



Final Regulation Agency Background Document

Agency name	Department of Mines, Minerals and Energy
Virginia Administrative Code (VAC) citation	4 VAC 25-165
Regulation title	Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes
Action title	New regulation to administer arbitration process for coalbed methane gas ownership disputes
Date this document prepared	April 17, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

Chapter 442 of the 2010 Acts of Assembly directs the Virginia Gas and Oil Board (VGOB) to adopt regulations to implement the arbitration process created in that act within 280 days of its enactment. VGOB adopts its regulations through the Department of Mines, Minerals and Energy (DMME). This regulation establishes the guidelines for the arbitration process. Some of the key provisions include how arbitrations are funded, the qualifications of the arbitrator, and procedures associated with the arbitration itself. The final regulations are identical to the proposed regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.

On April 16, 2013, the VGOB voted unanimously to adopt the final regulations titled “Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes.”

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.

As mentioned above, [Chapter 442 of the 2010 Acts of Assembly](#) mandates these regulations. Also, the Director of DMME is generally empowered with regulatory authority under § [45.1-161.3](#) and § [45.1-361.4](#) of the Code of Virginia. (Code). VGOB possesses authority to issue regulations under § [45.1-361.15](#) of the Code.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The purpose of this regulation is to administer the arbitration process mandated in Chapter 442 of the 2010 Acts of Assembly. The act creates a voluntary arbitration process for parties with conflicting claims of ownership of coalbed methane gas. Currently, there is approximately \$26 million in royalties held in escrow, most of which is due to unresolved claims of ownership. Creating an arbitration system that is an effective alternative to litigation can help reduce the amount of funds in escrow. To date, VGOB has not received a request for arbitration.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The regulation will establish the arbitration process. It will detail how interest is calculated to determine if sufficient funds are available to fund the arbitration, how the process works, and what happens once a determination is issued.

Issues

Please identify the issues associated with the proposed regulatory action, including:
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*

3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.

The primary advantage of this statutorily mandated regulation is that landowners and mineral owners in Southwest Virginia have another potential avenue to voluntarily resolve disputes over the ownership of coalbed methane gas. Another potential benefit to citizens, relevant businesses and the Commonwealth would be a decrease of funds currently held in escrow as the result of arbitration determinations. There are no disadvantages to this regulation.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made since the publication of the proposed regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

DMME received no public comments on the proposed regulations.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10	Definitions	N/A	This section serves to define terms.
20	Costs of arbitration	VGOA	This section details how arbitrations are funded.
30	Qualification of arbitrators	VGOA	This section details how individuals are qualified to serve as arbitrators.
40	Agreement to Arbitrate	VGOA	This section specifies that the agreement to arbitrate must be submitted on a form prescribed by DMME. This is to ensure all the necessary information is provided.
50	Conflicts of Interest	VGOA	This section specifies the

			circumstances in which an arbitrator would not be allowed to participate in an arbitration.
60	Conflicts of Interest	VGOA	One clause in this section was stricken as it was more restrictive than the limitations placed in § 45.1-361.22:1(A).
60	Location	VGOA	This section specifies how the venue for an arbitration is chosen.
70	Postponement of Arbitration	VGOA	This section specifies the process for requesting postponement of an arbitration.
80	Discovery	VGOA	This section specifies the pre-arbitration discovery process.
90	Extension of Arbitration	VGOA	This section details how the six month time period for a determination can be extended.
100	Determination of Arbitrator	VGOA	This section specifies the requirements of the determination of the arbitrator.
110	Ex Parte Communications	VGOA	This section prohibits any communication between one claimant and the arbitrator without the presence of the opposing claimant.
120	Fees	VGOA	This section specifies the hourly fee to be paid to the arbitrator.
130	Disbursement of Proceeds	VGOA	The section specifies the process by which a petition for disbursement shall be sent to the VGOB following a final determination.