

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 695

An Act to amend and reenact §§ 45.1-181 and 55-154.2 of the Code of Virginia, relating to mine voids.

[H 710]

Approved April 9, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-181 and 55-154.2 of the Code of Virginia are amended and reenacted as follows:

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

It ~~shall be~~ *is* 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 \$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 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 \$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~~ *shall* 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)~~ *(i)* the common name and geologic title, where applicable, of the mineral to be extracted; ~~(2)~~ *(ii)* 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)~~ *(iii)* the name and address of the owner or owners of the surface of the land; ~~(4)~~ *(iv)* the name and address of the owner or owners of the mineral, ore or other solid matter; ~~(5)~~ *(v)* the source of the operator's legal right to enter and conduct operations on the land to be covered by the permit; ~~(6)~~ *(vi)* the total number of acres of land to be covered by the permit; ~~(7)~~ *(vii)* 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)~~ *(viii)* whether any mining permits of any type are now held by the applicant and the number thereof; ~~(9)~~ *(ix)* 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)~~ *(x)* 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~~ *clause (ix)*, 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. *Clause (iv) shall not apply to the shell, container chamber, passage, or open space set forth in § 55-154.2.*

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)~~ *1.* 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)~~ *2.* Identify the area to correspond with the land described in the application;

~~(c)~~ *3.* 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)~~ *4.* Be drawn to a scale of 400 feet to the inch or better;

~~(e)~~ *5.* 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)~~ *6.* 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)~~ 7. Show the date on which the map was prepared, the north arrow and the quadrangle name; *and*
- ~~(h)~~ 8. 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.

§ 55-154.2. Presumption regarding estate of owner of mineral rights.

A. Except as otherwise provided in the deed by which the owner of minerals derives title, the owner of minerals shall be presumed to be the owner of the shell, container chamber, passage, and space opened underground for the removal of the minerals, with full right to haul and transport minerals from other lands and to pass men, materials, equipment, water and air through such space. No injunction shall lie to prohibit the use of any such shell, container chamber, passage or space opened underground by the owner of minerals for the purposes herein described. The provisions of this ~~section~~ *subsection* shall not affect contractual obligations and agreements entered into prior to July 1, 1981.

B. Notwithstanding the provisions of subsection A, with respect to the coal mineral estate, unless expressly excepted by the instrument creating the mineral ownership or lease interest, the owner or, if leased, the lessee of the coal mineral estate or its successor, assign, sublessee, or affiliate retains the right to any coal remaining in place after the removal of surrounding coal, as well as the right to use the shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal.

1. Any such shell, container chamber, passage, space, or void opened underground that is within the boundaries of a mine permit issued under Title 45.1 may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved, and no injunction shall lie to prohibit such use.

2. Any such shell, container chamber, passage, space, or void opened underground that is located in a sealed mine for which a mining permit no longer exists may be used consistent with state and federal regulations for any activity related to removal of coal from any lands for which a permit to mine coal has been approved only with the consent of the owner of such shell, container chamber, passage, space, or void. Such consent shall not be unreasonably withheld if the owner has been offered reasonable compensation for such use. In determining whether an offer of compensation is reasonable, a court shall be guided by the compensation set forth in other leases for the use of mine voids as is customary in the area.

C. The provisions of subdivisions B 1 and B 2 (i) shall not affect any provision contained in any contract in effect as of July 1, 2012, expressly prohibiting the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; (ii) shall not alter any contract entered into prior to July 1, 2012, that provides for the payment of compensation from the lessee to the lessor expressly for the use of any shell, container chamber, passage, space, or void opened underground that was created by the removal of the coal; and (iii) shall have no bearing on or application to any determination of ownership rights in natural gas or coalbed methane.

2. That the provisions of this act shall not be construed to affect any litigation pending in a court of competent jurisdiction on or before July 1, 2012.