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SENATE BILL NO. 564

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 45.1-238 of the Code of Virginia, relating to coal surface mining; refuse control.*

Patrons—Ticer, Marsden, Northam and Whipple; Delegate: Herring

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 45.1-238 of the Code of Virginia is amended and reenacted as follows:**

§ 45.1-238. Approval or denial of permit.

A. Upon the basis of a complete mining application and reclamation plan or a revision or renewal thereof, as required by the federal act and pursuant to the approved permanent state regulatory program, including public notification and opportunity for public hearing, the Director shall grant, require modification of, or deny the application for a permit in a reasonable time established by regulation and shall notify the applicant in writing. The applicant shall have the burden of establishing that the application is in compliance with all the requirements of the permanent state regulatory program. Within ten days after the granting of a permit the Director shall notify the government officials in the city or county in which the area of land to be affected is located that a permit has been issued and shall describe the location of the land.

B. No permit or revision application shall be approved unless the application affirmatively demonstrates, and the Director finds in writing on the basis of the information set forth in the application or from information otherwise available which will be documented in the approval and made available to the applicant, that:

1. The permit application is accurate and complete and that all the requirements of the federal act and the permanent state regulatory program have been complied with;

2. The applicant has demonstrated that reclamation as required by the federal act and the permanent state regulatory program can be accomplished under the reclamation plan contained in the permit application;

3. The assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the Director in accordance with regulation and the proposed operation has been designed to prevent material damage to hydrologic balance outside the permit area;

4. The area proposed to be mined is not included within an area designated unsuitable for coal surface mining pursuant to this chapter nor is it within an area under study for such designation in an administrative proceeding commenced pursuant to this chapter, unless in such an area as to which an administrative proceeding has commenced, the applicant demonstrates that prior to January 1, 1977, he made substantial legal and financial commitments in relation to the operation for which he seeks a permit;

5. In cases where the private mineral estate has been severed from the private surface estate, the applicant has submitted to the Director:

a. The written consent of the surface owner to the extraction of coal by surface mining methods; or

b. A conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or

c. If the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with the laws of this Commonwealth; provided, however, that nothing herein shall be construed to authorize the Director to adjudicate property rights disputes; and

6. *No spoil, refuse, silt, slurry, tailings, or other waste materials from coal surface mining and reclamation operations will be disposed of in any intermittent, perennial, or ephemeral stream.*

C. The applicant shall file with his permit application a schedule listing any and all notices of violations of the federal act, this chapter and any law, rule or regulation of the United States or of this Commonwealth or of any department or agency in the United States pertaining to air or water environmental protection, incurred by the applicant in connection with any coal surface mining operation during the three-year period preceding the date of application. The schedule shall also indicate the final resolution of any such notice of violation. Where the schedule or other information available to the Director indicates that any coal surface mining operation owned or controlled by the applicant is currently in violation of the laws referred to in this subsection, the permit shall not be issued until the

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59 applicant submits proof that such violation has been corrected or is in the process of being corrected to
60 the satisfaction of the authority, department or agency which has jurisdiction over such violation, and no
61 permit shall be issued to an applicant after a finding by the Director after opportunity for a hearing, that
62 the applicant, or the operator specified in the application, controls or has controlled mining operations
63 with a demonstrated pattern of willful violations of the federal act or this chapter of such nature and
64 duration with such resulting irreparable damage to the environment as to indicate an intent not to
65 comply with the federal act or this chapter.

66 D. In addition to finding the application in compliance with subsection B of this section, if the area
67 proposed to be mined contains prime farmland pursuant to § 507 (b) (16) of the federal act, the Director
68 shall comply with applicable regulations issued by the Secretary in determining whether to issue a
69 permit for such area.
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