



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*  
*Richmond 23219*

**Robert F. McDonnell**  
Attorney General

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

**MEMORANDUM**

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

FROM: Sharon M.B. Pigeon  
Assistant Attorney General

DATE: June 5, 2007

RE: 4 VAC 25-130-777.17 (“Existing Regulation”)

The Office of the Attorney General was advised that the Department has proposed to amend the Existing Regulation by increasing certain fees to be in conformity with Va. Code § 45.1-235, as amended in 2003.

You have asked that I provide you with a determination of whether statutory authority exists to amend the Existing Regulation and to promulgate in its stead the attached proposed amended regulation 4 VAC 25-130-777.17 (“Proposed Regulation”). After a review of the Proposed Regulation, I have determined that the regulation does fall within the Department’s powers and mandate to regulate coal mining operations and to promulgate regulations for that purpose. The Proposed Regulation is 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 and 45.1-161.35 and 45.1-230. Additional, more specific support for this action can be found in § 2.2-4006 of the Virginia Code, 1952, as amended, which exempts agency orders and regulations from the Virginia Register Act, §§ 2.2-4100 *et seq.*, as this action is required to comply with Va. Code § 45.1-235. No agency discretion is involved in taking this action.