MEMORANDUM OF AGREEMENT

Between
The Department of Mines, Minerals and Energy (DMME),
And
The Department of Environmental Quality (DEQ)

This Memorandum of Agreement (MOA or Agreement) is a statement of the intentions of the signatory agencies to coordinate their efforts in order to carry out their statutory duties. It is not a contract and it is not enforceable in any judicial or administrative forum. It does not create any rights or duties in any third party. It does not purport to modify the statutory duty of any signatory agency.

The purposes of this MOA are:

1. Facilitate efficient and effective administration of applicable State and Federal environmental laws, regulations and policies for the control of fugitive dust on and immediately adjacent to active coal mining sites.
2. Provide a mechanism for coordination.

This Agreement builds upon the long-standing cooperation between the agencies that has included regulation of dust both on and off permitted coal mine activity.

This Agreement acknowledges that DMME presently regulates land-disturbing, mining and reclamation activities from coal-mining operations by issuing Coal Surface Mining Operation (CSMO) permits. The DMME is delegated by the Federal Office of Surface Mining to administer the Federal Surface Mining Control and Reclamation Act (SMCRA) requirements. By this delegation, DMME has the responsibility for protection of public health and safety and the protection of the environment at CSMO permitted sites. The DMME utilizes enforcement action under the Virginia Coal Surface Mining Control and Reclamation Act of 1979 Title 45.1 Chapter 19.

This Agreement affirms the DEQ's responsibility to protect, enhance and maintain the quality of air of the Commonwealth as provided by law. The authority of DEQ to take such actions as are reasonably necessary, including adoption and enforcement of regulations, to achieve and maintain such levels of air quality as will protect human health, welfare and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions is not delegated or affected by this Agreement.

This Agreement is effective and will continue until terminated or amended as described below.

The parties agree as follows:

1. **Coordination of regulatory development and coordination of site-specific issues between DMME and DEQ:**

   a. The agencies agree that coordination and cooperation between the agencies is absolutely imperative for the assigned programs to be administered efficiently and effectively for the citizens of the Commonwealth of Virginia.

   b. The agencies agree to involve the signatories early in the development process whenever regulations, agency guidance or policy are being developed that would impact the operation or programs of the signatory.

   The agencies agree to collaborate on technical merits of site-specific issues or permits based upon a request from either agency and to provide assistance and to consult with one another as deemed necessary by either agency.

2. Responsibilities of DMME

   a. The DMME regulates land-disturbing activities associated with coal surface mining.

   b. Permits issued by DMME routinely contain provisions relating to the control of fugitive dust, as DMME has promulgated regulations for the control of fugitive dust on active coal-mining operations in the Commonwealth set forth at 4 VAC 25-130-780.18(b)(10), 4 VAC 25-130-784.13(b)(10), 4 VAC 25-130-816.150, 4 VAC 25-130-817.150 and 4 VAC 25-130-816.95.

   c. The DMME has issued a guidance memorandum and a procedure to the coal industry relating to road maintenance and fugitive dust.

   d. The DMME is the lead agency as designated in Virginia Code §45.1-161.6 with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45.1.

3. Responsibilities of DEQ and the State Air Pollution Control Board

   a. The State Air Pollution Control Board (SAPCB) has promulgated regulations for the general control of fugitive dust set forth at 9 VAC 5-40-90 and 9 VAC 5-50-90.

   b. DEQ has the authority under Virginia Code and the State Air Pollution Control Law to implement and enforce regulations promulgated by the SAPCB, including regulations for the control of fugitive dust.

4. Acknowledgements

   a. The facilitation of efficient and effective administration of state environmental laws and regulations for the control of fugitive dust on and adjacent to active coal-mining operations is deemed to be in the public interest.

   b. The DMME and DEQ agree that coordination between the agencies is of great importance in order to efficiently and effectively administer their respective requirements

for the control of fugitive dust at or adjacent to coal-mining operations on behalf of the citizens of the Commonwealth.

c. The DMME will be the lead agency with respect to enforcement of provisions of permits issued under Chapters 16 and 19 of Title 45.1, as required pursuant to Virginia Code §45.1-161.6. The agencies agree to collaborate as described in 1b of this Agreement.

d. The DEQ will coordinate with DMME for investigation, of alleged violations of fugitive dust control regulations and requirements of the SAPCB for areas at coal-mining operations.

e. The DMME will notify DEQ of offsite fugitive dust complaints.

f. The DEQ's responsibility to protect, enhance and maintain the quality of air related to coal-mining operations permitted by DMME is affirmed. Moreover, the authority of DEQ to issue permits to coal-mining operations that require a SAPCB permit pursuant to SAPCB regulations, as well as to otherwise enforce the Virginia State Air Pollution Control Law, Code of Virginia §10.1-1300 et seq., and implementing regulations is not delegated or affected by this Agreement.

5. Termination and Amendment.

The Agreement may be amended by mutual consent of the parties at any time. Either party may terminate this Agreement upon 180 days advance written notice to the other party. Amendments will be stated in writing and signed in the same manner as the Agreement itself.

Witness Signatures and Seals:

Director
Department of Mines Minerals and Energy

12/9/2009
Date

Director
Department of Environmental Quality

12/9/2009
Date