

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 542

An Act to amend and reenact §§ 45.1-161.58, 45.1-161.292:31, 45.1-181, 45.1-184.2, 45.1-235, 45.1-361.29, and 45.1-361.33 of the Code of Virginia, relating to mineral extraction license and permit fees.

[H 2465]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-161.58, 45.1-161.292:31, 45.1-181, 45.1-184.2, 45.1-235, 45.1-361.29, and 45.1-361.33 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-161.58. Fee to accompany application for license; fund; disposition of fees.

Each application for a license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of ~~seventy-five dollars~~ \$180. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mining industry. All expenditures from this fund must be approved by the Director.

§ 45.1-161.292:31. Fee to accompany application for license; fund; disposition of fees.

Each application for a mineral mine license or a renewal or transfer of a license shall be submitted to the Department, accompanied by a fee, payable to the State Treasurer, in the amount of ~~seventy-five dollars~~ \$180. However, any person engaged in mining sand or gravel on an area of five acres or less shall be required to pay a fee of ~~twenty dollars~~ \$48. All such fees collected shall be retained by the Department and paid into the state treasury and shall constitute a fund under the control of the Director. Expenditures from this fund may be made by the Department for safety equipment, safety training, safety education or for any expenditure to further the safety program in the mineral mining industry. All expenditures from this fund must be approved by the Director.

§ 45.1-181. Permit required; fee; renewal fee; application; furnishing copy of map, etc., to landowner; approval by Department.

It shall be unlawful for any operator to engage in any mining operation in Virginia, without having first obtained from the Department a permit to engage in such operation and paying a fee therefor of ~~twelve dollars~~ \$31 per acre for every acre of land to be affected by the total operation for which plans have been submitted, which shall be deposited in the state treasury in a special fund to be used by the Director for the administration of this chapter. A permit shall be obtained prior to the start of any mining operation. If within ~~ten~~ 10 days of the anniversary date of the permit the Director, after inspection, is satisfied that the operation is proceeding according to the plan submitted to and approved by him, then the Director shall renew the permit upon payment of a renewal fee by the operator of ~~six dollars~~ \$16 per acre for land to be affected by the total operation in the next ensuing year. The renewal fees shall be deposited in the state treasury in the special fund set out above. If the operator believes changes in his original plan are necessary or if additional land not shown as a part of the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which shall be approved by the Director in the same manner as an original plan and shall be subject to the provisions of this section and §§ 45.1-182.1 and 45.1-183 hereof. A separate permit must be secured for each mining operation conducted. Application for a mining permit shall be made in writing on forms prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized representative. The application, in addition to such other information as may be reasonably required by the Director shall contain the following information: (1) the common name and geologic title, where applicable, of the mineral to be extracted; (2) a description of the land upon which the applicant proposes to conduct mining operations, which description shall set forth: the name of the county or city in which such land is located; the location of its boundaries and any other description of the land to be disturbed in order that it may be located and distinguished from other lands and easily ascertainable as shown by a map attached thereto showing the amount of land to be disturbed; (3) the name and address of the owner or owners of the surface of the land; (4) the name and address of the owner or owners of the mineral, ore or other solid matter; (5) the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; (6) the total number of acres of land to be covered by the permit; (7) a reasonable estimate of the number of acres of land that will be disturbed by mining operations on the area to be covered by the permit during the ensuing year; (8) whether any mining permits of any type are now held by the applicant and the number thereof; (9) the name and address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the state of incorporation and the

name and address of its registered agent, if a corporation; or the name and address of the trustee, if a trust; and (10) if known, whether the applicant, or any subsidiary or affiliate or any partnership, association, trust or corporation controlled by or under common control with applicant, or any person required to be identified by item (9) above, has ever had a mining permit of any type issued under the laws of this or any other state revoked or has ever had a mining or other bond, or security deposited in lieu of bond, forfeited.

The application for a permit shall be accompanied by two copies of an accurate map or aerial photograph or plan and meeting the following requirements:

- (a) Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping service or in such a manner as to be acceptable to the Director;
- (b) Identify the area to correspond with the land described in the application;
- (c) Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of owners of the affected area which lie within 100 feet of any part of the affected area;
- (d) Be drawn to a scale of 400 feet to the inch or better;
- (e) Show the names and location of all streams, creeks or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within 500 feet of such area;
- (f) Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam at the surface or deposit to be mined, and the total number of acres involved in the area of land affected;
- (g) Show the date on which the map was prepared, the north arrow and the quadrangle name;
- (h) Show the drainage plan on and away from the area of land affected, including the directional flow of water, constructed drainways, natural waterways used for drainage and the streams or tributaries receiving the discharge.

Upon receipt of a written request by any landowner on whose property a sand and gravel operation is permitted pursuant to this section, the operator of the sand and gravel operation shall provide a copy of the map, photograph or plan to the landowner.

No permit shall be issued by the Department until the Director has approved the plan of operation required in this section and § 45.1-182.1 and the bond from the applicant as required in § 45.1-183.

§ 45.1-184.2. Succession of one operator by another at uncompleted project.

Where one operator succeeds another at any uncompleted operation, whether by sale, assignment, lease, merger, or otherwise, the Director may release the first operator from all liability under this chapter as to that particular operation and transfer the permit to the successor operator; provided, however, that the successor operator has complied with the requirements of this chapter, and the successor operator assumes as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the first operator. No fee, or any portion thereof, paid by the first operator shall be returned to either operator. The permit fee for the successor operator for the area of land permitted by the first operator shall be ~~six dollars~~ \$16 per acre, except as provided by § 45.1-180.4. The mining permit for the successor operator shall be valid for one year from the date of issuance and shall be renewed thereafter in accordance with the provisions of this chapter.

§ 45.1-235. Form and contents of permit application; fee.

A. Application for a surface mining permit shall be made to the Division in the format required by the Director and shall be signed and verified under oath by the person, or his legal representative, intending to engage in the surface mining of coal.

B. The application shall contain such information as shall be required by regulations adopted by the Director, including, but not limited to, the information required under the provisions of § 507 (b) of the federal act.

C. To the extent that funds are available from the federal Office of Surface Mining, the Director shall provide for permit application assistance to small operators as provided in § 507 (c) and (h) of the federal act. Such assistance shall be provided in accordance with regulations adopted by the Director.

D. Each applicant for a permit shall be required to submit to the Division as part of the permit application an operations plan and a reclamation plan which shall meet the requirements of this chapter and regulations promulgated by the Director.

E. Each application for a coal surface mining permit issued under this chapter shall be accompanied by a fee of ~~twelve dollars~~ \$26 per acre for the area of land to be affected by the total operation for which plans have been submitted. An anniversary payment of ~~six dollars~~ \$13 per acre for areas disturbed under the permit shall be payable annually on the anniversary date of the permit. All fees collected under the provisions of this chapter shall be paid into a special fund of the Department to be used for the administration of the coal surface mining regulatory program and are hereby appropriated for that purpose.

F. Each applicant for a coal surface mining permit shall file a copy of his application for public inspection at an appropriate public office approved by the Director where the mining is proposed to occur. However, information which pertains only to the analysis of the chemical and physical property of the coal, excepting information regarding such mineral or elemental content which is potentially toxic

in the environment, shall be kept confidential upon request of the applicant and not made a matter of public record.

G. Each applicant for a coal surface mining permit shall be required to submit to the Division as part of the permit application a certificate issued by an insurance company authorized to do business in the Commonwealth, certifying that the applicant has a public liability insurance policy in force for the surface mining and reclamation operations for which such permit is sought. Such policy shall provide for personal injury and property damage protection in an amount, not less than that specified in regulations adopted by the Director, adequate to compensate any persons damaged as a result of surface coal mining and reclamation operations, including use of explosives, and entitled by law to compensation under applicable provisions of law. Such policy shall be maintained in full force and effect during the terms of the permit or any renewal, and including the length of all reclamation operations. The Director is authorized to promulgate regulations which provide for the submission by the applicant of evidence of self-insurance, meeting the requirements of this subsection, in lieu of a certificate of a public liability insurance policy.

§ 45.1-361.29. Permit required; gas, oil, or geophysical operations; coalbed methane gas wells; environmental assessment.

A. No person shall commence any ground disturbing activity for a well, gathering pipeline, geophysical exploration or associated activity, facilities or structures without first having obtained from the Director a permit to conduct such activity. Every permit application or permit modification application filed with the Director shall be verified by the permit applicant and shall contain all data, maps, plats, plans and other information as required by regulation or the Director.

B. For permits issued on July 1, 1996, or thereafter, new permits issued by the Director shall be issued only for the following activities: geophysical operations, drilling, casing, equipping, stimulating, producing, reworking initially productive zones and plugging a well, or gathering pipeline construction and operation. Applications for new permits to conduct geophysical operations shall be accompanied by an application fee of ~~\$100~~ \$130. Applications for all other new permits shall be accompanied by an application fee of ~~\$200~~ \$260.

C. For permits issued prior to July 1, 1996, prior to commencing any reworking, deepening or plugging of the well, or other activity not previously approved on the permitted site, a permittee shall first obtain a permit modification from the Director. All applications for permit modifications shall be accompanied by a permit modification fee of ~~\$400~~ \$130. For permits issued on July 1, 1996, or thereafter, prior to commencing any new zone completions a permittee shall first obtain a permit modification from the Director.

D. All permits and operations provided for under this section shall conform to the rules, regulations and orders of the Director and the Board. When permit terms or conditions required or provided for under Article 3 (§ 45.1-361.27 et seq.) of this chapter are in conflict with any provision of a conservation order issued pursuant to the provisions of Article 2 (§ 45.1-361.13 et seq.) of this chapter, the terms of the permit shall control. In this event, the operator shall return to the Board for reconsideration of a conservation order in light of the conflicting permit. Every permittee shall be responsible for all operations, activity or disturbances associated with the permitted site.

E. No permit or permit modification shall be issued by the Director until he has received from the applicant a written certification that (i) all notice requirements of this article have been complied with, together with proof thereof, and (ii) the applicant has the right to conduct the operations as set forth in the application and operations plan.

F. A permit shall be required to drill any coalbed methane gas well or to convert any methane drainage borehole into a coalbed methane gas well. In addition to the other requirements of this section, every permit application for a coalbed methane gas well shall include:

1. The method that the coalbed methane gas well operator will use to stimulate the well.

2. a. A signed consent from the coal operator of each coal seam which is located within 750 horizontal feet of the proposed well location (i) which the applicant proposes to stimulate or (ii) which is within 100 vertical feet above or below a coal bearing stratum which the applicant proposes to stimulate.

- b. The consent required by this section may be (i) contained in a lease or other such agreement; (ii) contained in an instrument of title; or (iii) in any case where a coal operator cannot be located or identified and the operator has complied with § 45.1-361.19, provided by a pooling order entered pursuant to § 45.1-361.21 or § 45.1-361.22 and provided such order contains a finding that the operator has exercised due diligence in attempting to identify and locate the coal operator. The consent required by this section shall be deemed to be granted for any tract where title to the coal is held by multiple owners if the applicant has obtained consent to stimulate from the co-tenants holding majority interest in the tract and none of the coal co-tenants has leased the tract for coal development. The requirement of signed consent contained in this section shall in no way be considered to impair, abridge or affect any contractual rights or objections arising out of a coalbed methane gas contract or coalbed methane gas lease entered into prior to January 1, 1990, between the applicant and any coal operator, and any extensions or renewals thereto, and the existence of such lease or contractual arrangement and any

extensions or renewals thereto shall constitute a waiver of the requirement for the applicant to file an additional signed consent.

3. The unit map, if any, approved by the Board.

G. No permit required by this chapter for activities to be conducted within an area of Tidewater Virginia where drilling is authorized under subsection B of § 62.1-195.1 shall be granted until the environmental impact assessment required by § 62.1-195.1 has been conducted and the assessment has been reviewed by the Department.

H. The operator of any coalbed methane well drilled within 250 feet of a cemetery shall comply with a written request of any person owning an interest in a private cemetery or the authorized agent of a public cemetery that the operator of such well suspend operations for a period from two hours before to two hours after any burial service that takes place on the surface area of such cemetery. However, if the well operator or a mine operator determines that suspension of such operations will have an adverse effect on the safety of the well operations or mining operations, the operator shall be under no obligation to comply with the request, and operation of the well shall continue.

§ 45.1-361.33. Expiration of permits.

All permits issued pursuant to this chapter shall expire ~~twenty-four~~ 24 months from their date of issuance unless the permitted activity has commenced within that time period. An operator may renew the existing permit for an additional ~~twenty-four~~ 24 months by submitting a written request containing the coal operator's approval and remitting a ~~\$250~~ \$325 renewal fee no later than the expiration date.

2. That the Virginia Gas and Oil Board shall increase the fee for filing an application for the establishment of units, spacing, or pooling orders, as provided for in 4 VAC 25-160-30, to \$130. Action by the Board to increase this fee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

3. That the Department of Mines, Minerals, and Energy shall increase the fee for filing an application to transfer gas or oil permit rights, as provided for in 4 VAC 25-150-120, to \$65. Action by the Department to increase this fee shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).