA – 30 CFR 46.8

- No less than 8 hrs required
- No later than 12 months after the miner starts work at the mine
- Includes changes at the mine that could adversely affect miner's safety and health
- Training should address other health and safety subjects that are relevant to the mining operations

# Contractor Training

- DMM can assist with:
  - Contractor Training Plan preparation
  - General Mineral Miner Certification Training if student count warrant an individual class
  - Annual Refresher Training
  - Providing Training Content

# Contractor Registration

- Contractors must be registered with DMM and be assigned a “contractor number”. Contractors are encouraged to make this contact with DMM well before starting work.
- Mine owners/operators are required to report to DMM, at least annually, any and all contractors who have, are or will perform work at the mine.
- MSHA requires production-operators to maintain a minimal amount of information concerning contractors at the mine site (30CFR 45.4).

# The Supervision Issue

- Virginia law and regulation requires a certified mine foreman be employed if 3 or more people are working. Anyone employed as a mine foreman must be certified.
- The certified foreman must carry out a beginning of shift examination of all active work areas and ensure that all activities are performed according to State laws and regulations.
- Note that there is no separation of persons according to who they work for, where they are, or what they are doing. If they are exposed to mine hazards, a certified foreman is required.



# Supervision: Who, What, Where and When?



- This is a huge issue that must be understood between the mine operator and contractor before work commences. If the contractor's personnel are exposed to the hazards of the mine, they will be included in the "three or more" overall count.
- The big question is will the mine operator provide the certified foreman covering the contractor personnel, or will the contractor? DMM simply requires there be at least one, who supplies them is up to the parties involved.
- This can be complicated if work schedules differ between mine personnel and contractor employees. Differing work areas and activities may present issues as well.

# Independent Contractor Surface Foreman Exemption 45.2-1123D

- Independent contractors not involved with the extraction or processing of minerals, working in a clearly demarcated area where no mining hazards exist and where no other miners travel or work, may employ a competent person to carry out the foreman's duties.
- It is important to note that this “competent person” has the same responsibilities as a surface foreman including the Beginning of the Shift Examination.
- It is recommended that if a mine operator believes that this exemption is warranted, that they contact their assigned Virginia Energy Inspector to discuss prior to the work being done.
- The Inspector can meet with contractor personnel to assist them in understanding the “competent person” requirements under this exemption.

# Reporting Accidents

## ➤ Accidents/injuries

- Contractor personnel should report any accident or injury that occurs at the mine to the mine operator.
- Operators are required to report any accident involving serious personal injury or death to the division by the quickest available means.
- All injuries requiring medical treatment, other than first aid, must be reported by the mine operator within 10 days of their occurrence.
- A record of all injuries must be kept.



# Compliance

- Everyone on a mine property is required to comply with the laws and regulations that apply to the tasks they perform. Failure to do so will result in violations being issued to the individual(s) committing the violation.
- Contractors and their personnel must be familiar with the laws and regulations governing their work.

# Summary of Issues: Prior to Starting Work

- A written training plan is required for all contractors by DMM. MSHA requires training plans for contractors who are frequently exposed to mine hazards.
- All contractor employees must be given site specific hazard training and must be adequately task trained for the work that they do PRIOR to starting work.
- Mine operators should ensure that the Surface Foreman requirements have been discussed with the contractor and joint decisions made over who is supplying the required foreman for all shifts.
- Effective lines of communication between mine personnel and the contractor employees must be established and maintained during the job.



# Remember...

- DMM can be a resource for helping your contractor:
  - ❖ Develop a training plan
  - ❖ Provide some direct training (GMM & Annual Refresher)
  - ❖ Meet Surface Foreman Certification Requirements if applicable
  - ❖ Understand the “competent person” role if a foreman is not needed due to work location
  - ❖ Provide training in Mining Laws, Regulations and safe practices that apply to them specifically