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SENATE BILL NO. 1093

Offered January 20, 2020

A *BILL to amend and reenact §§ 45.1-161.305, 45.1-181, and 45.1-225.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 45.1-161.311:2.01, relating to surface mineral mines; local authority.*

Patron—Vogel

Unanimous consent to introduce

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-161.305, 45.1-181, and 45.1-225.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 45.1-161.311:3 as follows:

§ 45.1-161.305. Regulations governing conditions and practices at surface mineral mines.

A. The Director shall promulgate rules and regulations, in accordance with Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act, necessary to ensure safe working conditions and practices at surface mineral mines in the Commonwealth. Nothing in this section shall restrict the Director from promulgating regulations more stringent than regulations promulgated pursuant to the federal mine safety law. Such rules and regulations applicable to surface mineral mines shall establish requirements:

1. For protecting miners from general risks found at surface mineral mines;
2. For the provision and use of personal protection equipment;
3. For controlling unstable ground conditions;
4. For the handling and storage of combustible materials, including requirements for emergency plans, fire-fighting and emergency rescue, fire prevention and safety features on mine equipment, and fire prevention and safety in mine structures and buildings;
5. For controlling exposure to airborne toxic contaminants;
6. For safe storage, transportation, and use of explosives and blasting devices, *taking into account any risks associated with adjacent property*;
7. For the safe design, operation, maintenance, and inspection of drilling equipment;
8. For the construction, use, maintenance, and inspection of boilers, air compressors, and compressed gas systems;
9. For the safe design, operation, maintenance, and inspection of mobile equipment;
10. For the safe design, use, maintenance, and inspection of ladders, walkways, and travel ways;
11. For the safe design, operation, maintenance, and inspection of electrical equipment and systems;
12. For the safe design, use, maintenance, and inspection of guards on moving parts of equipment and machinery;
13. For the storage, transportation and handling of materials, including corrosive and hazardous substances;
14. For the safe design, operation, maintenance, and inspection of hoisting equipment and cables;
15. For the actions of certified and competent persons; and
16. For the design, construction, maintenance, inspection of refuse piles, and water and silt retaining dams, including emergency response plans.

B. The Director shall not promulgate any regulation relating to surface mineral mines which is inconsistent with requirements established by the Act, or which, when an operator takes action to comply with the provisions of such regulation, would place the operator in violation of the federal mine safety law.

§ 45.1-161.311:2.01. Blasting buffer zone.

Any locality may by ordinance create a reasonable buffer zone around any blasting area of any surface mineral mine adjacent to or within a reasonable distance of a school, park, or other public gathering space.

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

It 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 \$50 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

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59 administration of this chapter. A permit shall be obtained prior to the start of any mining operation. If
60 within 10 days of the anniversary date of the permit, the Director, after inspection, is satisfied that the
61 operation is proceeding according to the plan submitted to and approved by him, then the Director shall
62 renew the permit upon payment of a renewal fee by the operator for land to be affected by the total
63 operation in the next ensuing year according to the following schedule:

64 Anniversary Date: Renewal Fee:

65 Beginning July 1, 2019 \$18 per disturbed acre

66 Beginning July 1, 2020 \$20 per disturbed acre

67 Beginning July 1, 2021 \$22 per disturbed acre

68 Beginning July 1, 2022 \$24 per disturbed acre

69 The renewal fees shall be deposited in the state treasury in the special fund set out above. If the
70 operator believes changes in his original plan are necessary or if additional land not shown as a part of
71 the approved plan of operation is to be disturbed, he shall submit an amended plan of operation which
72 shall be approved by the Director in the same manner as an original plan and shall be subject to the
73 provisions of this section and §§ 45.1-182.1 and 45.1-183. A separate permit shall be secured for each
74 mining operation conducted. Application for a mining permit shall be made in writing on forms
75 prescribed by the Director and shall be signed and sworn to by the applicant or his duly authorized
76 representative. The application, in addition to such other information as may be reasonably required by
77 the Director, shall contain the following information: (i) the common name and geologic title, where
78 applicable, of the mineral to be extracted; (ii) a description of the land upon which the applicant
79 proposes to conduct mining operations, which description shall set forth: the name of the county or city
80 in which such land is located; the location of its boundaries and any other description of the land to be
81 disturbed in order that it may be located and distinguished from other lands and easily ascertainable as
82 shown by a map attached thereto showing the amount of land to be disturbed; (iii) the name and address
83 of the owner or owners of the surface of the land; (iv) the name and address of the owner or owners of
84 the mineral, ore or other solid matter; (v) the source of the operator's legal right to enter and conduct
85 operations on the land to be covered by the permit; (vi) the total number of acres of land to be covered
86 by the permit; (vii) a reasonable estimate of the number of acres of land that will be disturbed by
87 mining operations on the area to be covered by the permit during the ensuing year; (viii) whether any
88 mining permits of any type are now held by the applicant and the number thereof; (ix) the name and
89 address of the applicant, if an individual; the names and addresses of all partners, if a partnership; the
90 state of incorporation and the name and address of its registered agent, if a corporation; or the name and
91 address of the trustee, if a trust; and (x) if known, whether the applicant, or any subsidiary or affiliate or
92 any partnership, association, trust or corporation controlled by or under common control with applicant,
93 or any person required to be identified by clause (ix), has ever had a mining permit of any type issued
94 under the laws of this or any other state revoked or has ever had a mining or other bond, or security
95 deposited in lieu of bond, forfeited. Clause (iv) shall not apply to the shell, container chamber, passage,
96 or open space set forth in § 45.1-161.311:10.

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

99 1. Be prepared by a licensed engineer or licensed land surveyor or issued by a standard mapping
100 service or in such a manner as to be acceptable to the Director;

101 2. Identify the area to correspond with the land described in the application;

102 3. Show adjacent deep mining, if any, and the boundaries of surface properties, with the names of
103 owners of the affected area which lie within 100 feet of any part of the affected area;

104 4. Be drawn to a scale of 400 feet to the inch or better;

105 5. Show the names and location of all streams, creeks or other bodies of public water, roads,
106 buildings, cemeteries, oil and gas wells, and utility lines on the area affected and within 500 feet of such
107 area;

108 6. Show by appropriate markings the boundaries of the area of land affected, the outcrop of the seam
109 at the surface or deposit to be mined, and the total number of acres involved in the area of land
110 affected;

111 7. Show the date on which the map was prepared, the north arrow and the quadrangle name; and

112 8. Show the drainage plan on and away from the area of land affected, including the directional flow
113 of water, constructed drainways, natural waterways used for drainage and the streams or tributaries
114 receiving the discharge.

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

118 No permit shall be issued by the Department until the Director ~~has~~ *and the governing body of any*
119 *locality in which the operation sits have* approved the plan of operation required in this section and
120 § 45.1-182.1 and the bond from the applicant as required in § 45.1-183.

§ 45.1-225.1. Dams and refuse piles to be constructed, approved, etc., by qualified engineer; designs and other data to be submitted to the Director.

A. On and after July 1, 1974, new water or silt retaining dams, or a mine refuse pile, or the modification of existing mine water or silt or mine refuse retaining dams shall be designed and constructed by, or under the direction of, a qualified engineer, if such retaining dam:

1. Is designed to impound water or silt to a height of five feet or more above the lowest natural ground level within the impounded area; and

2. Has a storage volume of ~~fifty~~ 50 acre-feet or more; or

3. Is designed to impound water or silt to a height of ~~twenty~~ 20 feet or more, regardless of storage volume.

B. Water and silt retaining dam or mine refuse piles, designs, construction specifications, and other related data, including final abandonment plans, shall be approved and certified by the qualified engineer specified in subsection A of this section, and by the licensed operator or his agent.

C. The designs, construction specifications, and other related data approved and certified in accordance with subsection B of this section shall be submitted for approval to the Director. If the submittal is approved by the Director, he shall notify the licensed operator in writing. If he disapproves, he shall notify the licensed operator with his written objections thereto and his required amendments. But in no event shall the Director fail to approve or disapprove the submittal within thirty days following the receipt thereof.

D. *The governing body of any locality may, by ordinance, require the designs, construction specifications, and other related data for any mine refuse pile approved and certified in accordance with subsection B to be submitted to the governing body. The governing body may require a reasonable decrease in the approved height of the mine refuse pile, provided such decrease will not affect its safety or structural integrity.*