



Periodic Review / Retain Regulation Agency Background Document

Agency name	Department of Mines, Minerals, & Energy
Virginia Administrative Code (VAC) citation	4VAC 25-101
Regulation title	Regulation Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells
Document preparation date	September 28, 2007

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 36 (2006) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

The Department of Mines, Minerals and Energy (DMME) has authority to promulgate this regulation under authority found in § 45.1-161.3, Powers of the Department, § 45.1-161.106, Regulations governing conditions and practices at underground coal mines, §45.1-161.121, Mining in proximity to gas and oil wells, §45.1-161.254, Regulations governing conditions and practices at surface coal mines, and §45.1-161.292, Surface coal mining; distance from wells; requirements.

- Section 45.1-161.3 empowers DMME, with the approval of the Director, to promulgate regulations necessary or incidental to the performance of duties or execution of powers under Title 45.1 of the Code of Virginia.
- Section 45.1-161.106 of the Code of Virginia empowers the DMME Chief to promulgate regulations as may be necessary to ensure safe and healthy working conditions in underground coal mines in the Commonwealth.
- Section 45.1-161.121 of the Code of Virginia requires an operator who plans to remove coal, drive any passage or entry, or extend any workings in any mine, within 500 feet of

any gas or oil well already drilled into the projected mine workings or in the process of being drilled into the projected mine workings to file with the Chief a notice that mining is taking place or will take place and will provide copies to the well operator and the Gas and Oil Inspector.

- Section 45.1-161.254 of the Code of Virginia allows the Chief to have authority, after consultation with the Virginia Coal Mine Safety Board and in accordance with the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.), to promulgate rules and regulations necessary to ensure safe and healthy working conditions in surface coal mines.
- Section 45.1-161.292 of the Code of Virginia allows the mine operator to proceed with mining operations in accordance with the maps and plans submitted; however, without the prior approval of the Chief, he shall not remove any coal or extend any workings in any mine closer than 200 feet to any gas or oil well already drilled or in the process of being drilled

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The Department considered the alternative of repealing the regulation, but determined that the regulation is still needed to protect public safety, health, and welfare. The agency also considered the alternative of amending the regulation, but determined that no amendments were necessary at this time.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

DMME received no public comment in response to the Notice of Periodic Review published in *The Virginia Register*. Parties who have indicated an interest in this regulation were notified by email of the periodic review. The proposed regulation was reviewed internally by DMME. The agency did not form an advisory group to assist in the periodic review based upon perceived lack of controversy and public interest.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

DMME interprets the lack of public comment to indicate satisfaction with the regulation, the manner of implementation, clarity and ease of comprehension, and the effectiveness of the regulation.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

The Department of Mines, Minerals and Energy recommends that this regulation should stay in effect without change.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

The purpose of this regulation is to protect coal mine workers and the public from the potential harmful interaction between gas wells and active coal mines. By improving safety, this regulation enhances the stability of families with members working in or living near coal mines and gas wells.