



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

Judith Williams Jagdmann
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
804-371-8947 TDD

MEMORANDUM

TO: George P. Willis, Acting Director
Department of Mines, Minerals and Energy (“Department”)

FROM: Sharon M.B. Pigeon
Assistant Attorney General

DATE: February 14, 2006

RE: Amendment of Emergency Regulations 4 VAC 25-130-816.11 and 4 VAC 25-130-816.64
 (“Existing Regulations”) with Revised Replacement Regulations 4 VAC 25-130-816.11 and
 4 VAC 25-130-816.64 (“Proposed Regulations”)

The Office of the Attorney General was advised that the Department has proposed to amend the requirements concerning permit boundary signs and blasting near residences and occupied buildings on coal mines. Earlier regulations were amended previously pursuant to the directive to the Department of Mines, Minerals and Energy (DMME). This was done to promulgate those regulatory amendments on an emergency basis in accordance with the third enactment clause of Chapter 3 of the 2005 Virginia Acts of Assembly (HB 2573).

At the time of the emergency enactment, DMME was directed to make these additional revisions to the Existing Regulations within 280 days of the enactment of the emergency regulations. The Existing Regulations were enacted effective August 10, 2005 through August 9, 2006. DMME has no discretion in promulgating the Proposed Regulations as no alternative to this action would otherwise satisfy the original enacting mandate.

You have asked that I provide you with a determination of whether statutory authority exists to amend the Existing Regulations and to promulgate in their stead the attached replacement regulations 4 VAC 25-130-816.11 and 4 VAC 25-130-816.64 (“Proposed Regulations”). After a review of the Proposed Regulations, I have determined that the regulations do fall within the Department’s powers and mandate to regulate coal surface mining operations and to promulgate regulations for that purpose. The Proposed Regulations are approved as to form as currently written.

I have reached this conclusion in reliance on the general authority to promulgate regulations given to the Department through Va. Code §§ 45.1-161.3, 45.1-228, 45.1-230, and 45.1-242. Additional, more specific

support for this action can be found in §§ 2.2-4006 and 2.2-4011 of the Virginia Code, 1952, as amended, as the Proposed Regulations are in replacement of the emergency regulations enacted effective August 10, 2005.

The purpose of this communication is to provide legal advice, not policy advice. To the extent that this communication may advise you that certain action is lawful, the decision whether to take such action remains a policy decision within the discretion of your agency or board and this communication should not be construed as a comment for or against the merits of such action.