

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF MINE SAFETY**

**INDUSTRIAL MINERALS
MINE RESCUE TEAM AGREEMENT**

This AGREEMENT entered into by and between the Commonwealth of Pennsylvania, Department of Environmental Protection, Bureau of Mine Safety (hereinafter "DEP or Department"), and _____ (hereinafter "OPERATOR"), on this _____ day of _____, consists of the following:

WHEREAS, DEP has experience in training members of mine rescue teams regarding the use of self-contained breathing apparatus, first-aid, and mine rescue techniques and principles;

WHEREAS, DEP employs mine rescue instructors who have been approved by the U. S. Department of Labor, Mine Safety and Health Administration (hereinafter "MSHA");

WHEREAS, the OPERATOR desires to provide the mine rescue teams required by 30 CFR Part 49 by participating in mine rescue teams serving more than one mine;

WHEREAS, the Department desires to facilitate the OPERATOR's participation in mine rescue teams serving more than one mine; and

WHEREAS, the OPERATOR desires to have the Commonwealth train the OPERATOR'S mine employee(s) in mine rescue techniques and principles;

NOW, THEREFORE, in mutual consideration of the premises contained herein, the parties hereto intending to be legally bound hereby contract and agree as follows:

I. A. Designation of employees for training.

For each mine covered by this agreement, the OPERATOR agrees to provide one employee for each mine employing no more than 25 persons underground, and 2 or more persons for each mine employing 25 persons or more underground to serve on mine rescue team.

Each employee designated by the OPERATOR shall be approved by DEP before the employee begins training.

The Operator shall give DEP a list of all mines to be covered by this agreement. This list shall identify the number of employees at each mine. The Operator shall, within 15 days, notify the Department of any change in the mines to be covered or the number of employees at a mine.

B. Qualifications for designation as a trainee.

In order to qualify for training in mine rescue and be a member of a mine rescue team, an individual must:

1. Be an employee of the OPERATOR's mine and have been employed in an underground mine for one year in the past 5 years.

Miners who are employed on the surface but work regularly underground at the mine shall meet the experience requirement.

2. Be able to meet any physical or experience requirements contained in 30 CFR Part 49 or otherwise established by MSHA.
3. Submit to DEP a copy of MSHA Form 5000-3 annual physician's examination and certification that the individual is "physically fit to perform mine rescue and recovery activities for prolonged periods under strenuous conditions".

The OPERATOR shall not allow the designated team member's annual physical to lapse. The first such physical examination shall be completed within 60 days prior to the scheduled initial training. This report shall be filed with DEP prior to receiving training.

C. Dismissal from training.

Any non-compliance with the requirements will result in the designated employee being ineligible to be a mine rescue team member and may result in the loss of mine rescue coverage for the represented mine.

D. Attendance; Substitute for dismissed individual.

The OPERATOR is responsible for seeing that individuals designated by the OPERATOR are made aware of the site for training sessions selected by DEP. The OPERATOR is responsible for seeing that designated employees attend the entire training session scheduled by DEP.

In the event that an individual is dismissed or resigns from training, the OPERATOR shall submit the name of another qualified individual for approval by DEP, prior to the next scheduled training session.

The OPERATOR may only send employees for training who are approved by DEP and who are designated to receive all the training scheduled by and provided by DEP during the period of the contract year remaining after the employee is approved.

Nothing in this AGREEMENT shall be construed to permit the OPERATOR to send a temporary substitute to one or more training sessions, in the place of an employee who is approved by DEP and who is designated permanently as a trainee (i.e., an employee who has not been dismissed from future training sessions, who does not wish to be dismissed from training or to resign from training, and who wishes to receive training again during the contract year.)

II. SITE

The OPERATOR agrees to permit DEP to conduct training at its underground mine for purposes of this AGREEMENT.

DEP agrees to schedule monthly training sessions at sites to be designated by DEP. DEP will notify the OPERATOR or its liaison of the location prior to each training session.

In addition, training sessions, in which a portion of the training is to be conducted underground, will be conducted at each underground mine to be covered by the mine rescue team at least semi-annually.

III. TRAINING

Training will be provided by DEP staff persons who have been approved as mine rescue instructors by the Office of Education and Training, MSHA. DEP will provide at least the following training:

A. Initial training.

Prior to serving on a mine rescue team, each member shall complete, at a minimum, an initial 20-hour course of instruction as prescribed by MSHA's Office of Educational Policy and Development, in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team.

B. Annual training requirements

DEP will schedule and provide, and the designated trainees will attend all scheduled training sessions.

During the course of the contract year, DEP will provide the following training.

- (1) Sessions underground at least once each 6 months.
- (2) The wearing and use of the breathing apparatus by team members for a period of at least 2 hours every 2 months.
- (3) Where applicable, the use, care, capabilities, and limitations of auxiliary mine rescue equipment, or a different breathing apparatus.
- (4) Advanced mine rescue training and procedures, as prescribed by MSHA's Office of Educational Policy and Development.
- (5) Mine map training and ventilation procedures.
- (6) The wearing of mine rescue apparatus while in smoke, simulated smoke, or an equivalent environment at least once during each 12-month period.
- (7) Each trainee will participate in at least two (2) local mine rescue contests and/or a Mine Emergency Response Development (MERD) each year.
- (8) Mine site training sessions, a portion of which is to be conducted underground, will be conducted at each underground mine at least semi-annually.

Training at the mine shall include:

- Identifying the designated escapeways, intakes, returns,
- the ventilation system,
- locations and types of fire fighting equipment,
- the communication system,
- mine-wide monitoring system,
- the type of transportation equipment used at the mine.
- The location of stored self contained self rescuers, lifelines, breathable air, hardened rooms, and other emergency response equipment or supplies

IV. LIAISON

The OPERATOR shall designate a full-time management employee, other than a designated mine rescue trainee, to act as agent for the OPERATOR and to be the liaison with DEP for purposes of implementing this AGREEMENT. The name and business address of this liaison is as follows:

(Name): _____

(Address): _____

(Telephone) _____

(Emergency telephone) _____

V. LIAISON TRAINING

A. DEP shall provide training to persons acting as the OPERATOR’s liaison. The training provided will include, but not be limited to, emergency declaration, notification, and the procedures established by DEP to call out mine rescue teams.

B. Such training shall be held semi-annually and shall be attended by each liaison.

C. Attendance at these training sessions is mandatory.

VI. MUTUAL AID

A. As of the date of this Agreement and thereafter, upon notification by an authorized representative of DEP to the OPERATOR of an emergency situation, the OPERATOR will make its designated trainee available immediately to aid the party suffering such emergency in accordance with 30 CFR §49.2(a)(2), provided, however, that its designated trainee shall not then be responding to or engaged in another emergency situation.

B. The mine rescue personnel of the OPERATOR will be subject to the direction of the individual or individuals in charge at the site of rescue operations.

C. For purposes of this Agreement, “mine rescue operations” shall mean services or work to search for, rescue, or transport a person or persons endangered, trapped, injured, or killed in a mine disaster or emergency situation.

The term shall also include:

- Any rehabilitation work in the mine which is necessary to search for, rescue, or transport any person or persons in the mine.
- Fire fighting and mine recovery work which requires the use of personnel with self-contained breathing apparatus until such time the OPERATOR requesting mine rescue services reasonably determines that additional mine rescue services will not significantly impact the ability of the mine to be preserved or recovered.

D. The mine rescue team member’s employer shall be responsible for compensation of said employee for all hours worked related to responding to, and performing work at, mine emergencies. The employer shall also be responsible for providing Workmen’s Compensation insurance as well as any claims against the trainee which may result from such emergency.

E. The OPERATOR who may suffer an emergency, as a condition of its entitlement to the services of a mine rescue team member, whose employer has entered into a Mine Rescue Team Agreement with the DEP, shall agree to the following:

1. Reimbursement to the providing operator of wages of team members and all costs related to the services of the team, including but not limited to transportation costs, and out-of pocket expenses while en-route to or from, or at the emergency site.
2. Wage hours and rates of the team members shall be the same as if they had worked a like emergency at the team members' own mine.
3. Reimbursement to the providing operator of wages and costs shall be by invoice of separate costs submitted to the party suffering the emergency with reasonable detail and backup information.
4. Workers' Compensation and Occupational Disease coverage of each team member shall be provided and paid for by such mine rescue team member's regular employer.
5. Forever indemnify and hold the party providing the team member and their successors, heirs, legal representatives, and assigns harmless from and against all claims, demands, suits, actions, or cause of action, judgments and all other liabilities of whatever nature on account of the injury to or death of any person or persons and/or the damage to or destruction of any property or properties arising out of or in any manner connected with or as a result of the transportation of the team to or from the mine of the party requesting team services, their acts and omissions, while both on and off the emergency site and from all matters and things in connection therewith or in consequence thereof.

VII. EMERGENCY NOTIFICATION

A. By executing this Mine Rescue Training Agreement, the OPERATOR authorizes DEP to notify mine rescue team members on its behalf to respond to declared emergencies. The OPERATOR agrees to notify DEP at the first indication of an emergency or other similar incident requiring mine rescue teams and equipment, and authorizes DEP to notify mine rescue team members to respond.

Further, the OPERATOR agrees to provide its designated team members to other participating operations where a declared emergency has occurred.

B. The OPERATOR agrees to indemnify, defend, and hold harmless the DEP from and against any and all claims and causes of action arising from actions, omissions, or activities resulting from such notification.

VIII. PERSONAL PROTECTIVE EQUIPMENT

The OPERATOR shall provide to each designated mine rescue trainee, personal protective equipment for use during training and mine emergencies.

Such equipment, which shall be made immediately accessible, shall include items necessary for the personal protection of the employee when attending training sessions and responding to mine emergencies.

IX. COMPENSATION AND EXPENSES

The OPERATOR agrees to compensate designated trainees for all hours worked, including travel in excess of his/her normal travel time, related to scheduled mine rescue training. The OPERATOR further agrees to reimburse designated trainees for personal automobile mileage in

excess of mileage incurred commuting from home to work and return, at the current federal IRS rate.

X. HEALTH AND SAFETY

In the twenty-four (24) hour period of the scheduled mine rescue training date, the OPERATOR agrees to refrain from scheduling designated trainees for work hours other than that directly related to mine rescue training, unless it is mutually agreed upon between the OPERATOR and the designated trainee.

XI. EFFECT UPON STATUS OF EMPLOYEE

The employee designated by the OPERATOR to receive training in accordance with this AGREEMENT shall continue to be considered the employee of the OPERATOR for all purposes while the employee is carrying out the activities of this agreement. A designated employee in mine rescue activity is deemed to be in furtherance of the OPERATOR'S interests and business.

Nothing in this AGREEMENT shall be construed to give the DEP the right to hire or fire individuals from his or her employment by the OPERATOR. Nothing in this AGREEMENT shall be construed to exempt or preclude the employee from coverage by or participation in insurance or benefits offered by the OPERATOR employing the mines rescue team member, including but not limited to, the employee's right to coverage under Workmen's Compensation agreements or Unemployment Compensation or Occupational Diseases agreements or other insurance programs and responsibilities, the employee's right to accumulation of seniority rights, and the employee's job assignment or wages, etc.; additionally, nothing in this AGREEMENT shall be construed to alter the employee's status in these regards.

The OPERATOR shall maintain such insurances as will protect it from claims of Workmen's Compensation Acts, Occupational Diseases Acts, and from any such other claims for property damage, bodily injury or death which may arise from activities under this AGREEMENT; the DEP shall not be liable for any such claims. Certificates of such insurances shall be filed with the DEP before training begins.

The OPERATOR agrees to indemnify, defend, and hold harmless the DEP from and against any and all claims and causes of action arising from actions, omissions, or activities of mine employers or operators; mine-rescue related or DEP personnel; and mine employees; if these activities, actions, or omissions are undertaken in fulfillment of or in connection with activities performed pursuant to this AGREEMENT.

XII. TERM OF AGREEMENT

This AGREEMENT shall be effective from the date of signing, indicated in the first paragraph of this **AGREEMENT**, until **June 30, 2009**. The term of this AGREEMENT may be extended by submitting an "Amendment to the Mine Rescue Team Agreement" signed by all the parties or their successors. The extension shall be in writing. Each extension shall be effective for no longer a period than one year.

XIII. NONDISCRIMINATION / SEXUAL HARASSMENT CLAUSE

OPERATOR agrees to comply with the provisions applicable to "contractor" in the Nondiscrimination Sexual Harassment Clause attached hereto as Exhibit A.

XIV. CONTRACTOR INTEGRITY PROVISIONS

OPERATOR agrees to comply with the provisions applicable to “contractor” in the Contractor Integrity Provisions for Commonwealth Contracts attached hereto as Exhibit B.

XV. DEPARTMENT OF ENVIRONMENTAL PROTECTION -FEDERAL REQUIREMENTS

OPERATOR agrees to comply with the provisions applicable to “contractor” in the Department of Environmental Protection - Federal Requirements attached hereto as Exhibit C.

XVI. TERMINATION

A. Initial Notice

Either party promptly shall inform the other party whenever there is reason to believe that termination of the contract is indicated because of the existence of circumstances or conditions such as, but not limited to, failure to perform obligations described in this AGREEMENT, varying from the proposal without approval, lack of sufficient students, or the program not being fulfilled or reaching a stage where further efforts would produce little or no results as contemplated by the enabling legislation.

B. Final Notice and Termination

In such event, the contract may be terminated in whole or in part by either party hereto, after consultation of the parties by giving advanced written notice of at least thirty (30) days to the other party of a specified date of termination.

C. Termination upon initial notice in certain circumstances

If this contract is to be funded either partially or completely by federal funds, it may be terminated by DEP if federal funds are not provided to the Commonwealth for the contract purpose. Additionally, this AGREEMENT may be terminated by DEP should funds for the program be exhausted or terminated or further legislation alter the present status of the program. Any such termination shall be effected by delivery to the OPERATOR of a Notice of Termination specifying the reason for termination and the date such termination is to be effective.

XVII. EMERGENCY RESPONSE PLANS

The Operator shall provide the following to DEP:

1. A list of responsible person(s) for each underground mine
2. The mine's Emergency Response Plan
3. The Mine Rescue Notification Plan
4. The Mine Emergency Evacuation and Firefighting Program of Instruction

IN WITNESS WHEREOF, the parties hereto set their hands and seals to this AGREEMENT the date written above.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ATTEST: _____
J. Scott Roberts
Deputy Secretary for
Mineral Resources Management

FOR THE OPERATOR: _____
President or Vice-President

ATTEST: _____
Secretary/Treasurer

SEAL:

Approved as to Legality and Form by

ATTEST: _____
Chief/Assistant Counsel
Department of Environmental Protection

Office of the Attorney General
ATTEST: _____