



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

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

FROM: Sharon M.B. Pigeon
Assistant Attorney General

DATE: March 13, 2006

RE: Amendment of Regulations 4 VAC 25-130-700.12, 4 VAC 25-130-773.21, 4 VAC 25-130-775.11, 4 VAC 25-130-775.13, 4 VAC 25-130-784.20, 4 VAC 25-130-800.51, 4 VAC 25-130-816.105, 4 VAC 25-130-817.11, 4 VAC 25-130-817.64, 4 VAC 25-130-817.121, 4 VAC 25-130-842.15, 4 VAC 25-130-843.12, 4 VAC 25-130-843.13, 4 VAC 25-130-843.15, 4 VAC 25-130-843.16, 4 VAC 25-130-845.13, 4 VAC 25-130-845. 15, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, and 4 VAC 25-130-846.14 (“Existing Regulations”) with Revised Replacement Regulations 4 VAC 25-130-700.12, 4 VAC 25-130-773.21, 4 VAC 25-130-775.11, 4 VAC 25-130-775.13, 4 VAC 25-130-784.20, 4 VAC 25-130-800.51, 4 VAC 25-130-816.105, 4 VAC 25-130-817.11, 4 VAC 25-130-817.64, 4 VAC 25-130-817.121, 4 VAC 25-130-842.15, 4 VAC 25-130-843.12, 4 VAC 25-130-843.13, 4 VAC 25-130-843.15, 4 VAC 25-130-843.16, 4 VAC 25-130-845.13, 4 VAC 25-130-845. 15, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, and 4 VAC 25-130-846.14 (“Proposed Regulations”)

The Office of the Attorney General was advised that the Department has proposed to amend the Virginia Coal Surface Mining Reclamation Regulations to: revise references to sections in the Virginia Administrative Process Act to reflect its current numbering; provide direction as to where requests for formal administrative review and notices of judicial appeal shall be filed; maintain consistency with corresponding federal amendments regarding survey requirements and the rebuttable presumption of subsidence determinations; maintain consistency with federal regulations regarding thick overburden; maintain consistency between requirements for surface mines and underground mines; and increase the civil penalties for violations of the Virginia Coal Surface Mining Control and Reclamation Act that result in personal injury or fatality consistent with amendments to the Act.

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 25-130-700.12, 4 VAC 25-130-773.21, 4 VAC 25-130-775.11, 4 VAC 25-130-775.13, 4 VAC 25-130-784.20, 4 VAC 25-130-800.51, 4 VAC 25-130-816.105, 4 VAC 25-130-817.11, 4 VAC 25-130-817.64, 4 VAC 25-130-817.121, 4 VAC 25-130-842.15, 4 VAC 25-130-843.12, 4 VAC 25-130-843.13, 4 VAC 25-130-843.15, 4 VAC 25-130-843.16, 4 VAC 25-130-845.13, 4 VAC 25-130-845. 15, 4 VAC 25-130-845.18, 4 VAC 25-130-845.19, and 4 VAC 25-130-846.14 (“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. .

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.