



COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

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MEMORANDUM

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

FROM: Sharon M.B. Pigeon
Assistant Attorney General

DATE: March 29, 2007

RE: Amendment of Regulations 4 VAC 25-130-785.25, 4 VAC 25-130-816.116, and
4 VAC 25-130-817.116 (“Existing Regulations”) and Replacement With
Revised Regulations 4 VAC 25-130-785.25, 4 VAC 25-130-816.116, and
4 VAC 25-130-817.116 (“Proposed Regulations”)

The Office of the Attorney General was advised that the Department has proposed to amend the requirements concerning re-mining of previously mined lands. The Existing Regulations contain a sunset provision, and that is being deleted in the Proposed Regulations. This was done to make the Virginia regulations consistent with the current federal requirements enhancing site eligibility for re-mining, as amended by the Tax Relief and Health Care Act of 2006, 109 P.L. 432; 120 Stat. 2922.

The Department has no discretion in promulgating the Proposed Regulations as no alternative to this action would otherwise satisfy the agency’s mandate to maintain the State program in compliance with the federal Surface Mining Control and Reclamation Act by enacting regulatory provisions that are consistent with, and no less stringent than, the federal ones.

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 25-130-785.25, 4 VAC 25-130-816.116, and 4 VAC 25-130-817.116 (“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.