

MEMORANDUM OF AGREEMENT

REFUSE PILES, WATER AND SILT RETAINING DAMS

This Memorandum of Agreement is made this 29th day of May, 1997 by and between two divisions within the Commonwealth of Virginia's Department of Mines, Minerals and Energy (herein "DMME"), being the Division of Mined land Reclamation (herein "DMLR") and the Division of Mines (herein "DM").

Whereas, DMLR is the regulatory authority of the Commonwealth responsible for administering the Virginia Coal Surface Mining Control and Reclamation Act of 1979, Virginia Code §§ 45.1-226 et seq., and the regulations promulgated thereunder, 4 VAC 25-130 et seq., (herein the Act and the Regulations are collectively referred to as "VSMCRA") to facilitate the purposes more particularly set forth in Virginia Code 45.1-228, including but not limited to, measures designed to protect the public welfare and safety and to provide for the implementation and enforcement by the Commonwealth of the federal Surface Mining Control and Reclamation Act of 1977, and the regulations of the United States Secretary of the Interior promulgated thereunder, and amendments thereto, as the same may be or become effective any time or from time to time.

Whereas, DM is the regulatory authority of the Commonwealth responsible for administering the Mine Safety Act, Virginia Code §§ 45.1-161.7 et seq., and the rules and regulations promulgated thereunder, (herein the Mine Safety Act and the Rules and Regulations promulgated thereunder are collectively referred to as "Mine Safety Act") for the purpose of providing for the safety and health of coal miners.

Whereas, VSMCRA contains provisions designed to protect the public welfare and safety and the Mine Safety Act contains provisions relating to the safety and health of miners; however, the scope of neither is exclusive in nature.¹

Whereas, both VSMCRA and the Mine Safety Act contain provisions designed to regulate certain aspects of coal refuse piles, water and silt retaining dams thus leading to the potential for overlapping jurisdiction between DM and DMLR.

Whereas, to conserve time and resources and better administer the provisions of VSMCRA and the Mine Safety Act, DMLR and DM desire to enter into this Memorandum of Agreement to provide for cooperation and coordination in the administration of their respective duties with respect to requirements of VSMCRA and the Mine Safety Act applicable to coal refuse piles, water and silt retaining dams.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. This agreement shall not be construed as a delegation of authority from the Chief of DM (herein "Chief") to the Director of DMME (herein "Director"), nor from the Director to the Chief, and nothing herein contained shall be construed to hinder, prevent or impede the Chief from performing any duty or serving any function permitted or required by the Mine Safety Act or the Director from performing any duty or serving any function permitted or required by VSMCRA.

¹ Va. Code § 45.1-161.9 provides that "[I]n safety and health, all miners are to be governed by this Act and Chapter 18 (§ 45.1-221 et seq.) of this title, and any other sections of the code relating to safety and health of miners and rules and regulations promulgated by the Department.

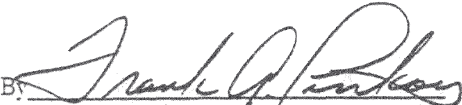
- Chapter 18 of Title 45.1 of the Code of Virginia, 1950 as amended, is administered by DM and sets forth reporting requirements and approval standards for water or silt retaining dams and coal mine refuse piles (herein "Chapter 18"). Further, mandatory standards for examination of dams and refuse piles, and development of emergency response plans for potentially hazardous conditions are addressed in Chapter 18.

Sections 4 VAC 25-130.816.49, 4 VAC 25-130.816.81, 4 VAC 25-130.816.83, 4 VAC 25-130.816.84, 4 VAC 25-130.816.87, and 4 VAC 25-130.817.49, 4 VAC 25-130.817.81, 4 VAC 25-130.817.83, 4 VAC 25-130.817.84, 4 VAC 25-130.817.87 of the regulations implementing VCSMR are administered by DMLR (herein "VSMCRA Regulations") and have the same purposes as the provisions of Chapter 18. The standards of Chapter 18 and the VSMCRA Regulations are effectively consistent with respect to their provisions which pertain to design, construction and certification requirements.


- So long as the VSMCRA Regulations remain and are applied in a manner that is at least as effective as the Chapter 18 statutory requirements, DM agrees to defer to DMLR with respect to plan approvals, for the designs, construction specifications and other related data, including final abandonment plans. The process for such approval will include review by the DM Mine Safety Engineer. The approved plan will be maintained on file with DMLR.
- DM and DMLR will continue jointly and independently to review their respective program for duplication between their respective functions, and to the extent such duplication can be resolved by agreement of the parties, they will amend this memorandum of understanding accordingly.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto in manner and form sufficient to bind them as of the day and year first written.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS
AND ENERGY, DIVISION OF MINES

By 
Frank A. Linkous, Chief

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS
AND ENERGY, DIVISION OF MINED
LAND RECLAMATION

By 
Danny R. Brown, in behalf of Director

SEEN AND APPROVED BY:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MINES, MINERALS AND ENERGY

By 
Benny R. Wampler, Deputy Director