

VOSH PROGRAM DIRECTIVE: 13-020

ISSUED: 01 October 2017

Subject **Memorandum of Understanding Between the Department of Mines, Minerals and Energy and the Virginia Department of Labor and Industry**

Purpose This directive transmits to field personnel a Memorandum of Understanding (MOU) between the Department of Mines, Minerals and Energy and the Virginia Department of Labor and Industry to clarify the regulatory responsibilities over the safety of persons on sites where the Department of Mines, Minerals and Energy (DMME) and the Department of Labor and Industry (DOLI) have jurisdiction. It updates an earlier MOU which expired in June of 2006.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope This Directive applies VOSH-wide.

Reference None.

Cancellation Not Applicable

Effective Date 01 October 2017

Expiration Date Not Applicable

Action The Directors and Managers shall ensure that the policies and procedures established in this MOU are adhered to in handling issues covered under the agreement administered.

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry Cooperative Programs Director and Consultation Manager
Assistant Commissioner-Programs VOSH Compliance & Cooperative Programs Staffs
VOSH Directors and Managers OSHA Region III & OSHA Norfolk Area Offices
VOSH DLS and OIS Staffs

Attachment: Memorandum of Understanding Between the Department of Mines, Minerals and Energy
and the Virginia Department of Labor and Industry (August 30, 2017)

MEMORANDUM OF UNDERSTANDING
Between the Virginia Department of Mines, Minerals and Energy
and the Virginia Department of Labor and Industry

This MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered by and between the Virginia Department of Mines, Minerals and Energy ("DMME") and the Virginia Department of Labor and Industry ("DOLI") (collectively "Parties") and clarifies the regulatory responsibilities over the safety of persons on sites where DMME and DOLI have jurisdiction.

WHEREAS DMME administers Title 45.1 of the Code of Virginia, including the **Coal Mine Safety Act** (§§45.1-161.7 through 45.1-161.104); the **Mineral Mine Safety Act** (§§45.1-161.292:1 through 45.1-161.292:73); the **Safety and Health Regulations for Mineral Mining** (Title 4, Agency 25, Chapters 35 and 40 of the Virginia Administrative Code); the **Virginia Mineral Mine Reclamation Laws and Regulations** (§45.1-161.1: through 45.1-161-225.3 and Title 4, Agency 25, Chapter 31); the **Virginia Coal Surface Mining Control and Reclamation Act** (§§45.1-226 through 45.1-270.7); and the **Virginia Gas and Oil Act** (§§45.1-361.1 through 45.1-361.44), and for sites licensed or permitted by DMME, it conducts inspections and, where appropriate, issues notices of violation and administrative orders for the benefit of the safety of persons;

WHEREAS DOLI administers Title 40.1 of the Code of Virginia, including all safety and health provisions of Title 40.1 (titled Labor and Employment), as well as all standards, rules and regulation adopted thereunder (§ 40.1-49.4); and the **Virginia Asbestos NESHAP Act** (§§ 40.1-51.23 through 40.1-51.41). DOLI conducts health and safety inspections of places of business covered by the State Plan developed in accordance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) and, where authorized, investigates injuries and fatalities at these locations; and

WHEREAS DMME and DOLI have concurrent jurisdiction over certain aspects of personnel safety at DMME permitted sites and seek to clarify their regulatory responsibilities over the safety of persons on DMME permitted and licensed sites as well as to foster cooperation between the agencies.

WHEREAS §45.1-361.42 of the Code of Virginia requires the DMME Director to notify the DOLI for actions taken under Title 40.1, as applicable.

To clarify their regulatory responsibilities over the safety of persons on DMME permitted and licensed sites and to foster cooperation between DMME and DOLI, the Parties acknowledge and agree as follows:

- DMME has jurisdiction regarding safety and health hazards on licensed or permitted sites administered by the Divisions of Mines, Mineral Mining, and Mined Land Reclamation, regarding environmental requirements on permitted mineral mines administered by the Division of Mineral Mining, and regarding the safety and health of persons on coal bed methane gas, oil, and geophysical operations undertaken pursuant to the Virginia Gas and Oil Act (§§45.1-361.1 through 45.1-361.44).

- DOLI has jurisdiction over all places of business covered by the State Plan developed in accordance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) for enforcing the safety and health provisions of Title 40.1 (titled Labor and Employment), as well as all standards, rules and regulation adopted thereunder and over enforcing asbestos emission standards for demolition and renovation construction activities and the disposal of asbestos containing construction wastes.
- DMME will notify DOLI whenever they receive notification of any workplace fatality, or other injury or illness over which DMME does not have jurisdiction as expeditiously as possible after discovering the lack of jurisdiction. DMME shall make such notification using the numbers available at the DOLI website:
http://www.doli.virginia.gov/workplace_fatality/workplace_fatality.html
- DOLI will notify DMME whenever they receive notification of any workplace fatality, or other injury or illness that occurs at any workplace within DMME's jurisdiction, over which DOLI does not have jurisdiction, as expeditiously as possible after discovering the lack of jurisdiction. DOLI shall make such notification using the numbers available at the DMME website:
<https://www.dmme.virginia.gov/dmm/accidents.shtml>
- DMME shall refer any safety or health hazard within DOLI's jurisdiction observed during an inspection or investigation pursuant to §45.1-361.42 of the Code of Virginia to DOLI expeditiously by telephone or electronic message.
- DMME shall provide DOLI with an electronic copy of any inspection or investigation report that documents the safety or health hazard within DOLI's jurisdiction, as well as any follow-up report addressing remediation or enforcement action.
- DOLI may conduct inspections or investigations when notified by DMME of a safety or health hazard within DOLI's jurisdiction.
- DOLI shall provide DMME with an electronic copy of DOLI's inspection or investigation, including any citation(s) issued.
- DMME and DOLI shall designate and provide contact information for the respective persons who will be charged with receiving and responding to notices and reports shared under this MOU within 30 days of the Effective Date of this MOU and shall be updated within 30 days of any change of the point of contact or point of contact's information.

This MOU represents a non-financial obligation.

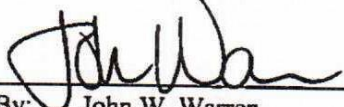
Any amendments to this MOU shall not take effect unless the amendment is in writing and signed by the Parties; any amendment takes effect upon the signature of the Parties.

This MOU memorializes a cooperative understanding between DMME and DOLI, as indicated by the signatures below. It is entered into for the mutual benefit of the Parties with regard to their respective

missions and responsibilities. This is not a legal contract nor does this create any contractual rights, obligations, benefits, or any private right of action.

The Effective Date of this Memorandum of Understanding is the date on which it is signed by both Parties and shall remain in effect until cancelled. The MOU may be cancelled upon 30 days written notice to the other Party.

Commonwealth of Virginia
Department of Mines, Minerals and Energy


By: John W. Warren
Director

Date: 8/30/2017

Commonwealth of Virginia
Department of Labor and Industry


By: C. Ray Davenport
Commissioner

Date: 8/30/2017

**APPROVAL REQUEST FORM
DOLI MOU**

(With DMME Concerning Fatality and Other Notifications Between the Agencies)

DEVELOPER/DIRECTOR OF ORIGINATING OFFICE:

Signature & Date Robert B. Feld 8-30-17

Comments: This MOU renews an earlier agreement dealing with notifications required under §45.1-361.42 of the Virginia Gas and Oil Act. The main area that such notifications could occur is in Asbestos NESHAP. We had few if any notifications under the old MOU. This MOU also includes fatality notifications between the two agencies when it is discovered that the case is in the other agencies jurisdiction. Several recent notifications went to the wrong agency initially. This MOU is intended to insure proper notification as soon as it is discovered.

ASSISTANT COMMISSIONER FOR PROGRAMS:

Signature & Date UP Bay 8/30/17
Comments:

DIVISION OF LEGAL SUPPORT:

Signature & Date Jay W. Walker 8.30.17
Comments:

ADMINISTRATIVE & FINANCIAL SERVICES DIRECTOR:

Signature & Date Nancy Sanders 8-30-17
Comments: